



**CONTRACT NO. 200005
STADLER RDS Software
(SS 100115)**

CONTRACTOR: STADLER SERVICE AG
Ernst-Stadler-Strausse 4
CH 9565 Bussnang, Switzerland
+41 71 626 1986
Christoph Heini
christoph.heini@stadlerrail.com

AWARD DATE: April 19, 2016

AWARD AMOUNT: \$466,500.00

CONTRACT TERM: Six (6) years from Notice to Proceed

PROJECT MANAGER: Brian Allan
512-852-7258
brian.allan@capmetro.org

CONTRACT ADMINISTRATOR: Anita Deibert
512-369-7755
anita.deibert@capmetro.org

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CONTRACT # 200005
(SS # 111715)

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**EXHIBIT A
PRICING SCHEDULE
Contract No. 200005**

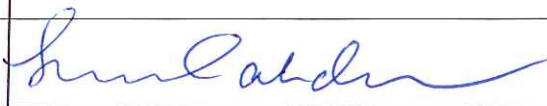
STADLER IS REQUIRED TO SIGN AND DATE EACH PAGE OF THIS SCHEDULE

1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT

Company Name (Printed)	Stadler Rail Service AG		
Address	Ernst-Stadler-Strasse 4		
City, State, Zip	9565 Bussnang, Switzerland		
Phone, Fax, Email	+41 71 626 19 59		Juerg.gygax@stadlerrail.co m
The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein.			
Authorized Agent Name and Title (Printed)	Jürg Gygax, CEO Stadler Rail Service AG		
Signature and Date			March 2, 2016

2. AUTHORITY'S ACCEPTANCE (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	Muhammad Abdullah, Contracting Officer
Signature and Date	 5/12/18
Accepted as to:	Exhibit A, Sections 4A, 4B, and 4C

The remainder of Exhibit A – Pricing Schedule has been redacted.

For further information regarding Exhibit A, you may:

- Reach out to the Contractor directly via the Contractor contact details provided on the cover page of this contract.

OR

- Submit a public information request directly to PIR@capmetro.org.

For more information regarding the Public Information Act and submitting public information requests, follow this link to our website: <https://www.capmetro.org/legal/>

EXHIBIT B
REPRESENTATIONS AND CERTIFICATIONS
(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)
MUST BE RETURNED WITH THE OFFER

1. TYPE OF BUSINESS

(a) The offeror operates as (mark one):

- An individual
- A partnership
- A sole proprietor
- A corporation
- Another entity _____

(b) If incorporated, under the laws of the State of:

Switzerland

2. PARENT COMPANY AND IDENTIFYING DATA

(a) The offeror (mark one):

- is
- is not

owned or controlled by a parent company. A parent company is one that owns or controls the activities and basic business policies of the offeror. To own the offering company means that the parent company must own more than 50% of the voting rights in that company.

(b) A company may control an offeror as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominate minority voting rights, use of proxy voting, or otherwise.

(c) If not owned or controlled by a parent company, the offeror shall insert its own EIN (Employer's Identification Number) below:

(d) If the offeror is owned or controlled by a parent company, it shall enter the name, main office and EIN number of the parent company, below:

Stadler Rail AG
9565 Bussnang
Switzerland
[REDACTED]

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) The offeror certifies (and all joint venture members, if the offer is submitted by a joint venture) that in connection with this solicitation:

(1) the prices offered have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, with any other offeror or with any other competitor;

(2) unless otherwise required by law, the prices offered have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening of bids in the case of an invitation for bids, or prior to contract award in the case of a request for proposals, directly or indirectly to any other offeror or to any competitor; and

(3) no attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(a) In accordance with the provisions of 2 CFR (Code of Federal Regulations), Part 180, the offeror certifies to the best of the offeror's knowledge and belief, that it and its principals:

(1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) have not within a three (3) year period preceding this offer been convicted of or had a civil judgement rendered against 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 or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (a)(2) above; and

(4) have not within a three (3) year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

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(b) Where the offeror is unable to certify to any of the statements above, the offeror shall attach a full explanation to this offer.

(c) For any subcontract at any tier expected to equal or exceed \$25,000:

(1) In accordance with the provisions of 2 CFR, Part 180, the prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to the statement, above, an explanation shall be attached to the offer.

(3) This certification (specified in paragraphs (c)(1) and (c)(2), above) shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of the certifications to the Authority upon request.

5. COMMUNICATIONS

(a) All oral and written communications with the Authority regarding this solicitation shall be exclusively with, or on the subjects and with the persons approved by, the persons identified in this solicitation. Discussions with any other person not specified could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and, thereby, compromise the integrity of the Authority's procurement system. If competition cannot be resolved through normal communication channels, the Authority's protest procedures shall be used for actual or prospective competitors claiming any impropriety in connection with this solicitation.

(b) By submission of this offer, the offeror certifies that it has not, and will not prior to contract award, communicate orally or in writing with any Authority employee or other representative of the Authority (including Board Members, Capital Metro contractors or consultants), except as described below:

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

6. CONTINGENT FEE

(a) Except for full-time, bona fide employees working solely for the offeror, the offeror represents as part of its offer that it (mark one):

- has
- has not

employed or retained any company or persons to solicit or obtain this contract, and (mark one):

- has
- has not

paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) The offeror agrees to provide information relating to (a) above, when any item is answered affirmatively.

7. CODE OF CONDUCT

(a) Declaration of Policy: The Capital Metropolitan Transportation Authority ("Capital Metro") Board of Directors, its employees, agents, and contractors must abide by the highest standards of conduct in carrying out Capital Metro's stewardship of public funds in order for the public to be assured that the actions of Capital Metro serve only the Authority's best interests.

(b) Definitions: For the purpose of this Code of Conduct, the following definitions shall apply.

(1) "Affected" means reasonably likely to be subject to a direct economic effect or consequence.

(2) "Agent" means a person authorized by Capital Metro to act for Capital Metro.

(3) "Business entity" means a sole proprietorship, partnership, limited partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized by law through which business is conducted.

(4) "Board of Directors" means the governing body of Capital Metro.

(5) "Confidential Information" means any information in Capital Metro's possession, which Capital Metro is legally required or has determined to keep confidential, and which Capital Metro has the legal right to keep confidential.

(6) A Board Member/employee has a "Conflict of Interest" if he/she has a substantial interest in a business entity that will be affected by his or her participation in a vote, decision, recommendation, or action.

(7) A Board Member/employee has a "Conflict of Interest" if he/she has a substantial interest in real property that will be affected by his or her participation in a vote, decision, recommendation, or action and the vote, decision, recommendation, or action will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(8) A Board Member/employee has a "Substantial Interest" in a business entity or real property if:

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(i) the interest is ownership of ten (10%) percent or more of the voting stock or shares of the business entity or ownership of ten (10%) percent or more or \$15,000 or more of the fair market value of the business entity;

(ii) funds received from the business entity exceed ten (10%) percent of the Board Member's/employee's gross income for the previous year;

(iii) the interest in real property is an equitable or legal ownership with a fair market value of \$2,500 or more;

(iv) an organization which employs, or is about to employ, a Board Member/employee who has a substantial interest in the business entity as defined in (i), (ii) and (iii) above; or

(v) one of the following individuals has a substantial interest, as defined in subsections (i), (ii) and (iii) above, in a business entity or real property: an employee's spouse, his/her partner, mother, father, brother, sister, children, aunt, uncle, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, stepchild, stepparents, grandparent, or grandchild. A relationship by marriage will end by death or divorce unless there is a living child or descendent of the marriage.

(9) "Contractor" means a person or business entity that has entered into a contract with Capital Metro to provide goods or services for Capital Metro.

(10) "Employee" means any person holding a position with Capital Metro, for which compensation is received, including part-time workers employed more than ten (10) hours per week or intermittent, seasonal, or temporary workers.

(c) Standards of Conduct: Board members, employees, agents and contractors shall exercise good-faith judgment and uphold the mission of Capital Metro as follows:

(1) ensure that Capital Metro complies with all applicable laws and regulations;

(2) adhere to Capital Metro policies and procedures;

(3) efficiently transact Capital Metro business and safeguard Capital Metro assets from waste, abuse, theft or damage;

(4) exhibit a desire to serve the public, and display a helpful, tolerant manner;

(5) treat fellow Board members, employees, agents, contractors and the public with honesty, respect and dignity;

(6) reveal all material facts known to them when reporting on work projects; and

(7) disclose immediately any information regarding

unethical or wrongful conduct related to Capital Metro transactions to the Board Vice Chair or the Capital Metro Ethics Officer.

(d) Absolute Prohibitions: No Board Members, Employees, Contractors, or Agents shall:

(1) participate in a contract or real property transaction in which he/she has a substantial interest;

(2) solicit, accept, or agree to accept any benefit as consideration for his/her decision, vote, opinion or recommendation;

(3) solicit, accept, or agree to accept any benefit as consideration for his/her violation of any law or duty;

(4) solicit, accept or agree to accept any benefit from a person that is interested in any Capital Metro contract or transaction;

(5) no Board Member or employee may receive or accept any gift or favor from a contractor or potential contractor of Capital Metro;

(6) act as a surety for a business that has a contract with Capital Metro;

(7) disclose or use confidential information that Capital Metro has not made public;

(8) use his/her official position or employment or Capital Metro's facilities, equipment or supplies to obtain private gain or advantage;

(9) engage in any transaction or activity or incur an obligation in a business, contract or real property transaction that would conflict with Capital Metro;

(10) fail to disclose to his/her supervisor or appropriate Capital Metro staff his/her discussions of future employment with any business interested in Capital Metro transactions;

(11) represent, for remuneration, any person in any proceeding involving Capital Metro's interests;

(12) Capital Metro Board Members, employees, and agents shall not use their authority to unfairly influence other Board Members or other employees or agents to perform illegal, immoral or discreditable acts;

(13) communicate details of any active Capital Metro procurement or solicitation to any contractor, potential contractor or individual not authorized to receive information regarding the active procurement;

(14) No Board Member or employee shall:

(i) participate for a business entity in which the employee has a substantial interest if the employee participated in the recommendation, bid, proposal or solicitation in a Capital Metro contract, procurement or personal admin-

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istration matter for a period of two (2) years after leaving employment; and

(ii) receive any pecuniary benefit from a Capital Metro contract or procurement through the ownership of a substantial interest, as defined in Section (b), subsections (6) through (8) above, in a business entity or real property for a period of two (2) years after leaving employment.

(e) Exceptions to Prohibitions: The Prohibitions listed above do not apply to the following:

(1) A gift or other benefit conferred, independent of the Board Member's or employee's relationship with Capital Metro, that is not given or received with the intent to influence the Board Member or employee in the performance of his or her official duties. The Board Vice Chair or the Ethics Officer must be consulted for a determination as to whether a potential gift falls within this exception.

(2) Food, lodging, or transportation in consideration for legitimate services rendered by the Board Member or employee related to his or her official duties.

(f) Disclosure of Conflict of Interest Requirements:

(1) A Board Member or employee must disclose any interest in a business, a contract, or in real property that would confer a benefit by their vote or decision.

(i) A Board Member or employee cannot participate in the consideration of the matter subject to the vote or decision.

(ii) Prior to the vote or decision, the Board Member or employee shall file an affidavit relating to the interest in the business, contract or real property with the Board Vice Chair or Ethics Officer.

(2) A Board Member or employee must disclose the name of a potential employer if the prospective employer has an interest in any Capital Metro transaction upon which the Board Member or employee may be involved.

(g) Penalties: In addition to turning over evidence of misconduct to the proper law enforcement agency when appropriate, the following penalties may be enforced:

(1) The failure of a Board Member to comply with the requirements of this policy shall constitute grounds for censure or removal from the Board in accordance with Section 451.511 of the Texas Transportation Code.

(2) The failure of an employee to comply with the requirements of this policy shall result in disciplinary action up to and including termination.

(3) The failure of an agent or contractor of Capital Metro to comply with this policy shall be grounds for such contractual remedy as may be appropriate up to and including termination of the contract and debarment of the contractor.

(h) By signing below, the offeror certifies and represents that the offeror:

(1) has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this solicitation;

(2) has read and is familiar with, and will comply with the Authority's CODE OF CONDUCT, above; and

(3) will abide by all the terms and conditions contained herein, which apply to and become a part of any contract resulting from this solicitation.

(i) To report suspected ethical abuses or fraud, contact the ethics hotline at (512) 385-0371. It is available 24 hours a day, 365 days a year. All calls are strictly confidential.

(j) In accordance with section 176.006, Texas Local Government Code, "vendor" is required to file a conflict of interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at www.ethics.state.tx.us. The questionnaire shall be sent to the Authority's Contract Administrator.

8. CERTIFICATION OF RESTRICTIONS ON LOBBYING

This Certification is applicable if the offer exceeds \$100,000.

(a) By submission of this offer, the offeror certifies to the best of the offeror's knowledge or belief that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.



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(d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 or not more than \$100,000 for each such failure.

9. VENDOR PERFORMANCE SCORING

(a) In compliance with the Texas Government Code, Title 10, Subtitle D, Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2157.125, and Texas Administrative Code, Title 1, Chapter 113.6, information obtained from the Texas Building and Procurement Commission's Vendor Performance Tracking System (VPTS) which may be found at TBPC's website at <http://www.window.state.tx.us> and may be used in evaluating responses to solicitations for goods and services to determine the best value for the Authority.

(b) The offeror certifies to the best of the offeror's knowledge and belief that if listed in the VPTS, neither it nor its principals have, in the last two years, received less than an average vendor performance scoring of **90%** in either commodity delivery, service delivery, commodity performance, or service performance categories.

10. SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

(a) These representations and certifications concern a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous or false certification, in addition to all other remedies the Authority may have, the Authority may terminate the contract for default and/or recommend that the offeror be debarred or suspended from doing business with the Authority in the future.

(b) The offeror shall provide immediate written notice to the Authority if, at any time prior to contract award, the offeror learns that the offeror's certification was, or a subsequent communication makes, the certification erroneous.

(c) Offerors must set forth full, accurate and complete information as required by this solicitation (including this attachment). Failure of an offeror to do so may render the offer nonresponsive.

(d) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.


Name of Offeror:

Stadler Rail Service AG

Type/Print Name of Signatory:

Jürg Gygax

Signature:



Date:

3.11.2015

**EXHIBIT E
CONTRACTUAL TERMS AND CONDITIONS
(SERVICES CONTRACT)**

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "subcontracts" includes purchase orders under this contract.

(b) In computing any period of time established in this contract, "days" means calendar days, and the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday; in which event the period shall run to the end of the next business day.

(c) Fully burdened hourly labor rate: An hourly rate that includes all salary, overhead costs, general & administrative expenses, and profit.

(d) Work. Work is defined as the scope of work detailed in Exhibit F, Scope of Services document.

(e) Vehicle. Vehicle is defined as the self-propelled rail vehicle of the type GTW DMU 2/6.

(f) Schedule: The schedule is the mutually jointly agreed delivery schedule which includes delivery and/or acceptance deadlines, it being understood that work will begin upon issuance of a Notice to Proceed and the acceptable final installation will be completed by February 2017 in conjunction with the AVT modifications (Contract No. 200001). Both parties shall perform its best efforts to agree on mutually acceptable revisions of the delivery schedule if a certain delay occurs.

(g) Reservation of Title: Stadler remains the owner of all supplies until having received the full payment.

2. FIRM FIXED PRICE CONTRACT

(a) This is a fixed price contract for the supplies or services specified and stated elsewhere in the contract.

(b) Price escalation for options:
The prices shall remain fixed for the first delivery under this Contract. Prices for option orders as defined in sections 6 and 7 of Exhibit A shall be such prices plus any escalation calculated using the US Department of Labor/Bureau of Labor Statistics Producer Price Index ("PPI") Category 1442.04, "Railroad Cars."

FORMULA EXAMPLE:
Index Point Change Calculation

PPI Index:

Future order month: 141.1
Less PPI Index:
Base order month: 137.6
Index Point Change: 3.5

Index Percentage Change Calculation

Index Point Change: 3.5
Divided by PPI Index:
Base Order Month: 137.6
Change: .0254
Percent Change
(Multiplied by 100): 2.54%
Price Increase Calculation

Base Order Price
(Example only): \$250,000
Plus Percentage Change
(\$250,000 x 2.54%): \$ 6,350
Revised Order Price: \$256,350

3. TERM

The term of the contract shall be six (6) years from the contract Notice to Proceed provided Contractor may terminate this contract early upon advance written notice to the Authority in the event there is change of the Authority's O&M operator from Herzog Transit Services to a direct competitor of Contractor. In order to exercise the right of early termination, Contractor must demonstrate to the Authority with clear and convincing evidence that the new O&M operator is a competitor of Contractor prior to its exercise of its termination rights. For purposes of the paragraph, the phrase "direct competitor" shall mean another train manufacturer or an affiliate thereof. In the event of termination, the effective date of the termination will be the start date of the new O&M operator. The Authority agrees to provide Contractor with advance written notice of any change to the Authority's O&M Contractor as soon as practicable. No work shall be performed under this contract prior to issuance of a Notice to Proceed.

4. OPTION TO EXTEND TERM

(a) The Authority may extend the term of this contract before the contract expires. Such an extension is subject to approval of the Contractor, but such an approval shall not be unreasonably withheld. If feasible, The Authority shall give written notice of its intent to extend before the contract expires. The preliminary notice shall not commit the Authority to an extension and any absence of notice shall not affect the validity of any exercise of option to extend the term of this contract.

(b) The option period prices shall be the unit prices provided in Exhibit A.

(c) There shall be two (2) option periods of four (4) years each.

5. OPTION TO EXTEND SERVICES

~~The Authority may require continued performance of any services within the limits and rates specified in the contract (Exhibit A). The Authority may exercise the option by written notice to the Contractor within 60 days.~~

5. INVOICING AND PAYMENT

(a) Invoices may be submitted once per month, and marked "original" to the attention of:

Accounts Payable
CMTA
P.O. Box 6308
Austin, Texas 78762-6308

(b) Payment shall be made within the time period allowed by law through the Texas Prompt Payment Act - Texas Government Code 2251.021(b). A prompt payment discount may be taken if offered and determined to be advantageous by the Authority.

(c) The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Authority when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50% of the total amount of this contract.

(d) Currency Exchange Rate It is agreed that the price for the options listed in sections 6 and 7 of Exhibit A shall be subject to a one-time adjustment (either up or down) at the time the option is awarded based on the daily currency exchange rate between Switzerland and the U.S. (USD/CHF) published by the U.S. Federal Reserve Board-<http://www.federalreserve.gov/releases/h10/current/default.htm>. For the avoidance of doubt, should the dollar rate fluctuate it is understood and agreed that the cost of the options shall be adjusted upward or downward based on the difference in the currency exchange rate in U.S. Dollars.

(e) Progress Payments and Milestones. Progress payments shall be made to the Contractor by the Authority during the contract performance period according to the following schedule:

Milestone	Payment
Upon completion of engineering and installation plan documents and setup.	40% of Installation cost
Upon completion and acceptance by Capital Metro of installation to the 1 st 2 nd and 3 rd vehicle.	40% of Installation cost
Upon completion and acceptance by Capital Metro of installation to the 4 th , 5 th , and 6 th vehicle.	20% of Installation cost

Every 6 months after start of RDS license	50% of annual license fee
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Installation cost: Item No. 1 of Exhibit A, section 4A
Annual license fee: Item No. 2 of Exhibit A, section 4A.

6. INSURANCE

Contractor shall furnish proof of Authority-stipulated insurance requirements specified below. Proof of insurance shall be in the form of a certificate executed by an approved insurance company authorized to do business in the State of Texas. The Authority's insurance requirements are:

(a) The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below. The Authority shall be endorsed as an ADDITIONAL INSURED by the Contractor with respect to the contract. In any event, the Contractor shall carry and pay the premiums for insurance of the types and the amounts of not less than the following:

(1) Commercial General Liability Insurance Coverage with limits of not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage including Products Liability. Such coverage as herein provided shall be extended for and endorsements included as follows:

- (i) Extended Coverages.
 - (A) Contractual Liability covering the Contractor's obligations herein.
 - (B) Personal Injury Liability extended to claims arising from employees of the Contractor and the Authority.

(ii) Endorsements Included. **The Authority named as ADDITIONAL INSURED.**

(2) Workers' Compensation Insurance: Statutory Workers' Compensation coverage in the State of Texas. Employers Liability Insurance with minimum limits of liability of One Million and No/100 Dollars (\$1,000,000). The Contractor shall cause its insurer for Worker's Compensation Insurance to endorse the Contractor's policy to **waive subrogation against Capital Metropolitan Transportation Authority**, its directors, officers, employees, agents, successors and assigns for any and all claims incurred by the Contractor's employees which arise out of the work under this contract. The above is applicable to U.S. based or U.S. assigned employees only.

(3) Automobile Liability Insurance covering all owned, hired and non-owned automobiles used in connection with work with limits not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage. If the Contractor uses the delivery services of a common carrier, then the Automobile Liability insurance will not be required. If the Contractor uses personnel and vehicles provided by the Contractor, then Automobile Liability will be required. Such

coverage as herein provided shall **include the Authority as an ADDITIONAL INSURED.**

(4) Professional Liability Coverage: Professional liability covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated. Minimum limits of liability shall be not less than One Million and No/100 Dollars (\$1,000,000) on an annual aggregate basis.

(b) All required insurance shall be written by an approved insurance company authorized to do business in the State of Texas.

(c) Proof that insurance coverage exists shall be furnished to the Authority by way of a Certificate of Insurance before any part of the contract work is started. The Certificate shall certify the Authority as an ADDITIONAL INSURED with a provision that in case of cancellation or any material change in the coverages stated above, the Authority shall be notified no less than thirty (30) days prior to any such change. The Contractor shall be liable for his subcontractor's insurance coverages of the types and in the amounts stated above, and shall furnish the Authority with copies of such Certificates of Insurance. If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority may terminate this contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due Contractor.

(d) The Contractor and all of its insurers shall, in regard to the above stated insurance, waive all rights of recovery or subrogation against the Authority and the Authority's insurance companies.

(e) The Contractor shall indemnify and hold harmless the Authority and its agents, successors, and assigns from and against all injury, loss, damage, or claims of liability, including attorney's fees and disbursements, to any person (including employees of the Authority; Contractor's employees and Contractor's subcontractors and their employees; associates and other persons assisting the Contractor on a paid or voluntary basis) for injury to or death of the person. The Contractor shall also indemnify and hold harmless the Authority and its agents, successors, and assigns from any loss of or damage to property arising from, related to, or in connection with any negligent act, error or omission of the Contractor during the performance of this contract and the use of the premises incident to the contract.

(f) The Contractor shall defend all suits brought upon the claims described in Section (e) above and pay all costs and expenses incident to the suits. The Authority shall have the right, at its own expense, to participate in the defense in any suit without relieving the Contractor of any obligation described above.

(g) The Authority will give the Contractor prompt notice in writing of the institution of any suit or proceeding and permit the Contractor to defend same and will give all needed information to do so. The Contractor shall similarly give the Authority immediate notice of any claim arising out of the

performance of the contract. The Contractor shall furnish immediately to the Authority copies of all pertinent papers received by the Contractor regarding the suit, action or claim.

(h) If any part of the contract is sublet, the Contractor shall provide the Authority evidence of subcontractors insurance currently in place in the form of an insurance certificate. The Authority may require subcontractors to obtain insurance up to the limits required of the Contractor. In the event a subcontractor is unable to furnish insurance in the limits required under the contract, the Contractor shall endorse the subcontractor as an ADDITIONAL INSURED on Contractor's policies.

(i) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by the Authority. The Authority reserves the right to inspect in person, prior to the commencement of the contract work, all of the Contractor's insurance policy required under this contract.

(j) If the Contractor has procured insurance at the time of the Contractor's submission of his bid, proof of the required insurance should be submitted with the Contractor's bid or proposal. Alternatively, the Contractor is requested to submit evidence of a commitment from an insurance company or companies, or a duly licensed agent, that the Contractor has made arrangements for the required insurance. If the bid or proposal is considered for award, and the Contractor has not previously furnished either the proof of insurance or evidence of commitment, the Contractor will be required to provide proof of the insurance or evidence of a commitment within five (5) days of request. If the Contractor is awarded the bid, and has submitted evidence of commitment rather than proof of the required insurance, the Contractor must furnish proof of the required insurance within five (5) days of the award of the contract. Certificate of Insurance must indicate the contract number and description. The insurance certificate should be mailed to the attention of the buyer who made the request.

(k) The above requirements only represent the minimum insurance coverage acceptable to the Authority and these requirements are not intended to represent the maximum risk involved or the maximum liability of the Contractor.

(l) The Contractor shall be responsible for setting its own requirements, if any, for the kind and amounts of insurance to be carried by its subcontractors in excess of the insurance required by the Authority. No delay in the work caused by the Contractor's enforcements of its subcontractor's insurance requirements shall be excusable delay in the contract.

7. REPRESENTATIONS

Contractor represents that the Services shall be performed in conformity with the descriptions and other data set forth in this contract and with sound professional principles and practices in accordance with accepted industry standards, and that work performed by Contractor's personnel shall reflect sound professional knowledge, skill and judgment. If any breach of the applicable standard of professional care is discovered by the Authority during the process of the work or within one year after acceptance of the work by the Authority,

Contractor shall again cause the nonconforming or inadequate Services to be properly performed at Contractor's sole expense and shall reimburse for costs directly incurred by the Authority as a result of reliance by the Authority on services failing to comply with the applicable standard of professional care, provided that in any case the Contractor has the first right to remedy or repair the said nonconforming or inadequate Services.

8. INDEPENDENT CONTRACTOR

Contractor's relationship to the Authority in the performance of this Agreement is that of an independent contractor. The personnel performing services under this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of the Authority. Contractor shall be fully liable for all acts and omissions of its employees, subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with contract requirements. There shall be no contractual relationship between any subcontractor or supplier of Contractor and the Authority by virtue of this contract. No provision of this contract shall be for the benefit of any party except the Authority and Contractor. Contractor shall pay wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

9. COMPOSITION OF CONTRACTOR

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

10. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

Subcontractors and outside associates or consultants providing key systems, key components or key services as required by the Contractor in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this contract. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the Authority.

11. PERSONNEL ASSIGNMENTS

Contractor represents that contractor has established a criminal background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that contractor conducts criminal background checks on its U.S. based or U.S. assigned employees in accordance with such policy to identify, hire and assign personnel to work on this contract whose criminal backgrounds are appropriate for the work being performed considering the risk and liability to the contractor and the Authority. The Authority reserves the right to require the contractor to disclose any criminal record for assigned personnel and the right to disapprove the use of assigned personnel with criminal records.

12. BADGES AND ACCESS CONTROL DEVICES

(a) Each contractor employee shall be required to wear a Capital Metro Contractor Photo Identification Badge at all times while on the Authority's premises. The badge will be provided by Capital Metro. If contractor employee loses or misplaces their badge, contractor will be charged a \$50.00 replacement fee for each lost or misplaced badge. This fee will be deducted from the contractor invoice. If contractor fails to return all badges provided for their employees upon completion of the contract or termination of the contractor's employee, contractor will pay a \$50.00 per badge fee deducted from their final invoice. Badges should be returned to the Project Manager. All requests for new and replacement badges must be submitted in writing by the Project Manger to the Manager of Security or Project Manager of Security

(b) Access Control Devices will be issued to contractor employees as necessary to perform the duties specified in the contract. Access Control Devices are not transferable between contractor employees. Contractor employees are prohibited from loaning Access Control Devices or providing access to an unauthorized person into restricted areas without prior arrangements with the Project Manager and the Manager of Security or the Project Manager of Security.

Lost Access Control Devices must be reported to the Project Manager, the Manager of Security or the Project Manager of Security immediately. If contractor fails to return all Access Control Devices provided for their employees upon completion of the contract or termination of the contractor's employee replacement cost shall be calculated at current market value to include labor and materials. Replacement key costs shall be deducted from the contractor current or final invoice. Misuse of Capital Metro key(s) may result in termination of the contract.

13. CHANGES

(a) Contractors are expected to examine the Schedule, Solicitation Instructions and Conditions, Contractual Terms and Conditions, all drawings, specifications, the Statement of Work, and all other provisions of, and exhibits to, the solicitation, whether incorporated by reference or otherwise, prior to the submission of offers.

(b) The Authority may, at any time, by written order, make changes within the general scope of the contract in the services to be performed. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any services under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract.

(c) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Authority.

15. TERMINATION FOR DEFAULT

(a) The Authority may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in either one of the following circumstances:

(1) if the Contractor fails to make delivery of the supplies or to perform the service within the time specified herein or any extension thereof; or

(2) if the Contractor is in material default regarding any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

(b) In the event the Authority terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent, if any, it has not been terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, the following: acts of God or of the public enemy, acts of the Authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; provided, however, in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor and if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Authority, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed supplies delivered to and accepted by the Authority shall be at the contract price. Payment for

manufacturing materials delivered to and accepted by the Authority and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Authority. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be those provided in the Termination for the Convenience of the Authority Clause hereof. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract.

(f) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. Time is of the essence for all delivery, performance, submittal, and completion dates in this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

16. TERMINATION FOR CONVENIENCE

The Authority may, whenever the interests of the Authority so require, terminate this contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

(a) The Contractor shall incur no further obligations in connection with the terminated work, and, on the date set forth in the notice of termination, the Contractor will stop work to the extent specified. The Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Contractor must still complete the work not terminated by the notice of termination and may incur such obligations as are necessary to do so.

(b) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: any completed or partially completed supplies that the Contractor has specifically produced or delivered and which the Authority has paid for, through the effective date of termination.

(c) The Authority shall pay the Contractor the following amounts:

(1) contract prices for supplies or services accepted under the contract;

(2) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit

shall not include anticipatory profit or consequential damages), less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(3) costs of settling and paying claims arising out of the termination of subcontracts (these costs must not include costs paid in accordance with subparagraph (2) of this paragraph); and

(4) the reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract.

(5) The total sum to be paid the Contractor under this section shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under this paragraph, and the contract price of work not terminated.

17. CONTRACTOR CERTIFICATION

The Contractor certifies that the fees in this Agreement have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

18. DRAWINGS AND OTHER DATA

Except for the license granted herein, all designs, drawings, specifications, notes, documents, reports, data, graphics and other works developed in the performance of this contract (the "Deliverables") shall be and remain the sole property of Contractor. Contractor hereby grants to the Authority an exclusive, fully paid, royalty free, perpetual license, to use, copy, modify and distribute the Deliverables for its business purposes. The Contractor shall deliver to the Authority a copy of the Deliverables as a condition of the payment for services rendered or upon the earlier termination of the contract.

19. STANDARDS OF PERFORMANCE

The Contractor shall perform all work hereunder in compliance with all applicable federal, state, and local laws and regulations. In the event such laws or regulations change after the date of this contract which will result in an increase to the Scope of Work, then such change shall be governed by paragraph 14. The Contractor shall use only licensed personnel to perform work required by law to be performed by such personnel.

20. ACCEPTANCE of WORK

Acceptance of the Work ("Acceptance") performed shall be deemed to have occurred when the Authority issues a written notification of Acceptance. Acceptance of the Work shall follow satisfactory delivery, installation, inspection, testing, if any and training, if any. Following completion of the Work and static and/or dynamic commissioning, if any, of the vehicle, the Authority and the Contractor perform a joint inspection of the Work, which successful completion shall be confirmed in written notice of Acceptance signed by both parties. Potential deficiencies will be listed on an inspection protocol and Stadler is obliged to take appropriate corrective actions within a jointly agreed period. The Acceptance of the Work by the Authority can only be withheld if there are material defects affecting the safe revenue service operation of the Vehicle.

21. SUSPENSION OF WORK

(a) The Authority may order the Contractor in writing to suspend all or any part of the work for such period of time as the Authority determines to be appropriate for the convenience of the Authority.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of the Authority in the administration of this contract, or by the Authority's failure to act within the time specified in this contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that no additional time is required for the Contractor, (2) extra costs are not incurred or (3) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Authority in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

22. FEDERAL, STATE AND LOCAL TAXES

Personal property furnished or used in this contract will be exempt from the Limited Sales and Excise and Use Tax imposed, Texas Tax Code, Section 151.009, and certain other taxes. Contractor shall obtain instructions for the issuance of and exemption certificate from the local office of the State Comptroller of Public Accounts or other tax offices. Any such taxes included on any invoice or voucher received by the Authority shall be deducted from the amount of the invoice or voucher for purposes of payment.

23. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Offeror shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall retain and make available to the Authority records showing compliance with this Section, for three (3) years after completion of a project, or until an audit is completed and all questions, claims, disputes, negotiations, and other actions arising therefrom are resolved, whichever occurs last. Additional retention periods may be required as appropriate and stipulated in writing.

24. CONFLICT OF INTEREST

(a) Reference is made to Exhibit B, Representations and Certifications, Code of Conduct, which is incorporated herein and made a part of this contract. Capitalized terms used in this clause and not otherwise defined shall have the meanings as described to them in the Code of Conduct.

(b) Contractor represents that no Employee has a Substantial Interest in Contractor or this contract, which Substantial Interest would create or give rise to a Conflict of Interest. Contractor further represents that no person who has a Substantial Interest in the Contractor and is or has been employed by the Authority for a period of two (2) years prior to the date of this contract has or will (1) participate, for Contractor, in a recommendation, bid, proposal or solicitation on any Authority contract, procurement or personnel administration matter, or (2) receive any pecuniary benefit from the award of this contract through an ownership of a Substantial Interest (as that term is defined in Section II, subsections (1) and (3) of the Code of Conduct) in a business entity or real property.

(c) Contractor agrees to ensure that the Code of Conduct is not violated as a result of Contractor's activities in connection with this contract. Contractor agrees to immediately inform the Authority if it becomes aware of the existence of any such Substantial Interest or Conflict of Interest, or the existence of any violation of the Code of Conduct arising out of or in connection with this contract.

(d) The Authority may, in its sole discretion, require Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of Contractor to so comply shall render this contract voidable by the Authority. Any willful violation of these provisions, creation of a Substantial Interest or existence of a Conflict of Interest with the express or implied knowledge of Contractor shall render this contract voidable by the Authority.

(e) In accordance with section 176.006, Texas Local Government Code, "vendor" is required to file a conflict of

interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at www.ethics.state.tx.us. The questionnaire shall be sent to the Authority's Contract Administrator.

25. GRATUITIES

The Authority may cancel this Agreement, without liability to Contractor, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any Authority official or employee with a view toward securing favorable treatment with respect to the performance of this Agreement. In the event this Agreement is canceled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

26. PUBLICATIONS

All published material and written reports submitted under this project must be originally developed material unless otherwise specifically provided in the contract document. When material, not originally developed, is included in a report, it shall have the source identified. This provision is applicable when the material is in a verbatim or extensive paraphrased format.

27. REQUEST FOR INFORMATION

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this contract to any party other than the Authority and its authorized agents except as otherwise provided by this contract or after obtaining the prior written permission of the Authority.

(b) This contract, all data and other information developed pursuant to this contract shall be subject to the Texas Public Information Act. The Authority shall comply with all aspects of the Texas Public Information Act.

(c) The Contractor is instructed that any requests for information regarding this contract and the Deliverables shall be referred to the Authority.

(d) The Authority will not release any confidential or proprietary information to a third party unless required by law.

28. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

(a) All reports, charts, schedules, or other appended documentation to any proposal, the contents of basic proposal or contracts, any responses, inquiries, correspondence, and all material submitted as part of the proposal shall become the property of the Authority upon receipt.

29. LIMITATION OF LIABILITY

In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to Contractor or its subcontractors for special, indirect, incidental or consequential damages, resulting from the Authority's performance, nonperformance, or delay in performance of its obligations under this contract, or the Authority's termination of the contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. Contractor shall include similar liability provisions in all its subcontracts.

30. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental provisions, regulations or standards prevailing during the term of this Agreement. In the event such laws or regulations change after the date of this contract which will result in an increase to the Scope of Work, then such change shall be governed by paragraph 14. Contractor shall obtain any permits or licenses necessary for the performance of the Services.

31. CLAIMS

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor, the Contractor shall give written notice thereof, to the Authority within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Capital Metropolitan Transportation Authority, 2910 East Fifth Street, Austin, Texas 78702.

32. ASSIGNMENT

This contract shall be binding upon the parties, their successors, and assignees; provided, however, that neither party shall assign its obligations or delegate its duties hereunder without the prior written consent of the other. Any attempted assignment or delegation without written consent shall be void and ineffective. For the avoidance of doubt, an assignment of all or parts of the scope of work to entities, which are directly affiliated with the Contractor, is permissible. The Contractor is obliged to inform the Authority accordingly.

33. LICENSES AND PERMITS

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of work or to the products or services to be provided under this contract including, but not

limited to, any laws or regulations requiring the use of licensed subcontractors to perform parts of the work.

34. NOTICE OF LABOR DISPUTES

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor immediately shall give notice, including all relevant information, to the Authority.

(b) Intentionally deleted.

35. PUBLICITY RELEASES

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this contract or the work hereunder which the Contractor or any of its subcontractors desires to make for the purposes of publication in whole or in part, shall be subject to approval by the Authority prior to release.

36. INDEMNITY

The Contractor, and the Contractor's subcontractors and suppliers shall defend, indemnify and save harmless the Authority, its officers, agents and employees from and against all suits, actions or claims of any character, name or description (including the cost, expenses and reasonable attorney's fees) brought for or on account of any injuries or damages (including death) received or sustained by any person or property on account of or arising out of, or in connection with, any acts or omissions of the Contractor or any subcontractor or anyone directly or indirectly employed by or under the supervision of them in the performance of this Contract, and shall in all ways hold the Authority, its officers, agents and employees harmless from any such claims, losses or damages. However, the amount of the indemnity the Contractor and the Contractor's subcontractors and suppliers may become obligated to pay shall be limited to an overall amount equal to 100% of the Total Contract Price.

37. MAINTENANCE OF RECORDS

All associated records required by this contract or by law shall be maintained for three (3) years after completion of a project, or until an audit is completed and all questions, claims, disputes, negotiations, and other actions arising therefrom are resolved, whichever occurs last. Additional retention periods may be required as appropriate and stipulated in writing.

38. EXAMINATION AND RETENTION OF RECORDS

[INTENTIONALLY DELETED]

39. EXCUSABLE DELAYS / DEFAULTS

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Authority in either

its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless –

(1) the subcontracted supplies or services were obtainable from other sources;

(2) The Authority ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of the Authority under the Termination clause of this contract.

40. LOSS OR DAMAGE TO PROPERTY

The Contractor shall be responsible for any loss or damage to property including, merchandise, fixtures and equipment belonging to the Authority or to any other individual or organization, if any such loss or damage was caused by Contractor or any employee thereof, while such employee is on the premises of the Authority as an employee of the Contractor.

41. CONTRACTOR CONTACT/AUTHORITY DESIGNEE

The Contractor shall provide the Authority with a telephone number to ensure immediate communication with a person (not a recording) anytime during contract performance. Similarly, the Authority shall designate an Authority representative who shall be similarly available to the Contractor.

42. QUALITY ASSURANCE

A periodic review of the Contractor's scheduled work will be performed by the Authority, provided that the Authority shall have the right to perform a daily review during the periods when the Authority's representatives are present at the work site. A daily review of the Contractor's scheduled work will be performed by the Authority. If work is deemed incomplete or unacceptable in any way, the Authority will determine and cause and require the Contractor to take corrective measures in accordance with the terms of the contract.

43. NONWAIVER OF RIGHTS

Failure or delay of the Authority (a) to insist in any one or more instances upon performance of any of the terms and conditions of this contract or (b) to exercise any rights or remedies, or (c) to approve the Services shall not release Contractor from any of its obligations under this contract and shall not be construed as a waiver or relinquishment of the Authority's rights (a) to require strict performance of Contractor's obligations or (b) to require the future performance of any terms and conditions, but the Contractor's obligations with respect to such performance shall continue in full force and effect.

44. INTERPRETATION OF CONTRACT – DISPUTES

All questions concerning interpretation or clarification of this contract or the acceptable fulfillment of this contract by Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the Capital Metro President/CEO within two weeks after the Authority notifies Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two weeks of the protest filing of his final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, Contractor shall proceed with the Services in accordance with the determinations, instructions, and clarifications of the President/CEO. Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses arising from its failure to do so. Contractor's failure to protest the Contracting Officer's determinations, instructions, or clarifications within the two week period shall constitute a waiver by Contractor of all of its rights to further protest.

45. TOBACCO FREE WORKPLACE:

(a) Definitions:

(1) **Tobacco products:** Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.

(2) **Capital Metro Property:** The following tobacco free workplace policy refers to all Capital Metro owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.

(b) Policy:

Capital Metro is committed to providing a safe and healthy worksite and promoting the health and well-being of its employees. Personal health hazards related to tobacco products are numerous and have been well documented. The health hazards related to tobacco use impact both users and non-users who are exposed to second-hand smoke. We care about the health of each and every employee, and our intent is to provide all employees and visitors with a work environment conducive to good health.

(1) The purpose of this policy is to promote a healthy environment for all employees and visitors by:

(h) Protecting employees and visitors from second hand smoke

(ii) Encouraging tobacco users to quit tobacco use

(iii) Lowering health plan costs

(2) Tobacco use is not permitted at any time, on Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.

(3) There will be no designated tobacco use areas on Capital Metro owned or leased property, since no level of tobacco exposure is considered to be safe.

(4) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

(5) Capital Metro strives to be a good neighbor in the community, and as such we discourage the use of tobacco products on the property of nearby businesses and residences.

46. ORDER OF PRECEDENCE

In the event of any inconsistency between the provisions of the solicitation (including any resulting contract), the inconsistency shall be resolved by giving precedence in the following order: (1) the Schedule; (2) Contractual Terms and Conditions (Exhibit E); (3) other provisions of the contract whether incorporated by reference or otherwise; and (4) the specifications or statement of work (Exhibit F).

47. GOVERNING LAW

The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Texas. Whenever there is no applicable state statute or decisional precedent governing the interpretation of, or disputes arising under or related to, this contract, then federal common law, including the law developed by federal boards of contract appeals, the United States Claims Court (formerly the Court of Claims), and the Comptroller General of the United States, shall govern. Venue for any action shall lie exclusively in Travis County, Texas. This is the complete agreement between the parties. If any provision of the contract is found to be invalid or unenforceable, the remaining provisions shall not be impaired.

48. ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

[INTENTIONALLY DELETED]

48. CONSEQUENTIAL DAMAGES

Except for liquidated damages provided elsewhere in this Contract, Contractor shall not be liable to the Authority for any consequential damages, such as loss of revenue, loss of use, or costs of capital. Nothing herein shall limit or exclude

Contractor's liability for incidental damages including, but not limited to, removal, inspection, costs of return, or warehousing.



Exhibit F
Scope of Services
Stadler Rail Data Services (RDS) Software for Capital Metro DMUs

Overview

Stadler is the owner of a proprietary technology product for rail systems called Rail Data Services (RDS). RDS is a software product that collects vehicle performance data and transmits the information on demand back to a central server. It will be used by Capital Metro to capture component and system performance information, provide real-time diagnostics, and manage performance of the DMUs.

Scope of Services

Stadler will install the RDS software onto Capital Metro's G1-fleet as follows, and thereafter shall license the RDS Software to Capital Metro for a period of five (5) years upon the completion and approval of the installation of the RDS:

- **Installation** and License of RDS System on the G1-fleet of CapMetro for six (6) existing DMUs, including 10 customer accounts for use by both Herzog and Capital Metro, with web access to the RDS Server, including backup of data for a period of 24 months.
 - A certificate based VPN tunnel will be set up between Stadler and Capital Metro. Traffic flow through this tunnel will be controlled via IP address and port number and will be restricted to DMU / RDS data
 - The SIM cards will be provisioned on the Capital Metro / Verizon private network (APN).
 - All data flow between the DMUs and Stadler will be encrypted and will not be publicly accessible
 - Capital Metro and Herzog users will view the RDS data via a normal Internet based web browser session. This data flow will not be transmitted via the VPN tunnel
 - Design details are available in figure 1, APN conceptual drawing, below
 - Included tasks
 - RDS onboard application engineering, ensure connections to private APN
 - Setup of Capital Metro VPN Server (as virtual Windows machine)
 - VPN Configuration in collaboration with Capital Metro
 - Management of Stadler Certification Authority (exclusive for this connection): issue, revocation, renew certificates
 - Routing of train connections to the corresponding RDS (incl. maintenance)
 - Ensure operating of this service during the complete period of the contract
- **4-year License** for the RDS System on the four (4) new DMUs (Contract No. 135935) being manufactured by Stadler (the RDS system will have already been installed by Stadler under the contract), including 10 customer accounts for use by both Herzog and Capital Metro with web access to the RDS Server, including backup of data for a period of 24 months. The term of the License for the four (4) new DMUs being manufactured by Stadler shall begin upon the end of the warranty period and remain in effect through for four (4) years.
- **RDS Technical Support** to include user phone and email technical support during the Central European (CET) office hours (Mon-Fri, 8:00 AM- 5:00 PM). Recording of inquiries in case of any problems, internal coordination and solution proposal work.



Exhibit F
Scope of Services
Stadler Rail Data Services (RDS) Software for Capital Metro DMUs

- Note: Stadler will set up a customer hotline and a user support as defined under the contract, during the Central European Hours (CET) office hours (Mon-Fri, 8:00 AM-5:00 PM). Eventually Stadler's U.S. based site can provide a telephone support during the local office hours, starting in Q2 2017.
- **One day on-site training** for up to ten (10) Capital Metro and/or Herzog employees.
- **Software maintenance** Stadler will maintain the software and install software updates in a timely fashion, as well as replace damaged components such as server components. Stadler will import maintenance updates on the server side with prior notification.
- **Data** All data is stored in a database for up to 2 years (daily transfer to data base, requirement that data must be transferred once to data base, transcription errors are not recoverable) Herzog and Capital Metro will be able to download and/or export the Data. All Data will be backed up by Stadler for two years.
- **Data Fields** Stadler will provide a definition of all data fields.
- **Remote Troubleshooting and Support** Stadler will provide troubleshooting and support of the Capital Metro owned Stadler railcar fleet utilizing the RDS System. Herzog will coordinate communication with Stadler on troubleshooting support which will include access to mechanical, electrical and software engineers at Stadler who will be available by phone or email.

Exhibit F
Scope of Services
Stadler Rail Data Services (RDS) Software for Capital Metro DMUs

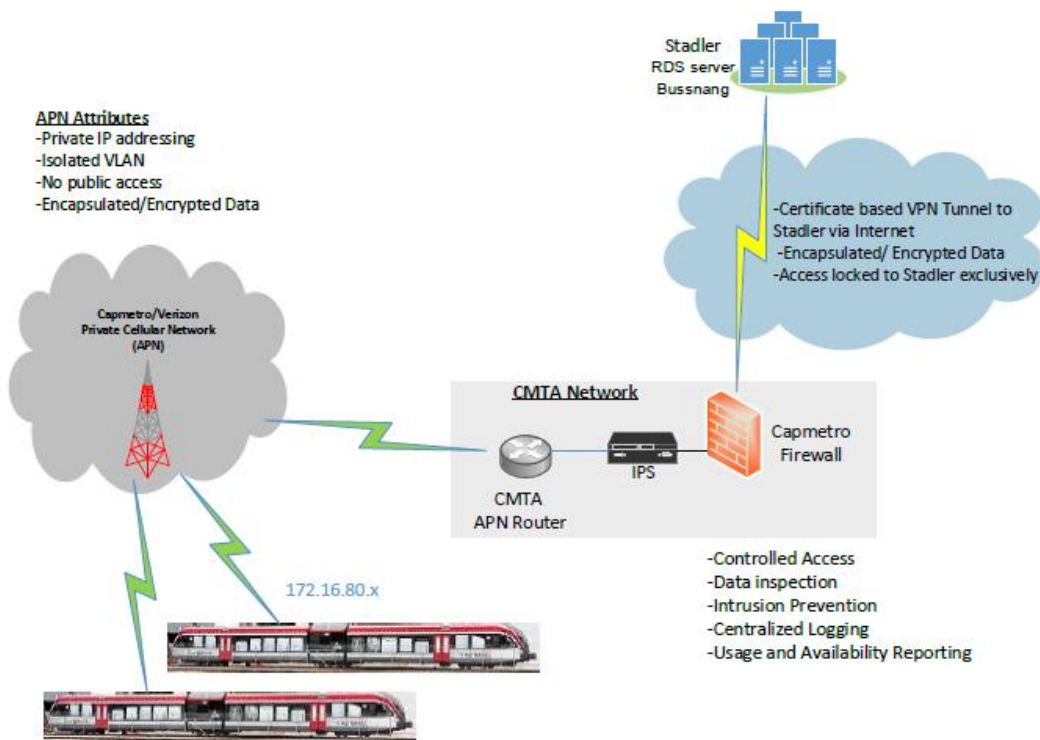


Figure 1 – APN conceptual drawing

Connection Description

Overview:

The intent of this design is to protect and encrypt all data going to and from the DMUs. All communications between the DMUs and the Stadler site or server will be encrypted and controlled via a VPN tunnel between Stadler and Capital Metro. Capital Metro and its vendors will access the RDS data using a standard web browser connecting to the external Stadler website. This web based traffic will not be transmitted via the VPN tunnel, but rather will be accessed via the Internet.

SIM card provisioning:

The SIM cards for the RDS will be provisioned by Capital Metro and will reside on Capital Metro’s private network with Verizon (APN). This will provide private IP addresses for the SIM cards that are not publicly routable on the Internet. No ‘public’ access to the DMUs will be permitted. These SIM cards will have a 172.16.80.x IP address, with exact IP addresses assigned at time of provision. No devices other than the DMUs will be provisioned on this isolated /24 network.



Exhibit F
Scope of Services
Stadler Rail Data Services (RDS) Software for Capital Metro DMUs

VPN tunnel:

A certificate based VPN tunnel will be established between the Capital Metro Cisco ASA firewall and the designated Stadler endpoint. Traffic flow is allowed on the VPN tunnel between Stadler and Capital Metro will be controlled by IP address and port number. Permitted traffic will be bi-directional between the DMUs and the defined Stadler VPN resource.

Other General information:

Capital Metro will not be able to do a deep packet inspection of the traffic with an Intrusion Prevention System due to the proprietary nature of the Stadler software. Due to the proprietary nature of the traffic, the IPS will not block traffic based on IPS signatures and inspection rules. Logging will be limited but any logs collected will be sent to a Capital Metro syslog server. Capital Metro will monitor the SIM cards and collect usage and availability data. Capital Metro will not send 'alerts' based on these monitors due to DMUs only being powered on while in service. Capital Metro will not have login information for the router hardware unit.

EXHIBIT G - ADDITIONAL TERMS AND CONDITIONS FOR IT SERVICES

1. Additional Definitions.

1.1 “**Authority Data**” means all information and data uploaded to or otherwise obtained by the Ongoing Services from the hardware installed on the applicable vehicles that are subject to this Agreement, including any historical data of a similar nature provided by or on behalf of the Authority.

1.2 “**Availability Percentage**” means the following fraction expressed as a percentage:

$$\frac{\text{Maximum Uptime} - \text{Unscheduled Downtime}}{\text{Maximum Uptime}}$$

Uptime is only related to the actual response time of the Contractor webserver.

1.3 “**Average System Response Time**” means the end-to-end average round trip measurement between a User’s device and the Ongoing Service. Uptime is only related to the actual response time of the Stadler webserver. Measured via “time to first byte” from Contractor site in Bussnang.

1.4 “**Deliverable**” means (a) any material or item created specifically for the Authority as a part of any Service or in connection with Contractor’s performance of any Service; and (b) all hardware and equipment that Contractor installed (or had installed) in or on any facilities, vehicles, or other equipment of the Authority.

1.5 “**Maximum Uptime**” means the applicable calendar month in its entirety (i.e., 24 hours per day, seven days per week), minus Scheduled Maintenance.

1.6 “**Scheduled Maintenance**”. Scheduled Maintenance is carried out during CET office hours, ideally between 8-11 CET. Prior notification will be done via website one week in advance.

1.7 Those services to be performed at a specific time (e.g., the delivery of materials, installation services, implementation services, and customization services) shall be considered “**Fixed Services**,” and those services to be performed on an on-going basis throughout the term of the Agreement (e.g., software-as-a-service, support, maintenance, and hosting services) shall be considered “**Ongoing**

Services.” Together, Fixed Services and Ongoing Services are considered “**Services.**”

1.8 “**Unscheduled Downtime**” means the total time, other than Scheduled Maintenance, during which Contractor’s server on which the Ongoing Services are hosted does not actually respond to Customer’s attempt to use the Ongoing Service is not operating in compliance with this Agreement.

1.9 “**User**” means an employee, contractor, agent, supplier, or other individual using the Ongoing Service on behalf of the Authority.

2. Acceptance; Delivery.

2.1 Acceptance. If within ninety (90) days of the Completion Date (as defined below) the Authority determines that any Service or Deliverable is unacceptable to the Authority, the Authority may reject such Service or Deliverable by written notice to Contractor, such notice to include the reason for such rejection. The “**Completion Date**” means that date on which the Authority receives written notice from Contractor that, as applicable: (a) the Fixed Services have been completed; (b) the Deliverable has been delivered to the Authority (including, if required of Contractor, the full installation and implementation of such Deliverable); or (c) the Ongoing Services, including the necessary hardware, software, and all other obligations of Contractor in order for the Authority to receive the Ongoing Services, have been fully installed, implemented, and are ready for production use by Authority. Contractor will, at its expense, re-perform or repair any Service or Deliverable rejected by the Authority pursuant to this Section within a reasonable period of time after its receipt of written notice thereof from the Authority, such period of time not to exceed thirty (30) days, subject to the Authority’s right to reject the re-performed or repaired Service or Deliverable in accordance with this Section 2.1. If Contractor does not timely correct a deficiency or the Authority rejects a corrected Service or Deliverable, the Authority may then elect to either (i) permit Contractor additional opportunities to correct the deficiency (each opportunity at Contractor’s expense and subject to the Authority’s right to reject in accordance with this Section 2.1); (ii) terminate this Agreement or any portion hereof by providing written notice to Contractor; or (iii) accept the non-conforming Service or Deliverable as-is. If the Authority elects option (ii), Contractor shall, within five (5) days of such termination, refund to the Authority all amounts paid

by the Authority for the non-conforming Service and/or Deliverable. If the Authority elects option (iii), then the amounts to be paid by the Authority hereunder shall be equitably adjusted and, if necessary, refunded to the Authority within five (5) days of such agreement. Whether the Authority elects (i), (ii), or (iii) above, Contractor shall reimburse the Authority for any additional costs and expenses incurred by the Authority due to Contractor's delay in performance. If the Authority accepts a Service or Deliverable, the Authority shall notify Contractor in writing ("**Acceptance**" or "**Accepted**"); however, the Authority's Acceptance of non-conforming Services or Deliverables shall not constitute a waiver of any other rights (including any warranties) pursuant to this Agreement or at law or in equity. Services and Deliverables shall not be deemed Accepted until Contractor receives written notification thereof from the Authority.

2.2 Customs, Imports and Exports. If any Deliverable or Service, or any component thereof, is imported or exported into or out of any country or otherwise requires the import or export of any item, Contractor will be the importer or exporter of record, as applicable, and will be responsible for all legal, regulatory and administrative requirements associated with such importation and/or exportation and the payment of all associated duties, tariffs, taxes and fees. Upon the Authority's request, Contractor shall provide the Authority with an appropriate certification stating the country of origin for the applicable Service or Deliverable, sufficient to satisfy the requirements of (a) the customs authorities of the country of receipt, and (b) any applicable export licensing regulations.

3. Confidential Information.

3.1 Contractor acknowledges that the Authority has revealed, or may have to reveal, to Contractor, and that Contractor may obtain by virtue of its performance certain confidential, proprietary and/or trade secret information, including, without limitation, information concerning the Authority's operations, employees, features and other confidential information, and such information may include, without limitation, certain specifications, designs, plans, drawings, hardware, software, data, prototypes, business and financial information or names and job positions and responsibilities of its employees or independent contractors (collectively, "**Confidential Information**"). The Authority's "Confidential Information" also includes all Deliverables. All Confidential Information, in whatever form provided, will remain the property of the Authority. Contractor agrees to take commercially reasonable and

appropriate action to maintain all such Confidential Information of the Authority that is in Contractor's possession in confidence, such action to be no less protective than the actions Contractor takes to protect its own information similar to the Confidential Information, and in a manner adequate to protect the Authority's proprietary right in its Confidential Information. In furtherance of the foregoing, Contractor will treat as confidential and will not, without the prior written approval of the Authority, use or copy (other than in the performance of its duties hereunder), publish, disclose, copyright or authorize anyone else to do the same, either during the term of the contract or subsequent thereto, any Confidential Information.

3.2 Contractor agrees to limit disclosure of these terms and conditions and any Confidential Information of the Authority to only those agents, employees and subcontractors of Contractor that are involved in its execution and performance and only if those employees, agents and subcontractors have been advised of and agree to be bound by these confidentiality obligations. Contractor agrees that it will be responsible for any breach of the confidentiality provisions of this Agreement by its employees, agents or subcontractors.

3.3 Contractor agrees to return or destroy (and certify in writing to such destruction), within three (3) business days of the termination of this Agreement or the Authority's request and at the Authority's direction, all documents or other materials embodying Confidential Information and Contractor will retain no copies (written, electronic, or otherwise) thereof.

3.4 If Contractor is required by applicable law to disclose any Confidential Information of the Authority, Contractor shall provide to the Authority prompt notice of each such request, to the extent not prohibited by such applicable law, so that the Authority may seek an appropriate protective order or waive compliance with these confidentiality provisions or both. Contractor shall reasonably assist the Authority in its efforts to contest or limit such required disclosure. If, absent the entry of a protective order or the receipt of a waiver of these confidentiality provisions, Contractor is, in the written opinion of its legal counsel, legally compelled to disclose such information, under penalty of liability for contempt or other censure or penalty, Contractor may disclose such information to the persons and to the minimum extent required without liability.

3.5 The term “Confidential Information” shall not include any information that: (a) is or becomes available to the public other than by breach by Contractor of its confidentiality obligations; (b) Contractor can prove by written documentation that it already knew, without any obligation of confidentiality, at the time of disclosure by the Authority; (c) information learned by Contractor through a third party lawfully in possession and having no obligation to keep such information confidential; or (d) is independently developed by employees or agents of Contractor without any use, access, or reference to such information.

3.6 ~~Stadler Contractor will issue a security certificate. Encrypted transmission of data via VPN service. Parameter of connectivity will be mutually agreed between Capital Metro and Contractor Stadler. Contractor Stadler offers Capital Metro a static IP address in combination with a port, which will be used exclusively for this connection. Contractor agrees that the server it uses to host the Ongoing Services will be a private virtual server used only for the Authority. Contractor will issue a security certificate to the Authority that will only allow for access and use of the Ongoing Services by static IP addresses in combination with a port on both ends of the connection. The connection provided by Contractor will encrypt all data transmitted via such VPN.~~ Contractor agrees to maintain a level of security with respect to the Ongoing Services that is commensurate with and at least as protective as that level of security that would be required by all applicable laws, industry-best practices, and the Authority’s policies and procedures governing or pertaining to the access to, storing of, or processing of information that could be used to identify a natural person or that relates to an identified or identifiable natural person, regardless of whether Contractor actually does access, store, or process such information. At a minimum, Contractor shall maintain or cause to be maintained a reasonable and commercially feasible information security program designed to reasonably ensure the security of the Ongoing Services. Such safeguards must include electronic barriers (e.g., firewalls or similar barriers), password-protected access to the Ongoing Services, the removal of any of the Authority’s data from electronic media in accordance with applicable law before re-use, and the recordation of the movements of hardware, electronic media and any person responsible therefor. For any physical component of the Ongoing Services, Contractor agrees that such safeguards must include secured access, storage and disposal procedures of such components. Contractor’s current security measures and procedures are attached hereto

as Attachment 1 and Contractor shall comply with all provisions thereof. If there is a conflict between the provisions of this Exhibit and Attachment 1 or any modified version of Contractor’s security measures and procedures, the terms of this Exhibit shall control. Contractor shall not modify its security measures and procedures in any manner that offers less protection than that specified in Attachment 1. Whenever Contractor employs the services of a third-party service provider to assist it in performing its obligations herein, Contractor shall ensure that each such service provider maintains the same security safeguards set forth herein. If Contractor becomes aware of a suspected or actual breach of security or unauthorized access to the Ongoing Services or any component thereof (an “Incident”), Contractor shall immediately: (a) notify the Authority and specify the extent to which the Ongoing Services were compromised or any information was disclosed; and (b) take appropriate actions to contain and mitigate such Incident. At the Authority’s request, Contractor will reasonably cooperate with the Authority to investigate the nature and scope of any Incident, including, without limitation and upon the Authority’s written instruction, making all notifications to persons, entities, or governmental authorities as may be required, all such cooperation to be at Contractor’s expense. The content of all such notices must be authorized by the Authority in writing prior to delivery. Unless required by applicable law, in no event shall Contractor notify any individual person, any other government entity, or any other third party of an Incident unless authorized by the Authority in writing. ~~Upon the Authority’s request, Contractor shall also provide to the Authority a copy of Contractor’s most recent external independent audit reports (including, but not limited to, any SSAE 16, SOC1, SOC2 or other similar audits of Contractor’s operations, information security program, and/or disaster recovery/business continuity plan) (the “Audit Reports”). At all times during the term of this Agreement and for as long as Contractor controls any Confidential Information of the Authority, Contractor’s performance hereunder shall not be performed in a manner that offers materially less security than that described in such Audit Reports.~~

4. Ongoing Services.

4.1 Contractor hereby grants to the Authority a non-exclusive, non-transferable, fully paid-up, royalty-free license to access and use the Ongoing Services during the term of the Agreement. Contractor agrees that the Authority may allow its third party service providers to use any of the Services on behalf of the Authority provided the Authority

remain liable for any damages caused by such third party service provider's failure to comply with the use restrictions set forth in Section 4.3 below.

4.2 In connection with the Ongoing Services, Contractor shall provide server-side connectivity with two or more internet service providers ("ISPs") that ensures a server infrastructure at Contractor's facilities with high availability. Such connectivity shall be with ISPs of Contractor's choosing and any cost or charge for such connectivity shall be included in the amounts to be paid by the Authority as set forth herein.

4.3 Use of the Ongoing Services will require a unique user name and password combination. The Authority's use of the Ongoing Services shall be limited to those vehicles agreed upon by the parties as being subject to and within the scope of this Agreement. The Authority shall not, and shall not assist others in doing same, copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Ongoing Services or any part thereof. For the avoidance of doubt, the Ongoing Services and any materials accessible through the Ongoing Services are only available in English.

4.4 Contractor will maintain an Availability Percentage of no less than ninety-nine percent (99%) measured on an annual basis at Contractor site in Bussnang. Contractor is responsible for measuring, managing to, and enforcing the Availability Percentage Contractor will, by the fifth (5th) business day of each month, provide to the Authority a detailed written report showing the actual Availability Percentage and the actual Average System Response time, called "time to first byte" and the actual Average System Response time, called "time to first byte", for the Ongoing Service for the preceding month. Excluded from Contractor's calculation of the Availability Percentage and the Average System Response Time shall be any outage or delay in Ongoing Services caused solely by infrastructure or service not in Contractor's control (e.g. outage due to general internet conditions). Contractor shall be considered in material breach of this Agreement if: (a) the Availability Percentage is less than 95% in any month; (b) the Availability Percentage is less than 99.5% in any three (3) consecutive months; (c) the Availability Percentage is less than 99.5% in any four (4) months out of a rolling twelve (12) month period; (d) Average System Response Time is slower than 600 millisecond in any month; (e) Average System Response Time is slower than 350 milliseconds in any three (3) consecutive

months; or (f) Average System Response Time is slower than 350 milliseconds in any four (4) months out of a rolling twelve (12) month period.

4.5 At no additional cost, Contractor will make available to the Authority and install and fully implement all upgrades, updates, and new versions to the Ongoing Services ("**Upgrades**"). Upgrades will be available when Contractor makes such Upgrade to any other customer. Installation and implementation of Upgrades shall not otherwise interrupt the Ongoing Services unless first authorized by the Authority in writing. All Upgrades will include at least that level of functionality as included in the prior version and will be fully functional and interoperate with all previous functionalities of prior versions of the Ongoing Services and all previously submitted or obtained Authority Data. Contractor will provide the Authority with at least ninety (90) days' advance written notice of any planned release of an Upgrade. Once implemented, an Upgrade will be considered a part of the Ongoing Services.

4.6 Contractor shall maintain a business continuity and disaster recovery plan designed to ensure the continuity of the Ongoing Services in the case that an event interrupts normal business operations (e.g., data backup and recovery, relocation of resources) (the "**Business Continuity Plan**"). ~~Within fifteen (15) days of the date of this Agreement, Contractor shall provide a copy of the Business Continuity Plan to the Authority.~~ The Business Continuity Plan shall enable Contractor, within forty-eight (48) hours of any disruption of the Ongoing Services, to restore the Ongoing Services to a condition where it is accessible via the Internet, conforms to the requirements of this Agreement, allows for access to all previously generated Authority Data, and is able to process additional Authority Data that is submitted to the Ongoing Services. Contractor shall actively test, review, and update the Business Continuity Plan on at least an annual basis using ~~American Institute of Certified Public Accountants standards and other industry best practices as guidance. Contractor shall promptly provide the Authority with copies of all such updates to the Business Continuity Plan.~~ In any event, any future updates or revisions to the Business Continuity Plan shall be no less protective than the plan in effect as of the execution of this Agreement. ~~Contractor agrees that it will use all efforts to:~~ (a) maintain the Business Continuity Plan as related to the Ongoing Services, (b) ~~within ninety (90) days of the Effective Date, and at least once every calendar year during the term of this Agreement, update and test the operability of the Business Continuity Plan in effect at that time,~~ (c)

~~upon the Authority's request, certify to the Authority that the Business Continuity Plan is fully operational, (d) upon discovery by Contractor, immediately provide the Authority with written notice of a disaster impacting the provision of the Ongoing Services; and (e) to the extent not already implemented, upon the occurrence of any disaster impacting the provision of the Ongoing Services immediately implement the Business Continuity Plan.~~ If Contractor fails to make the Ongoing Services available to the Authority within the periods of time set forth in the Business Continuity Plan, the Authority may, in addition to any other remedies available to it hereunder or at law or in equity, immediately terminate this Agreement. Full backups of all Authority Data will be performed weekly. Incremental backups of the Authority Data will be performed nightly. All backups of Authority Data will be replicated offsite in near-real time. Notwithstanding anything to the contrary herein, no failure or delay by Contractor in performing its obligations under this Section 4.6 shall be excused for any reason.

5. Ownership of Intellectual Property. Capital Metro can access all data (reports, livedata, historical data, browsing) via web-surface at all time. The data are available for download and/or export. Capital Metro has no ownership of the database, where the Capital Metro data is stored but will retain ownership of the data. Capital Metro has no exclusive user rights, Stadler must have access to data at any time.

5.1 All software, processes, know-how, and any other methods and tools used by Contractor to perform any of the Services, including, without limitation, the Ongoing Services, but excluding the Authority Owned Items (as defined below), shall remain the exclusive property of Contractor. All property of Contractor shall be considered the Authority's Confidential Information which the Authority accepts to keep confidential under the provisions of Section 3 it being understood that all such information is subject to the Texas Public Information Act.

5.2 All supplies, tools, materials, data, and information provided by the Authority to Contractor or otherwise obtained by Contractor by virtue of this Agreement (the "**Authority Materials**"), all Authority Data, and all Deliverables (collectively, the "**Authority Owned Items**") shall remain the sole and exclusive property of the Authority, and no right, title, or interest in or to such Authority Owned Items is transferred to Contractor under this Agreement or by virtue of Contractor's performance hereunder. ~~To the extent the Authority does not automatically own any~~

~~right, title, or interest in or to any of the Authority Owned Items, Contractor hereby assigns and transfers to the Authority all right, title, and interest (including all intellectual property rights) in and to the Authority Owned Items.~~ All Authority Owned Items shall be considered the Authority's Confidential Information.

5.3 Contractor agrees that it will use reasonable care in protecting and securing all Authority Owned Items while in its possession. To the extent any Deliverable, Service, Contractor's performance of its obligations hereunder, or Contractor's negligence, gross negligence, or intentional misconduct causes any destruction, deletion, or loss of any Authority Owned Item, Contractor shall be responsible for replacing, repairing, regenerating, or restoring the Authority Owned Item at its own cost. To the extent Contractor is unable to do so within a reasonable period of time, the Authority may undertake its own efforts to replace, repair, regenerate, or restore such Authority Owned Item, including, without limitation, hiring a third party to do so, and Contractor will reimburse the Authority for all costs incurred in doing so. ~~This Section 5 will replace Section 18 of the Exhibit E Contractual Terms and Conditions.~~

6. Additional Warranties; Other Obligations of Contractor.

6.1 In addition to all other representations, warranties, and covenants included in this Agreement, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that: (a) it is not contractually prohibited from engaging in the Services or providing the Deliverables, and that it is not a party to any agreement or under any obligation which conflicts with the terms of this Agreement or which prohibits Contractor from carrying out its responsibilities under this Agreement; (b) it is fully able to furnish the Services as contemplated by this Agreement; (c) none of the Services or Deliverables to be furnished or created hereunder will infringe upon any intellectual property rights of any third party or misappropriate a third party's trade secrets; (d) the Services and all Deliverables, and Contractor's performance hereunder, will comply with all applicable laws; (e) the Deliverables will be free from defects in design, material and workmanship; (f) the Services and Deliverables shall substantially conform to any samples and demonstrations that were provided to the Authority; (g) the Ongoing Services and all Deliverables will perform in accordance with all documentation, descriptions, and performance criteria provided by Contractor to the Authority or otherwise

published by Contractor; (h) Contractor has the rights necessary to grant the Authority the licenses and other rights required of Contractor hereunder; (i) the Ongoing Services will have the capability to interoperate with any web browser that is commercially available as of the date of this Agreement or made so available during the term of this Agreement; and (j) the Services will not deliver and the Deliverables will not contain any malicious data, code, program, or other internal component (e.g., virus, computer work, time bomb, Trojan horse, or similar component) that could damage, destroy, or alter or disrupt a computer program, firmware or hardware or that could reveal, damage, destroy, alter, or disrupt data or other information.

6.2 To the extent any Services or Deliverables fail to comply with any of the representations, warranties, or covenants set forth herein, within thirty (30) days of the Authority's notice thereof to Contractor, Contractor shall, at no cost to the Authority, re-perform or repair such non-conforming Service or Deliverable such that it satisfies all requirements hereof. If Contractor is unable to so re-perform or repair such non-conforming Service or Deliverable within such thirty (30) day period, the Authority may terminate, in part or in whole, this Agreement, and Contractor shall immediately refund to the Authority all amounts paid for the terminated portion of this Agreement.

6.3 Contractor will use commercially reasonable efforts to ensure that, in providing the Services, it does not, without the consent of the Authority, adversely affect or alter (a) the operation, functionality or technical environment of the software and hardware used by or on behalf of the Authority or its Affiliates in connection with their operations, or (b) the processes used by the Authority or its Affiliates in connection with their operations. For purposes of this Agreement, "Affiliate" means any corporation or other business entity controlling, controlled by, or under common control with the applicable party, where "control" means the ability to control or direct the management of an entity.

6.4 Except as otherwise expressly provided in this Agreement, Contractor will be responsible for providing the facilities, personnel, equipment, servers, hardware, software, technical knowledge, expertise and other resources necessary to provide the Services in accordance with the requirements hereof.

6.5 Subject to Section 4.4, neither Contractor nor any of its content providers guarantees

nor warrants the availability, accuracy, completeness, reliability, or timeliness of the Ongoing Services. Except as otherwise provided herein, and to the maximum extent permitted by applicable law: (a) the Services and Deliverables are provided "as is" and "as available," with all faults and without warranty of any kind, and Contractor hereby disclaims all warranties and conditions with respect to the Ongoing Services, either express, implied, or statutory, including, but not limited to, the implied warranties and/or conditions of merchantability, satisfactory quality, completeness, reliability, fitness for a particular purpose, and accuracy; and (b) Contractor does not warrant that the functionality provided by the Ongoing Services will meet the Authority's requirements, that defects in the Ongoing Services will be corrected, or that the Ongoing Services will be compatible or work with any third party software, applications, or third party services.

7. Transition Obligations.

7.1 Within five (5) days of the termination or expiration of this Agreement, or upon the Authority's request, Contractor shall, at no additional cost to the Authority, deliver to the Authority all Authority Owned Items, including all Authority Data (further including all raw data) in a format reasonably requested by the Authority, then in the possession or under the control of Contractor in the same condition in which they were first provided or obtained, normal wear and tear excepted. In no event may Contractor withhold any Authority Owned Items from the Authority or otherwise refuse to return any Authority Owned Items to the Authority, regardless of any dispute that may then exist between the parties or the pendency of the payment of any amounts owed to Contractor.

7.2 ~~At contract termination, connection will be cut and SIM card can be removed. Uninstallment is not part of the scope of supply. Contractor must have access to vehicles if hardware needs to be removed. Contractor will hand in a quote for uninstallment if required.~~ Within thirty (30) days of the termination or expiration of this Agreement, Contractor shall, at ~~no~~ **a cost to be mutually agreed between the parties** additional cost to the Authority, provide all commercially reasonable assistance requested by the Authority to transition to a third party, including, without limitation, uninstalling all hardware and equipment that Contractor installed (or had installed) in or on any facilities, vehicles, or other equipment of the Authority. Contractor shall use commercially reasonable efforts in uninstalling such hardware and equipment and shall be liable for all

damages caused in the process of performing such uninstallation. If such hardware and equipment is not uninstalled within thirty (30) days of such termination or expiration, the Authority may, in its sole discretion, elect to perform such uninstallation itself or hire a third party to do so, in which case Contractor shall reimburse the Authority for all costs (including third party fee) related thereto.

7.3 The term of this Agreement shall automatically be extended and shall govern Contractor's performance pursuant to this Section 7.

8. ~~Additional Indemnification.~~ Contractor shall defend, indemnify and hold harmless the Authority, its Affiliates, and each of their respective officers, employees and agents against all claims, damages, liabilities, losses, fines, judgments, costs, and expenses, including, without limitation, court costs and reasonable attorneys' fees, relating to or arising out of (a) Contractor's breach of this Agreement; (b) Contractor's failure to comply with any applicable law; (c) any damage to tangible property caused by Contractor while at the Authority's facilities or on any vehicle or other property owned or leased by the Authority (including damage to such facility, vehicle, or other property itself); or (d) any claim or allegation that any of the Deliverables or Services infringe a third party's intellectual property rights.

9. ~~Limitation of Liability.~~ To the maximum extent permitted by applicable law, the liability according to Section 8 of the Contractor and its Subcontractors is limited to an overall amount 20% of the contract Value and in no event shall either party or any of its Affiliates be liable to the other party or any of its Affiliates for any indirect or consequential damages arising from or related to this Agreement, including, without limitation, damages for loss of profits, corruption or loss of data, failure to transmit or receive any data, business interruption, however caused and regardless of the theory of liability (contract, tort, or otherwise) and even if the liable party has been advised of the possibility of such damages. Notwithstanding the preceding, this Section 9 shall not apply to Contractor's indemnification obligations hereunder or damages arising from or related to Contractor's breach of either Section 3 or Section 6.1(j), either party's failure to comply with applicable law, or either party's gross negligence, intentional misconduct, or fraud. Section 8 and 9 will replace Section 36. of the Exhibit E Contractual Terms and Conditions.

10. ~~Additional Insurance Obligations.~~ In addition to the insurance policies required in this

~~Agreement, Contractor shall also maintain the following insurance coverages in a manner that conforms to the requirements hereof: (a) fidelity coverage (crime) in an amount of \$1 million; and (b) excess liability coverage in an amount of \$4 million per occurrence and in the aggregate (umbrella form) over Contractor's other policies. Furthermore, the Professional Liability Coverage shall be increased to a \$5 million general aggregate limit and \$2 million per occurrence and must include information security (cyber) coverage~~

11. Equitable Relief. Contractor agrees that any breach by it of Section 3 or Section 7 may cause irreparable harm to the Authority for which remedies at law may be inadequate. Accordingly, Contractor agrees that, in addition to all other remedies at law or under this Agreement, the Authority may enforce any provision of this Agreement by seeking equitable relief (including an injunction) without the need to post bond or other security or to prove the inadequacy of monetary damages.

12. UCITA. Neither the Uniform Computer Information Transactions Act nor any state laws incorporating such Act apply to this Agreement or the transactions contemplated hereunder.

13. No Additional Terms. No click-through, shrink-wrap, click-wrap, browse-wrap, online, or other such terms and conditions shall apply to this Agreement, the Services, or any Deliverables, and all such terms are hereby rejected by the Authority in their entirety.

14. Survival. Each of the provisions of this Agreement that by their nature are intended to survive the termination or expiration of this Agreement shall so survive, including, without limitation, Sections 1, 3, 5, 7, 8, 9, 11, 12, 13, and 14.