



**METRO**

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**CONTRACT 200232  
HUMAN RESOURCE INFORMATION SYSTEM (HRIS)  
SUBSCRIPTION AND MAINTENANCE  
(SSP 303193)**

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**CONTRACTOR:** Ultimate Software  
2000 Ultimate Way  
Weston, Florida 33326  
  
Phone: 800-432-1729  
E-Mail: [ultiproinfo@ultimatesoftware.com](mailto:ultiproinfo@ultimatesoftware.com)

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**AWARD DATE:** February 14, 2018

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**CONTRACT TERM:** From February 16, 2018 through February 15, 2019

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**PRICE:** \$79,110.00

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**PROJECT MANAGER:** Virginia Keeling  
512-369-6024  
[virginia.keeling@capmetro.org](mailto:virginia.keeling@capmetro.org)

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**CONTRACT ADMINISTRATOR:** Jean Burnett  
512-369-6243  
[jean.burnett@capmetro.org](mailto:jean.burnett@capmetro.org)

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PROCUREMENT DEPARTMENT  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
2910 E. 5<sup>th</sup> STREET  
AUSTIN, TEXAS 78702

**CONTRACT 200232  
(SSP 303193)  
HRIS SUBSCRIPTION AND MAINTENANCE  
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**EXHIBIT A  
PRICING SCHEDULE  
SSP 303193**

THE OFFEROR IS REQUIRED TO SIGN AND DATE EACH PAGE OF THIS SCHEDULE

**1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT**

Company Name (Printed)	Ultimate Software		
Address	2000 Ultimate Way		
City, State, Zip	Weston, FL 33326		
Phone, Fax, Email	800-432-1729		ultiproinfo@ultimatesoftware.com
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)	Kay Gruwer - Executive Relationship Manager		
Signature and Date	<i>Kay Gruwer</i> 8.30.17		

**2. ACKNOWLEDGEMENT OF AMENDMENTS**

The offeror acknowledges receipt of the following amendment(s) to this solicitation (give number and date of each).

Amendment #	Date	Amendment #	Date

**3. PROMPT PAYMENT DISCOUNT**

# of Days	Percentage	%

Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

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

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	Jean Burnett, Contracting Officer
Signature and Date	<i>Jean Burnett</i> 2/14/18
Accepted as to:	Exhibit A, Pricing Schedule, Section 6, Base Year 1, Items 1, 2, 3, & 5.

# **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](mailto: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:

Delaware

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 fifty percent (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 dominant 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:

[REDACTED]

(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:

N/A

**3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

- (a) The offeror (and all joint venture members, if the offer is submitted by a joint venture) certifies 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.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory:
- (1) is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or
    - (i) has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision \_\_\_\_\_ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];
    - (ii) as an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and
    - (iii) as an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.
- (c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

- (a) In accordance with the provisions of 2 C.F.R. (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 judgment 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

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- (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.
- (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 C.F.R. part 180, the prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals are 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 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:
  - (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 at \$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-



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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's 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;

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- (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 administration 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 Capital Metro's 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 Capital Metro's 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 Texas Local Government Code, § 176.006, a "Vendor" is required to file a conflict of interest questionnaire within seven (7) 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](http://www.ethics.state.tx.us). The questionnaire shall be sent to the Authority's Contract Administrator.

**8. TEXAS ETHICS COMMISSION CERTIFICATION**

In accordance with Section 2252.908, Texas Government Code, upon request of the Authority, the selected contractor may be required to electronically submit a "Certificate of Interested Parties" with the Texas Ethics Commission in the form required by the Texas Ethics Commission, and furnish the Authority with the original signed and notarized document prior to the time the Authority signs the contract. The form can be found at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Questions regarding the form should be directed to the Texas Ethics Commission.

**9. TEXAS LABOR CODE CERTIFICATION (CONSTRUCTION ONLY)**

Contractor certifies that Contractor will provide workers' compensation insurance coverage on every employee of the Contractor employed on the Project. Contractor shall require that each Subcontractor employed on the Project provide workers' compensation insurance coverage on every employee of the Subcontractor employed on the Project and certify coverage to Contractor as required by Section 406.96 of the Texas Labor Code, and submit the Subcontractor's certificate to the Authority prior to the time the Subcontractor performs any work on the Project.

**10. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION**

- (a) The Prime Contractor certifies that it shall perform no less than thirty (30%) of the work with his own organization. The on-site production of materials produced by other than the Prime Contractor's forces shall be considered as being subcontracted.
- (b) The organization of the specifications into divisions, sections, articles, and the arrangement and titles of the project drawings shall not control the Prime Contractor in dividing the work among subcontractors or in establishing the extent of the work to be performed by any trade.
- (c) The offeror further certifies that no more than seventy percent (70%) of the work will be done by subcontractors.

11. 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.
- (e) I understand that a false statement on this certification may be grounds for rejection of this submittal or termination of the awarded contract.

Name of Offeror:

The Ultimate Software Group, Inc.

Type/Print Name of Signatory:

Shelley Steen

Signature:

Shelley Steen

Date:

8/17/17

**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.

**2. FIRM, FIXED PRICE CONTRACT**

(a) The lump sum amounts offered in Exhibit A-1, the Schedule, are fixed and may not change during the contract period.

(b) This is a firm, fixed price contract, less and except travel which shall be a not to exceed amount pursuant to Exhibit A-1.

(c) ~~Travel Contract Prices. Capital Metro will not pay travel expenses for mileage charges within the Capital Metro services area. Contractor will be reimbursed for car rental expenses or reasonable taxi or bus fare within the not to exceed travel expenses pursuant to Exhibit A-1. Air fare cannot be reimbursed at a rate higher than coach fare. Any travel conducted pursuant to this contract shall not be billed in excess of the then current maximum per diem rates for lodging and meals for Travis County as established by the U.S. General Services Administration (10/01/05-9/30/06 rate is \$132.) The table of rates can be found at: [http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2006&noc=T&queryState=Texas&contentType=GSA\\_BASIC&contentId=17943](http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2006&noc=T&queryState=Texas&contentType=GSA_BASIC&contentId=17943).~~

**3. TERM**

The term of the contract shall be 1 year from Notice to Proceed. 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. 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 on the Schedule.

(c) There shall be seven option periods for twelve (12) months duration each.

(d) A price redetermination for the final five option periods may be applicable as per Section 45.

(e) The total term of this contract shall not exceed eight years.

**5. OPTION TO EXTEND SERVICES**

The Authority may require continued performance of any services within the limits and rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Authority may exercise the option by written notice to the Contractor within 60 days.

**6. INVOICING AND PAYMENT**

(a) Invoices may be submitted once per month, electronically to:

AP\_invoices@capmetro.org

or via mail 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.

7. **INSURANCE**

Contractor shall furnish proof of Capital Metro-stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Authority and shall contain a contract waiver of subrogation in favor of the Authority. Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Authority showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority and the Authority shall be named as an Additional Insured under each policy, excluding Professional Liability insurance. All insurance policies shall be written by reputable insurance company or companies acceptable to the Authority with a current Best's Insurance Guide Rating of A+ and Class XIII or better. All insurance companies shall be authorized to transact business in the State of Texas. Contractor shall notify the Authority in writing of any material alteration of such policies, including any change in the retroactive date in any "claims-made" policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto. The below requirements only represent the minimum coverage acceptable to the Authority and these requirements are not intended to represent the maximum risk or the maximum liability of Contractor. Contractor shall be responsible for setting its own insurance 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.

(a) The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below.

**CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS**

(1) Commercial General Liability Insurance Coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury, Property Damage and Products Liability, and a Two Million Dollars and No/100 Dollars Annual Aggregate(\$2,000,000), with coverage that includes:

- Products and Completed Operations Liability
- Independent contractors
- Personal Injury Liability extended to claims arising from employees of Contractor and the Authority.
- Contractual Liability pertaining to the liabilities assumed in the agreement.

(2) Automobile Liability Insurance covering all owned, hired and non-owned automobiles used in connection with work with limits not less than One Million Dollars and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage.

(3) Workers' Compensation Insurance providing statutory limits in accordance with the Texas Workers' Compensation Act and/or other State or Federal law as may be applicable to the work being performed under this contract. Employer Liability Insurance with minimum limits of One Million Dollars and No/100 Dollars (\$1,000,000).

(4) Technology Error's & Omissions Insurance: Combined Technology & Omissions Policy with a minimum Five Million and No/100 Dollars (\$5,000,000) claim limit, including (a) Professional Liability Insurance covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated (such coverage to be maintained for at least two (2) years after termination of this contract, which obligation shall expressly survive termination of this contract; and (b) Privacy, Security and Media Liability Insurance providing liability for unauthorized access or disclosure, security breaches or system attacks, as well as infringement of copyright and trademark that might result from this contract.

(5) Cyber endorsement in favor of CMTA on General Liability Policy One Million Dollars and No/100 Dollars (\$1,000,000)

(6) Third Party extension in favor of CMTA endorsement on Privacy, Security and Media Policy: One Million Dollars and No/100 Dollars (\$1,000,000)

(b) The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

(c) Contractor, and all of its insurers shall, in regard to the above stated insurance, agree to waive all rights of recovery or subrogation against the Authority, its directors, officers, employees, agents, successors and assigns, and the Authority's insurance companies arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of Contractor under this contract and/or use of any Authority premises or equipment under this contract.

(d) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTRIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement, which shall be evidenced on the Certificate of Insurance. 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.

(e) 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.

(f) If any part of the contract is sublet, Contractor shall be liable for its 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. No delay in the work caused by the Contractor's enforcement of its Subcontractor's insurance requirements shall be excusable delay in the contract. 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.

(g) 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.

(h) If the Contractor has procured insurance at the time of the Contractor's submission of its 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 Contracting Officer.

(i) The Contractor and its lower tier subcontractors are required to cooperate with the Authority and report all potential claims (workers' compensation, general liability and automobile liability) pertaining to this contract, to the Authority's Risk Management Department at (512) 389-7549 within two (2) days of the incident.

## 8. WARRANTIES

Contractor warrants 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 warranties is discovered by the Authority during the process of the work or within six months 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 warranties.

## 9. 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.

## 10. 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.

## 11. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

Any subcontractors and outside associates or consultants 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.

## 12. 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 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.

## 13. CHANGES

(a) Offerors 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. Failure to do so shall be at the offeror's risk.

(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.

**14. 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, provided it is the fault of the Contractor and not that of the Authority; or

(2) if the Contractor fails to perform 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. The Authority may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

(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.

**15. 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 Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Authority. 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: (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 specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials.

(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.

## **16. 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.

## **17. DRAWINGS AND OTHER DATA**

(a) All designs, drawings, specifications, notes and other works developed solely for the Authority in the performance of this contract shall become the joint owned property of the Authority and the Contractor and may be used in any manner by the Authority or the Contractor and without additional compensation to the Other. The Authority shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Contractor, for a period of three (3) years after completion of the project, agrees to retain all works developed in the performance of the contract and to furnish all retained works to the Authority upon the Authority's request. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(b) Exceptions to paragraph a above are as follows: the Contractor shall retain the ownership of any functional and technical designs, programs, modules, code, interfaces, algorithms, flowcharts, diagrams, documentation and the like created or enhanced during the course of the Authority's implementation. However, Capital Metro shall maintain a license to use said items as it relates to the use of the Human Resources Software System and as it may pertain to replacing the system at a later date. Additionally, ownership of the source code is not considered a project deliverable, but the Contractor agrees to maintain said source code in Escrow for the term of the contract and any option periods therefore.

## **18. STANDARDS OF PERFORMANCE**

The Contractor shall perform all work hereunder in compliance with all applicable federal, state, and local laws and regulations. The Contractor shall use only licensed personnel to perform work required by law to be performed by such personnel.

## **19. INSPECTIONS AND APPROVALS**

(a) All work performed by Contractor or its subcontractors or consultants shall be subject to the inspection and approval of the Authority at all times, but such approval shall not relieve Contractor of responsibility for the proper performance of the Services. Contractor shall provide sufficient, safe, and proper facilities at all times for such inspection of the work and shall furnish all information concerning the work and give the Authority or its representatives free access at all reasonable times to the facilities where the Services are performed.

(b) "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(c) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and for as long afterwards and the contract requires.

(d) The Authority has the right to inspect and test all services called for by this contract, to the extent practicable, at all times and places during the term of the contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the work.

(e) If any of the services do not conform with contract requirements, the Authority may require the Contractor to perform the services again in conformity with the contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails promptly to perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Authority may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of such service or (2) terminate the contract for default.

(g) The Authority agrees that the Contractor will have the right to inspect electronically or otherwise the software masterfile(s) database of the CUSTOMER to determine an accurate number of active employees on a monthly basis.

**20. 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 performance would have suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) 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.

(d)

**21. 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 by Chapter 20, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 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.

**22. 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 and with Section 32.0 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.

**23. 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.

#### 24. 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.

#### 25. 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.

#### 26. 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.

#### 27. 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.

(b) All documents, reports, data, graphics and other materials produced under this contract shall become the sole possession of the Authority upon receipt and payment, subject only to Contractor's professional obligation to maintain copies of its work product.

(c) Exceptions to paragraphs a and b above are as follows: the Contractor shall retain the ownership of any functional and technical designs, programs, modules, code, interfaces, algorithms, flowcharts, diagrams, documentation and the like created or enhanced during the course of the Authority's implementation. However, Capital Metro shall maintain a license to use said items as it relates to the use of the Asset Management System and as it may pertain to replacing the system at a later date. Additionally, ownership of the source code is not considered a project deliverable, but the Contractor agrees to maintain said source code in Escrow for the term of the contract and any option periods therefore.

#### 28. 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.

#### 29. 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. Contractor shall obtain any permits or licenses necessary for the performance of the Services.

#### 30. 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.

**31. 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.

**32. 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.

**33. 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) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract under which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

**34. 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.

**35. 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.

**36. 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.

**37. EXAMINATION AND RETENTION OF RECORDS**

(a) The Authority and its representatives shall have audit and inspection rights described below.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price redeterminable contract, or any combination thereof, the Authority shall maintain, and the Authority and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times at the Contractor's plants, or such parts thereof, as may be engaged in or maintain records in connection with the performance of this contract.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this contract or if the Contractor's cost of performance is relevant to any change or modification to this contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

(d) The materials described in (b) and (c), above, shall be made available at the office of the Contractor at all reasonable times for inspection, audit, or reproduction until the expiration of three (3) years from the date of final payment under this contract, except that if this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any final settlement.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts exceeding \$25,000 hereunder, altered to reflect

the proper identification of the contracting parties and the Authority under the prime contract.

**38. EXCUSABLE DELAYS**

(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.

**39. LOSS OR DAMAGE TO PROPERTY**

The Contractor shall be responsible for any loss or damage to property including money securities, 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.

**40. QUALITY ASSURANCE**

A regular 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.

**41. 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.

**42. 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.

**43. 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 Pricing Schedule, Exhibit A; ~~including Exhibit A-1 Pricing;~~ (2) ~~Solicitation Instructions and Conditions;~~ (3) Contractual Terms and Conditions; (3) SaaS (Hosted Solutions) – Terms and Conditions for the Performance of Information Technology (IT) Products and Services; (4) Data Security and Privacy; and (5) other provisions of the contract whether incorporated by reference or otherwise.

**44. 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.

**45. PRICE REDETERMINATION**

(a) *Price redetermination period.* A price redetermination shall be made only during the fifth year of the contract to be applicable for years six through ten.

(b) *Applicability.* The unit prices and the total price stated in this contract shall be redetermined in accordance with this clause, except that—

(1) The prices for supplies delivered and services performed before the first effective date of year six of the contract are firm fixed. Price redetermination shall remain fixed unless the basis for the increase is documented, sustained and compelling as determined by the Authority; and;

(2) The increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price unless the basis for the increase is documented, sustained and compelling as determined by the Authority. There is no percentage limitation on the amount of decrease that may be made under this clause.

(c) *Data submission.*

(1) Not more than one (1) year nor less than six (6) months before the beginning of the redetermination period, the Contractor shall submit—

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and—

(A) An estimate and breakdown of the costs of these supplies or services in the format determined by the Authority;

(B) Sufficient data to support the accuracy and reliability of this estimate as determined by the Authority; and

(A) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the last month before the submission of proposed prices with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded—

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) of this section for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by paragraphs (d)(1) and (2) of this section, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Authority has overpaid the Contractor, the Contractor shall repay the excess to the Authority immediately upon request.

(d) *Price redetermination.* Upon the Contracting Officer's receipt of the data required by paragraph (d) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(e) *Contract modifications.* The negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(f) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (f) of this section), the Contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(g) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed

contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(h) *Termination.* If this contract is terminated, prices shall continue to be established in accordance with this clause for (1) completed supplies and services accepted by the Authority and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract.

**EXHIBIT F  
HRIS SUBSCRIPTION AND MAINTENANCE  
SCOPE OF SERVICES**

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**1. PURPOSE OF PROCUREMENT**

Capital Metropolitan Transportation Authority (herein known as Capital Metro or The Authority) is seeking a proposal from Ultimate Software for continuation of the current subscription to the HRIS/Payroll system CORE, Performance Management Program; Paycheck Modeling; Compensation Management and Ultipro Time and Attendance. This software will continue to provide Capital Metro with enhanced capabilities to better manage Human Resources and Payroll features while still providing for desired Disaster Recovery ability by continuing the outsourcing of these components.

**2. BACKGROUND**

In 2007, Capital Metro moved their Human Resources and Payroll function to Ultimate Software's Ultipro HCM services. In 2015, Capital Metro upgraded their financial system to the Microsoft AX Dynamics Financials.

Within the current software solution Capital Metro intends to achieve the following goals:

(a) **Business Goals**

(1) Continue with an out-sourced solution for both Human Resources and Payroll functionality.

(2) Continue the Cloud base product version that will allow for continued vendor support and upgrades.

(b) **Technical Goals**

(1) Continue to provide a solution that is scalable, modular, and will accommodate growth within both the overall organization and the number of users.

(2) Continue to provide a system/solution that is a commercial-off- the-shelf package.

(3) Continue to provide a system that complies with Capital Metro's system standards as defined in Section 7 and 8.

**3. SCOPE OF SERVICES**

(a) Ultimate Software will work with key stakeholders, be aware of Capital Metro's existing UltiPro Products and advise on how best to maximize the value of solutions and how they align with human capital trends and/or Capital Metro's strategic business goals. .

(b) Human Resources Information Systems (HRIS) Software Requirements capabilities/functionality to include as a minimum:

(1) Basic HRIS capabilities

(2) Maintain Employee Data

(i) Personal

(ii) Job

(iii) Salary base, Incentive, Bonus, Call Pay, Shift Differential, Remuneration, Overtime

(iv) Hiring and Status Dates (Rehires, reinstatements, etc.)

(v) Inventory control

(vi) Employee ID (1-9, Immigration, Social Security, etc.)



- (vii) Work Schedules
- (viii) Policy Confirmations
  
- (3) Provide Self-Service Capabilities to employees
  - (i) Personal information
  - (ii) Tax Information, W4, W2, 1095-C and 1094-C
  - (iii) Benefits Elections
  - (iv) Retrieval of Confirmation of Changes
  - (v) Benefit statements
  - (vi) Access to Reference Materials on Policies, Benefit Plans, or other HR reference material
  
- (4) Integration with HRIS system software modules
  - (i) Allow streamlining of Human Resources processes through work flow capabilities.
  
- (5) Benefits Management capabilities
  - (i) Benefit Coverage and Tracking
    - Pre Tax
    - Medical
    - Dental
    - Vision
    - After Tax
    - Life
    - Disability both Long and Short
  - (ii) Dependents
  - (iii) Pension and Retirement Tracking
  
- (6) Management Self Service capabilities
  - (i) Salary planning
  - (ii) PCN workflow
  
- (7) Performance Management Plan (PMP) capabilities
  - (i) Tracking and notification
  - (ii) Form template with manager and employee change ability
  - (iii) Integration of PMP scores with rate adjustment based on formulas within HRIS module
  
- (8) Easy-to-use tracking system for multiple training curriculums
  - (i) Ability to track training by employee
  - (ii) Ability to enter training by batch-entry
  - (iii) Training course syllabus
  - (iv) Individually developed plans
  - (v) Develop requirements by position
  - (vi) Registration process
  - (vii) Training record process
  
- (9) Provide Payroll capabilities/functionalities to include as a minimum:
  - (i) Tax filing to comply with federal and state compliance laws
  - (ii) Automated administrative employee timesheets
  - (iii) Timesheets utilizing schedules for call centers and ability to track occurrences
  - (iv) Complete itemized listing of pay codes on check stubs and deposit advices
  - (v) Ability to print paper checks
  
- (10) Technical
  - (i) Provide user training and documentation to users on how to use the new product implemented.
  - (ii) Ensure system/software modularity and scalability.
  - (iii) Provide system/software reliability and recoverability.

- (iv) Employ open architecture standards to maximize future usage.
  - (v) Integrate with existing hardware and software systems with a minimum of complexity.
  - (vi) Provide system administration tools that allow for changes to be made and implemented quickly and easily.
  - (vii) Provide internal controls over the application to ensure that:
    - All input data is accurate, complete, authorized, and correct.
    - All data is processed as intended.
    - All data stored is accurate and complete.
    - All output is accurate and complete.
    - A record is maintained to track the process of data from input to storage and to the eventual output.
  - (viii) Continue to provide secure web access to hosted system 24,7,365 except for agreed upon periods of maintenance.
- (11) Provide information security within the application to ensure:
- (i) Data Confidentiality – Confidential information must only be divulged as appropriate, and must be protected from unauthorized disclosure or interception. Confidentiality includes privacy considerations.
  - (ii) Data Integrity – Information integrity refers to the state of data as being correct and complete. This specifically includes the reliability of financial processing and reporting.
  - (iii) Data Availability – Information must be available to The Authority when, where, and in the manner needed. Availability includes the ability to recover from losses, disruption, or corruption of data and IT services, as well as from a major disaster where the information was located.
- (12) Ultipro Training and documentation:
- (i) Continue to offer training under the Ultipro self-service portals as well as the UltiLearning Center site.
  - (ii) Continue to provide updated documentation on all modules utilized by Capital Metro.

#### **4. CAPITAL METRO RESPONSIBILITIES**

- (a) Continue to provide a project manager who will act as primary point of contact.
- (b) Allow the contractor the necessary access to the premises, facilities, systems, documents, and Capital Metro staff members.
- (c) Facilitate contractor in setting up required meetings and interviews.

#### **5. CONTRACTOR RESPONSIBILITIES**

- (a) Provide a single point of contact for all communication regarding work under this contract.
- (b) Coordinate all tasks with the Capital Metro project manager.
- (c) Continue to provide guidance and training material, including user manuals, to Capital Metro staff.
- (d) Capital Metro reserves the right to disapprove the project manager any vendor appoints to the project based on the person's experience and past performances.

#### **6. FIRM AND STAFF QUALIFICATIONS**

- (a) Each staff member assigned to the project by the firm must have been involved in successful management of a minimum of three (3) of the current software products under the maintenance contract. Applicable references will be required.

(b) Capital Metro reserves the right to disapprove any person any vendor appoints to the project based on the person's experience and past performance.

**EXHIBIT I**

**Data Security and Privacy**

**1. Data Governance**

- a. In the course of providing the SaaS Services to Customer, Ultimate Software may collect, transfer, store and use Customer Data, as defined in the Agreement, provided to, collected by or made accessible to Ultimate Software. For these purposes, Customer Data may be transferred to or be accessible to (i) Ultimate Software personnel as is required to perform the SaaS Services in accordance with the Agreement and in accordance with applicable data privacy protection laws; (ii) third parties (including, but not limited to, courts, law enforcement, or regulatory authorities), where required by law, provided Ultimate Software will provide reasonable notice to Customer prior to any such disclosure if legally permissible; and (iii) others who are providing services to Customer pursuant to the Agreement.
- b. When Ultimate Software discloses Customer Data, Ultimate Software shall utilize generally accepted industry standard protections, but in no event less than reasonable care.
- c. Ultimate Software shall maintain internal company wide policies and procedures addressing the secure storage and handling of Customer Data which shall comply with generally accepted industry standards.
- d. Ownership, use and licensing terms of Customer Data are set forth in the SaaS agreement that is incorporated into the contract between the parties, as is this Exhibit.
- e. No right, license, permission, ownership or other interest of any kind in or to any Customer Data or other intellectual property rights owned or licensed by Customer is or is intended to be given or transferred to, or acquired by, Ultimate Software except for the limited right of use in order for Ultimate Software to provide services to Customer as expressly stated in the Agreement and further detailed in the SaaS Agreement.
- f. Ultimate Software will not, and will not authorize or encourage any third party to, directly or indirectly: (i) use any automated, deceptive or fraudulent means to generate impressions, click-throughs, or any other actions with respect to Customer Data; (ii) conduct any automated extraction of data except as necessary for Ultimate Software to provide services to Customer; (iii) track any activities of Customer through any electronic means, other than as necessary for Ultimate Software to provide services to Customer; or, (iv) collect or process other data from Customer other than as has been expressly authorized by Customer in the Agreement.

**2. Privacy and Compliance**

Ultimate Software represents and warrants that with respect to the collection, storage, transfer, and use of Customer Data it shall comply with (i) all applicable governmental laws, rules, and regulations, including but not limited to ISO 27001, ISO 27018, (ii) its Privacy Policy (available at [http://www.ultimatesoftware.com/Privacy\\_Policy](http://www.ultimatesoftware.com/Privacy_Policy)), (iii) generally accepted industry standards, and (iv) shall only do so if and to the extent required to perform services pursuant to the Agreement.

**3. Information Security Management Program**

- a. Ultimate Software shall maintain a documented, approved and implemented Information Security Management Program ("ISMP") in accordance with generally accepted industry standard practices that include reasonable administrative, technical, and physical safeguards to protect assets and Customer Data from loss, misuse, unauthorized access, disclosure, alteration, and destruction. The ISMP will address the following areas:
  - i. Risk management
  - ii. Security policy
  - iii. Organization of information security
  - iv. Human resources security
  - v. Asset management
  - vi. Access control
  - vii. Cryptography
  - viii. Physical and environmental security
  - ix. Operations security
  - x. Communications security
  - xi. System acquisition, development, and maintenance
  - xii. Supplier management

- xiii. Information security incident management
- xiv. Information security aspects of business continuity management
- xv. Compliance

#### 4. Data Protection

When working with Customer Data, including Personally Identifiable Information, Ultimate Software shall maintain the following:

- a. Designated security and privacy personnel and departments responsible for the development and implementation of the ISMP required by this agreement and applicable law;
- b. Require background checks (including criminal) on its workforce;
- c. Implement reasonably appropriate security and privacy awareness training for all members of its workforce;  
Transfer and store Customer Data including Personally Identifiable Information in an encrypted/secure manner,
- d. Shall not store Customer Data including Personally Identifiable on unencrypted mobile devices or media, such as laptops, phones, USB drives, etc.;
- e. Mobile Device Management (MDM) technology will be enabled to encrypt and remotely wipe a device or mobile devices that may access Ultimate Software email systems;
- f. Implement reasonably appropriate technical safeguards to protect Customer Data, such as firewalls, intrusions detection systems, logging and monitoring systems, access control systems and encryption;
- g. Restrict access to data, applications, systems, databases and networks to approved users with a business need/job responsibility.
- h. Reasonably timely de-provisioning, revocation or modification of user access to Ultimate Software's systems, information assets and Customer Data shall be implemented by Ultimate Software upon any change in status of employees, contractors, customers, business partners or third parties. Any change in status is intended to include termination of employment, contract or agreement, change of employment, transfer within the organization or change in SaaS Service delivery.
- i. Maintain procedures for data retention and storage, and backup/redundancy mechanisms. Ultimate Software will test the recovery of backups at planned intervals;
- j. Implement reasonable physical safeguards to restrict physical access to Confidential Information, such as Data Centers and restricted access server rooms requiring authentication, and appropriate environmental controls. Physical security perimeters (which may include fences, walls, barriers, guards, gates, electronic surveillance, physical authentication mechanisms, reception desks and security patrols) shall be implemented to reasonably safeguard Customer Data and Ultimate Software's relevant information systems;
- k. Remove and delete Customer Data from Ultimate Software systems after contract termination and all services have been rendered.

#### 5. Audit Reports, Site Visits and Security Assessments

- a. Ultimate Software will have, at a minimum, an annual site audit of Ultimate Software's Information Technology General Controls including, but not limited to, information security, confidentiality and availability controls, performed by an independent third-party audit firm based on the recognized audit standard SSAE 18 SOC 1 and SOC 2 report or equivalent. Ultimate Software will make available to Customer for review, its SSAE 18 SOC 1 and SOC 2 report or equivalent after the report's publication by the independent audit firm. Customer agrees to treat such audit reports as Confidential Information under this Agreement. Any control exceptions noted in the SSAE 18 SOC 1 or SOC 2 report or equivalent will be addressed in the report with management's corrective action. Ultimate Software maintains certification to ISO 27001 and ISO 27018 and will make the Certificate of Registration available to Customer upon request.
- b. Ultimate Software shall permit Customer to visit and receive a guided tour of Ultimate Software's data center and premises where Ultimate Software provides SaaS Services to Customer ("Visit") with no less than sixty (60) days' prior written notice to Ultimate Software and acknowledgement from Ultimate Software not more than one (1) time per calendar year. Any such Visit shall be subject to (i) Customer's compliance with Ultimate Software's SaaS site provider(s)' written security and privacy procedures and (ii) the privacy and confidentiality obligations Ultimate Software has to its other customers. Notwithstanding anything to the contrary, Customer will be responsible for any and all costs and/or expenses incurred by Customer in relation to any such Visit.

- c. Ultimate Software will have a network and application level penetration test conducted annually. This audit shall be performed by a recognized third-party audit firm engaged by Ultimate Software. Upon request, Customer shall be provided with a high level executive summary of such test.
  - d. Customer may submit general security and privacy due diligence questionnaires for completion by Ultimate Software no more than annually. Questionnaires can be submitted directly to the Privacy, Risk & Compliance department at [compliance@ultimatesoftware.com](mailto:compliance@ultimatesoftware.com).
- 6. Disaster Recovery**
- a. Ultimate Software shall have a defined and documented business continuity/disaster recovery plan for recovery services provided to Customer.
  - b. Such plan shall provide for reasonable physical protection against damage from deliberate attacks as well as natural causes and disasters.
  - c. Security mechanisms and redundancies shall be implemented by Ultimate Software to reasonably protect equipment from utility service outages (e.g., power failures, network disruptions, etc.).
  - d. Telecommunications equipment, cabling and relays transferring data or supporting SaaS Services shall be reasonably protected by Ultimate Software from interception or damage and designed with redundancies, alternative power source and alternative routing.
  - e. Such plan shall provide for appropriate backup facilities and technology that will permit transition of the Services (from the previous night's backup date), with a maximum recovery time of 24 hours from declaration of a disaster to be operational and accessible to Customer.
  - f. Ultimate Software shall conduct a test of such plan each year. Customer may request the annual high-level summary of the results of such test.
- 7. Data Breach**
- Ultimate Software will respond to, contain and remediate security incidents, using commercially reasonable efforts, on a 24/7 basis. Ultimate Software shall notify Customer of security incidents within twenty-four (24) hours of becoming aware of an actual incident involving Customer Data. An "incident" is a breach of confidentiality, data integrity or a security compromise of a network or server resulting in the unauthorized access, use, transfer or acquisition of Customer Data. Ultimate Software shall consult and cooperate with and inform Customer about incident response activities in reasonable intervals until the incident is resolved, which may include documenting and keeping Customer reasonably informed of all investigative and recovery efforts related to any such incidents, including discovery, investigation and containment, recovery, use of data and experience for gap identification and process improvement, mitigation plans, and cooperation with law enforcement, if legally permissible, as reasonably appropriate.
- 8. Liability for Security Incidents and/or Data Misuse.** Indemnity, defense and hold harmless provisions applicable between the parties are set forth in section 8 to the SaaS Agreement, which are incorporated into the contract, as is this Exhibit. Such obligations are in addition to any other indemnification or similar obligations that are set forth in the SaaS Agreement between the parties.
- 9. Notice to Customers and Employees.** Any notifications to any of Customer's employees regarding security incidents will be handled exclusively by Customer. Ultimate Software may not under any circumstances contact Customer's employees relating to such security incident unless Ultimate Software is under a legal obligation to do so, in which event (i) Ultimate Software shall, if legally permissible, notify Customer in writing promptly after concluding that Ultimate Software has the legal obligation to notify such employees and explain in such notice to Customer the basis for the legal obligation before making such notification to Customer's employees, and (ii) Ultimate Software will limit the notices to any of Customer's employees to those required by the legal obligation or as pre-approved by Customer. Ultimate Software will reasonably cooperate with Customer for, and reasonably assist with, any notices Customer sends to Customer's employees regarding a security incident, if requested by Customer.
- 10. Equitable Relief.** Ultimate Software acknowledges that Customer may have no adequate remedy at law if there is a breach or a threatened breach of any of the obligations set forth in this Exhibit and, accordingly, Customer may, in addition to any legal or other remedies available to Customer subject to the terms of the Agreement, seek injunctive or other equitable relief to prevent or remedy such breach without the requirement of a bond or notice. Ultimate Software will not object or defend against such action on the basis that monetary damages would provide adequate remedy.

**EXHIBIT J**

**SaaS (HOSTED SOLUTIONS) - TERMS AND CONDITIONS FOR THE PERFORMANCE OF INFORMATION TECHNOLOGY (IT) PRODUCTS AND SERVICES**

- 1.1 **Definitions.** Unless otherwise specified in this contract (or an Exhibit or Exhibit hereto), the following definitions shall apply, if applicable:
- 1.1.1 "Acceptance" shall have the meaning set forth in Section 1.4.5 of this Exhibit.
  - 1.1.2 "Applicable Laws" means any and all applicable statutes, laws, treaties, rules, codes, ordinances, regulations, permits, interpretations, or orders of any Federal, state, or local governmental authority having jurisdiction over the Services, this contract, and the parties all as in effect as of the date of this contract and as amended during the Service Term of this contract.
  - 1.1.3 "Application" means the UltiPro Software, technical system, platform, application and/or subscription services to be provided by the Contractor, as may be further described in the Technical Specifications.
  - 1.1.4 "Authority Data" means all data, content and information (i) submitted by or on behalf of the Authority to the Contractor or loaded into the System, (ii) obtained, or processed by the Contractor or by the Application or System in connection with this contract.
  - 1.1.5 "Confidential Information" shall have the meaning set forth in Section 2.2 of this Exhibit.
  - 1.1.6 "Contractor's Certification" shall have the meaning set forth in Section 1.4.4 of this Exhibit.
  - 1.1.7 "Contractor Technology" means (i) the System, (ii) the Application, and (iii) any source code, technology, information, content, and data, ideas, inventions, suggestions, copyrightable materials or other information, all modifications, improvements or enhancements to the System or Application and enhancements thereof (including ownership of all trade secrets copyrights, and intellectual property rights pertaining thereto) together with Intellectual Property Rights related thereto, owned or used by the Contractor in the performance of the Services.
  - 1.1.8 "Documentation" means the Contractor's online documentation made available to the Authority, including user manuals and operator instructions related to the Services and/or Contractor Technology.
  - 1.1.9 "Intellectual Property Rights" means all worldwide right, title and interest in and to any and all personal, proprietary, and intellectual property rights, including but not limited to patents (including patent and patent applications, inventions, improvements, enhancements, reissues, divisions, renewals, continuations, continuations-in-part, extensions, provisionals, and reexaminations), trademarks, service marks, trade dress, logos, slogans, configurations, trade names, corporate names, and business names, whether or not registered, including all common law rights, and registrations and applications for registration thereof, works of authorship, and copyrights (registered or otherwise), all internet uniform resource locators, and domain names, including any domain name application or registration, all industrial designs, data and database rights, trade secrets, proprietary know-how and show-how, whether or not reduced, and all registrations and applications for registration, and all rights provided by international treaties or conventions, to any of the foregoing, or anything similar or equivalent thereto.

- 1.1.10 "Malware" means any malicious data, code script, active content program, or other malicious software that could damage, destroy, alter or disrupt any computer program, data, firmware or hardware.
- 1.1.11 "Process" or "Processing" means, with respect to any Authority Data, to migrate, collect, access, use, process, modify, copy, analyze, disclose, transmit, transfer, sell, rent, store, or retain or destroy such data in any form. For the avoidance of doubt, "Process" includes the compilation or correlation of any Authority Data with information from other sources and the application of algorithmic analysis to create new or derivative data sets from any Authority Data.
- 1.1.12 "Remediation Efforts" means, with respect to any Security Incident, activities designed to remedy a Security Incident which may be required by Applicable Law or the Contractor's policies or procedures, or which may otherwise be necessary, reasonable or appropriate under the circumstances and as agreed upon by the parties.
- 1.1.13 "SaaS Agreement" means, the agreement between the Parties for Payroll and Human Resources Information Management that will replace Contract No. 81680.
- 1.1.14 "Security Incident" means the confirmed: (i) loss or misuse of Authority Data; or (ii) inadvertent, unauthorized, or unlawful processing, use, alteration, corruption, sale, rental, or destruction of or access to Authority Data and as to (i) and (ii) either resulting from Contractor's breach of the SaaS Agreement.
- 1.1.15 "Service Levels" shall have the meaning set forth in Section 3.1 of this Exhibit.
- 1.1.16 "Security Requirements" means generally accepted industry practices and other reasonable physical, technical and administrative safeguards, procedures, protocols, requirements and obligations related to facility and network security in order to protect Authority Data from a Security Incident.
- 1.1.17 "Service Term" means (i) the term of the contract as set forth in Exhibit A to the contract, or (ii) with respect to any hosted service related to the Services and/or Contractor Technology, the specific term or period for subscription services set forth in Exhibit A of this contract.
- 1.1.18 "Services" means all services to be performed by the Contractor for or on behalf of the Authority, as described in the SaaS Agreement and this Exhibit.
- 1.1.19 "System" means an application, network, database or system provided by Contractor to perform the Services.
- 1.1.20 "Termination Assistance Services" means the Contractor's reasonable cooperation with the Authority in order to assist in the transfer of Authority Data to the Authority and to facilitate the transition to an alternative software or service for the Services or Application at such time when the Authority may obtain authorization and/or funding for such replacement.
- 1.1.21 "Updates" means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of the Services and/or Contractor Technology during the Service Term.

1.2 Contractor Requirements.

- 1.2.1 The Contractor will shall furnish, at its own expense, all resources, personnel, equipment, tools, and supplies necessary for the access and use of the Contractor Technology and the timely performance of the Services, provided that the Authority acknowledges and agrees that Authority shall have sole responsibility for access from the Authority to the internet. The Contractor may use any reasonable and appropriate means necessary and appropriate to perform the Services under the SaaS Agreement.



- 1.2.2 The Contractor will establish and manage all Security Requirements reasonably necessary to protect Authority Data integrity and to reasonably permit access to the Services and/or Contractor Technology. The Contractor will, upon the Authority's request, for each year of the Term of this contract under the Project Plan, provide to the Authority copies of third party SSAE 18 - SOC audit reports, executive summaries of annual penetration test results and other equivalent evaluations with regard to security and confidentiality in connection with the Services that the Contractor provides to the Authority. The Contractor will use commercially reasonable efforts in accordance with the Security Requirements to secure the Services and/or Contractor Technology and all Authority Data stored therein against access by parties external to the Project and by unauthorized users, and against damage, disruption and other activity aimed at data availability or the services or other trespass or illegal actions. The Contractor will employ computer anti- Malware protections and other reasonable commercial means to provide for a safe computing environment. The Contractor agrees that it will, and it will cause its personnel and contractors to timely comply with the Authority's privacy policies and safety and network security policies, as the same may be provided to the Contractor reasonably in advance, at all times while on-site at the Authority's facilities or remotely accessing the Authority's systems or facilities (including Authority Electronic Property).
- 1.2.3 The Contractor shall adopt and implement reasonable facility and network security, disaster recovery plans and back-up plans as to protect against data loss, theft and unauthorized access, disclosure and use of the Application, Authority Data, and the Authority's Confidential Information and to provide for the integrity and continuity of the performance of Services under this contract. The Contractor will use best efforts in accordance with generally accepted industry practices and standards for this requirement.
- 1.2.4 The Contractor and/or its designated third party auditor(s) will perform all audits as set forth in the Data Privacy and Security Exhibit, and will provide information as may be reasonably requested by Authority as to the outcome of such audits.
- 1.2.5 The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority's rules, regulations, and guidelines then in effect when on-site at the Authority and all Applicable Laws.
- 1.2.6 Unless otherwise prohibited by law, Contractor will promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data. Contractor notification obligations as set forth in the prior sentence will also apply in the event of a Security Incident caused by Customer. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. Following a Security Incident caused by Customer, Contractor agrees to provide reasonable assistance to Customer with activities designed to remedy the Security Incident. Any such assistance shall be at the sole cost of Customer.
- 1.2.7 Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority, subject to Applicable Laws, and the Contractor may not contact Customers or employees of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must, if legally permissible, notify the Authority in writing promptly after concluding that the Contractor has the legal authority to notify such Customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to Customers and any employees of the Authority regarding a Security Incident.

1.3 Support and Performance.

1.3.1 The Contractor shall in accordance with Contractor standard Support Guidelines (i) promptly notify the Authority of any errors in the Services and/or Contractor Technology of which it learns from any source; (ii) respond to user identified Application errors pursuant to the timeframes set forth in Contractor's Maintenance Schedule set forth in Section 1.3.2 below, and implement corrected Services and/or Contractor Technology copies or corrections or bypasses such that the Services and/or Contractor Technology performs in all material respects in accordance with the Documentation, pursuant to the timeframes set forth in Schedule 1 attached hereto and incorporated by reference herein; (iii) provide to all Authority authorized support designees on a 24 hours per day, 7 days per week basis, all reasonably necessary telephone or web consultation requested by them in connection with their use and operation of the Services and/or Contractor Technology; and (iv) treat any Application dumps, Authority Data, tapes or any other documentation provided from users to resolve a reported problem as Confidential Information of the Authority.

1.3.2 The Contractor will periodically release maintenance Updates in accordance with the SaaS Infrastructure and Network Infrastructure Maintenance schedule set forth below. At no additional cost to the Authority, the Contractor will provide access to all maintenance Updates and all new features and functionalities of the Services and/or Contractor Technology in general release as purchased by Authority that are provided by the Contractor to any of its other customers.

SaaS Infrastructure and Network Infrastructure Maintenance Schedule

Perform SaaS infrastructure and network infrastructure maintenance on the following schedule for the production SaaS Site:

NOTE: Customer may experience intermittent connectivity during these periods or may be restricted from access during these periods.

Perform system daily maintenance from 3:00 a.m. to 5:00 a.m. EST not to exceed a maximum of five (5) hours per month. No advanced notice provided.

Perform emergency maintenance, as required, when necessary. Where possible, Ultimate will use best efforts to provide advanced notification via newswire.

Ultimate Software will provide Customer advanced notification of the following maintenance via the UltiPro support portal.

Perform release upgrade window as required three (3) times per year on either Saturday or Sunday from 2:00 a.m. to 8:00 a.m. EST.

Perform extended system maintenance as required once per year on either Saturday or Sunday from 12:01 a.m. to 12:00 p.m. EST.

1.3.3 The Contractor will use commercially reasonable efforts to maintain the Services and/or Contractor Technology with a high level of quality and performance consistent with generally accepted industry standards and the state of the art technology.

1.4 Additional Representations and Warranties. In addition to all other representations, warranties, and covenants included in this contract, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that:

- 1.4.1 it is not contractually prohibited from engaging in the Services and that it is not a party to any contract or under any obligation which conflicts with the terms of this SaaS Agreement or which prohibits Contractor from carrying out its responsibilities under this SaaS Agreement;
- 1.4.2 it is fully able to furnish the Services as contemplated by the SaaS Agreement;
- 1.4.3 there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the SaaS Agreement, and the Contractor agrees not to enter into any such contract during the pendency of this SaaS Agreement;
- 1.4.4 the Services and/or Contractor Technology will not contain any Malware at all times during which the Services and/or Contractor Technology is made available for access and use by the Authority's user, or any Authority Data is processed using the Services and/or Contractor Technology. Any patches, Updates, upgrades or error corrections to the Services and/or Contractor Technology provided by the Contractor likewise will not contain any Malware;
- 1.4.5 the Services and/or Contractor Technology will not contain any security mechanisms, including, but not limited to, copy protect mechanisms, encryptions, time-activated disabling devices or other codes, instructions or devices which may disable the modules or other software or erase or corrupt data;
- 1.4.6 the Services and/or Contractor Technology will comply with all Applicable Laws at all times;
- 1.4.7 With respect to the Services and Contractor Technology, (i) all modules and other materials (including third party software and hardware and open source software used or included by Contractor as part of the Services or Contractor Technology) will be original or will be authorized or licensed for use in connection with the Services; (ii) there is, as of the Effective Date of the SaaS Agreement, no claim, litigation or proceeding pending or threatened against the Contractor with respect to the Services and/or Contractor Technology, or any component thereof, alleging infringement or misappropriation of any Intellectual Property Rights; and (iii) the Services and/or Contractor Technology, and any use thereof, shall not infringe upon any Intellectual Property Rights of any third party in any country.

## 2. Intellectual Property Rights.

- 2.1 The Contractor will not create, acquire, license, use, register, or seek to register any Intellectual Property Rights owned by Authority. Contractor is given a limited, worldwide, royalty-free, non-sublicensable right to use, reproduce, perform and display, Authority's Intellectual Property Rights during the term of the SaaS Agreement, or any extensions or renewals thereof, for the purposes of providing Services and/or Contractor Technology for the benefit of the Authority, subject to the terms of the SaaS Agreement. All use of Authority's Intellectual Property Rights inures solely to the benefit of the Authority. Any modification, enhancement, or improvement of, or derivative works to, Authority's Intellectual Property Rights shall be owned by Authority, provided same is performed by Authority. For clarification purposes, Authority's Intellectual Property shall not include the System or Contractor Technology.
- 2.2 Authority will not create, acquire, license, register, or seek to register any Intellectual Property Rights owned by Contractor. Authority is given a limited, worldwide, royalty-free, non-sublicensable right to use, reproduce, perform and display Contractor's Intellectual Property Rights during the term of this Contract, and any extensions or renewals thereof,

for the purposes of obtaining and using the Services and/or Contractor Technology. All use, of Contractor's Intellectual Property Rights inures solely to the benefit of the Contractor and is subject to the Contractor's quality control and standard guidelines. Any modification, enhancement, or improvement of, or derivative works to, Contractor's Intellectual Property Rights shall be owned by Contractor. For clarification purposes, the Contractor's Intellectual Property shall not include Authority's Intellectual Property.

- 2.3 As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to any Authority Data, any Intellectual Property Rights therein, and all other Intellectual Property Rights owned or licensed by Authority ("Authority IP"). Authority IP does not include Contractor Technology. Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or process any Authority Data, except as licensed hereinabove, for purposes of performing Services solely for the benefit of Authority. The Contractor will not use any Authority Data in a manner that is harmful to the Authority.
- 2.4 As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Contractor is the sole owner of all rights, title and interest in and to any Contractor Technology, any Intellectual Property Rights therein, and all other Intellectual Property Rights owned or licensed by Contractor ("Contractor IP"). Contractor IP does not include Authority IP. Authority may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or process any Contractor Technology, except as licensed hereinabove, for purposes of obtaining and using Services provided by Contractor. Authority will not use any Contractor Technology in a manner that is harmful to the Contractor.
- 2.5 Authority is only permitted to use the Contractor Technology for its own employees. Authority shall not provide service bureau, data processing, time sharing services or to otherwise provide payroll or human resource record keeping for third parties by using the Contractor Technology.
- 2.6 To the extent that any third party software is provided herein, Authority agrees that it shall only use such software in conjunction with the UltiPro Software and Services and Authority acknowledges that it is prohibited from engaging in, causing, assisting or permitting, the reverse engineering, disassembly, translation, adaption or recompilation of any such third party software and that it shall not attempt to obtain or create the source code from the object code of any such third party software provided to it pursuant to the Agreement, unless explicitly permitted by applicable and mandatory law.
- 2.7 Both Parties acknowledge they will not use the Services, Contractor Technology, Authority IP, Contractor IP, or any third party software for any illegal purpose or activity.

### 3. Proprietary Information and Non-Disclosure.

Except as otherwise permitted under this Contract, Contractor and Authority will not knowingly disclose to any third party, or make use of any Confidential Information during the term of this Contract and in perpetuity. For purposes of this Agreement, "Confidential Information" will mean non-public information of a Party to this Agreement. In addition to the foregoing, the Parties agree to not, at any time, during or at any time after the term of this Agreement, in any fashion, form or manner, either directly or indirectly, divulge, disclose or communicate to any person, firm, or

corporation in any manner whatsoever any information of any kind, nature or description concerning any matters relating to each other's business, including, but not limited to, names of employees, Authority companies, its manner of operation, the nature, or descriptions of, its plans, processes or data of any other kind. Without regard to whether any or all of the foregoing matters would be confidential, the Parties hereto stipulate that as between them, the same are important, material and confidential. This Agreement shall not be deemed to prevent the disclosures of information after having received prior consent from the other Party. This Agreement does not apply to information in the public domain at the time of disclosure, or which is or becomes publicly available without breach of the Contract, or which is known to the Parties receiving it at the time of disclosure, or which is received from a third party who has not breached any Agreement with the Party claiming confidentiality, or which is disclosed by the Party claiming confidentiality to third parties on a non-restricted basis, or which is required to be disclosed to a governmental or regulatory agency or as required by a judicial or arbitration tribunal. Notwithstanding anything to the contrary, although Contractor remains responsible for the confidentiality obligations as set forth in this Agreement, Contractor reserves the right to have Confidential Information processed, managed and/or stored with off-site vendors Salesforce and the SaaS Site providers (currently Quality Investment Properties Metro, LLC and IO Phoenix One, LLC , who shall assist in the performance of Services by hosting servers or providing online portals for the processing of information pertinent to the Services.

4. Upon any termination or expiration of this contract, the Contractor agrees to deliver to the Authority any and all Confidential Information except that the Contractor may keep one file copy of any Confidential Information pertinent to its rights and obligations surviving the expiration or termination of the SaaS Agreement, which copy shall be held in confidence in accordance with the terms of this SaaS Agreement. With respect to the Services and/or Contractor Technology and/or any Authority Data hosted or Processed by the Contractor, the following terms will apply:
  - 4.1 Unless otherwise designated in the contract or agreed upon in writing by the Authority, the Contractor will use commercially reasonable efforts to make the Services and/or Contractor Technology available 24 hours per day 7 days a week. The Contractor represents that access to the Services and/or Contractor Technology for The Authority and its Customers will be maintained at an availability standard of 99.75% as measured over the course of a calendar month, excluding Standard Exceptions (the "Service Levels"). "Standard Exceptions" to the 99.75% service-availability standard shall mean SaaS Infrastructure and Network Infrastructure Maintenance Schedule, maintenance downtime to resolve extraordinary technical problems with the Services and/or Contractor Technology or the host operating environment, force majeure (including state or federally declared natural disasters in the Contractor's physical locations), or technical difficulties attributable to any non-Contractor computer hardware, or technical difficulties attributable to the Authority's interface with the Services and/or Contractor Technology unless such technical difficulties are the direct fault of the Contractor. The Contractor agrees to measure and provide a detailed report to the Authority, on a monthly basis, showing the Contractor's provision of the Services and/or Contractor Technology as compared to the Service Levels.
  - 4.2 Unless otherwise approved in writing by the Authority, the Contractor must host the Services and/or Contractor Technology in the United States of America ("U.S.A.") at the location(s) specified by the Contractor, must provide services under this contract with resources (e.g., hardware and software) located in the U.S.A, and must not transfer or process any Authority Data outside of the U.S.A.
  - 4.3 In the event of the expiration or termination of the Service Term except for a termination due to breach by Authority, Authority may elect to extend its access to and use of the Services for up to six (6) months (the "Transition Period") in which it may continue to access and use the Services subject to the terms and conditions herein including but not

limited to the pricing and payment terms (which terms and conditions shall survive during the Transition Period) for the purpose of transitioning to a replacement system. In addition, Contractor shall provide Consulting services to Authority during the Transition Period for an orderly transition at the then currently published rate for Consulting Services. Upon termination or expiration of the Transition Period, all rights and licenses granted hereunder shall immediately terminate

- 4.4 The Contractor will promptly notify the Authority upon discovering or otherwise learning of a Security Incident. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. The Contractor will (i) undertake Remediation Efforts at the Contractor's sole expense and reimburse the Authority for its reasonable costs and expenses in connection with any Remediation Efforts that it elects to undertake, (ii) make certain that such Remediation Efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident, and (iii) reasonably cooperate with any Remediation Efforts undertaken by the Authority.
5. Rights to Access and Use. The Contractor hereby grants to the Authority, and third-party service providers providing services to the Authority (but only in their capacity as the Authority's service providers) a non-exclusive, worldwide, royalty-free license to access and use the Services and/or Contractor Technology during the Service Term. Such license shall be enterprise-wide for an unlimited number of users or transactions, unless limitations on use are expressly agreed upon by the Authority in this contract. The Authority may allow its contractors and service providers to access and use the Services and/or Contractor Technology in the course of performing services for the Authority, including application development services, data processing and facilities management services, provided the Authority is responsible for any such third parties compliance with the terms of the SaaS Agreement.
6. Use of Authority's Name. The Contractor agrees not to make any written use of or reference to the Authority's name for any marketing, public relation, advertising, display or other business purpose or make any use of Authority Data for any activity unrelated to the express business purposes and interests of the Authority under this contract, without the prior written consent of the Authority, which consent will not be unreasonably withheld.
7. Specific Performance. The Parties acknowledge and agree that the remedy at law for the breach of provisions of this contract including with respect to ownership of Intellectual Property Rights and Confidential Information may be inadequate and that the Parties may be entitled to seek injunctive relief without bond, in addition to any other rights or remedies which the Parties may have for such breach, subject to the terms of the SaaS Agreement.
8. Indemnification. In addition to any other indemnification set forth elsewhere in the SaaS Agreement or exhibits, the following indemnification obligations shall apply:
- 8.1 The Contractor shall indemnify, defend and hold harmless the Authority and its trustees, directors, officers, employees and agents ("Authority Indemnitees") from and against any and all claims, demands, lawsuits, actions, investigations, allegations or other proceedings of any kind or nature ("Claims") and any losses, damages, liabilities, judgments, awards, penalties, interest, fines, costs and fees or expenses of whatever kind or nature, including reasonable attorneys' fees ("Losses"), incurred by Authority Indemnitees to the extent arising out of, caused by, relating to, or resulting from: (i) any failure of the Services and/or Contractor Technology to conform with Applicable Laws; (ii) any Security Incident; (iii) any Remediation Efforts caused by a Security Incident; (iv) any gross negligence of Contractor in providing Services; and (v) any actual or alleged violation, infringement or misappropriation of any Intellectual Property Rights of a third party related to the Services and/or Contractor Technology

- 8.2 Either party shall promptly advise the other party in writing of any action, administrative or legal proceeding, or investigation to which this indemnification may apply. The Contractor shall, at its expense, assume on behalf of the Authority Indemnitees and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to the Authority; provided, however, that the Authority shall have the right, at its option, to be represented therein by advisory counsel of its own selection and at its own expense. The indemnification obligations shall not be subject to any limitations or exclusions with respect to damages, compensation, benefits payable under insurance policies, workers' compensation acts, disability benefit acts, or other employees/benefit acts. Contractor shall have full and exclusive control of any such defense and settlement of the claim, although no settlement or judgment shall be entered that would impose liability or fault on Authority unless Authority gives its prior, written approval.
- 8.3 If the Services and/or Contractor Technology or any use thereof by the Authority is held to infringe or it is believed by the Authority to infringe the rights of third parties, the Contractor will, at its expense and upon the Authority's request, (i) modify the Services and/or Contractor Technology (and each affected module) to be non-infringing so long as the utility or performance of the Services and/or Contractor Technology is not materially impaired and the Services and/or Contractor Technology continues to conform to Applicable Laws, the Technical Specifications and the Authority's original requirements as mutually agreed to by the Parties, in all material respects, subject to the Authority's approval which will not be unreasonably withheld, conditioned, or delayed; or (ii) obtain for the Authority a license to continue using the infringing Services and/or Contractor Technology (or affected component thereof).
- 8.4 The indemnity obligations contained in this Section shall survive the expiration, termination, suspension, abandonment and/or completion of the SaaS Agreement.
9. Approval. Any approval given by the Authority shall not relieve the Contractor of its obligations and other duties under this contract or be construed as an assumption or waiver by the Authority.

**Schedule 1**

**Service Level Agreement**

**I. Service Level for Production SaaS Services:**

Contractor's service level objective for the production SaaS environment, including, but not limited to, access to the Contractor Technology, is to make these services available a minimum of ninety nine and three quarters (99.75%) percent of the time as measured over any one month, not to include activities pursuant to the SaaS Infrastructure and Network Infrastructure Maintenance Schedule.

**II. Product Support Service Level - Customer Service Severity Code Summary**

Severity Level	Description	Examples of Issues	Target Response Time
1	Emergency issue whereby all users have no access to the UltiPro	All users have no production access UltiPro:	30 Minutes -OR- immediately via Rapid Response
2	High impact where users are unable perform key processes associated with a deadline and/or are unable to continue with their current operations	User is unable to perform tasks in the UltiPro such as new hires, calculating payroll, viewing pay information, and unable to download or print information.	2 Hours -OR- immediately via Rapid Response
3	Moderate impact issue whereby users are unable to perform key processes NOT associated with any deadlines. Users are able to continue with their current operations.	User has a question about how to accomplish a certain task, completing a process or is reporting an issue within the UltiPro system.	Within four (4) business hours
4	Low impact issue and/or you have general questions regarding usage of the product. You are reporting a behavior which is not an emergency	How to and General Inquiries, regarding new/existing product functionality. O Request for consulting services. O Form requests.	Within sixteen (16) business hours



## Amendment from Contract 81680 to Contract 200232

This Amendment (this "Amendment"), dated as of February 10, 2018 ("Effective Date") is made by and between The Ultimate Software Group, Inc. ("Ultimate Software") and Capital Metropolitan Transportation Authority ("Customer").

**WHEREAS**, Ultimate Software and Customer entered into Contract No. 81680 Payroll and Human Resources Information Management of effective date March 12, 2007 (hereafter "SaaS Agreement") along with various addenda, supplements, amendments, etc. to same, (hereinafter collectively referred to as the "Prior Agreement");

**WHEREAS**, the parties have agreed to terminate the Prior Agreement as of February 16, 2018. The current SaaS Agreement between the Parties will include the Prior Agreement and the amendments contained herein and shall be referred to as Contract 200232.

**NOW, THEREFORE**, the Parties agree as follows:

1. The above whereas clauses are incorporated as terms into the SaaS Agreement.
2. The term SaaS Agreement may also be referred to as "Contract" within the SaaS Agreement and any Exhibits and schedules thereto.
3. The term of the SaaS Agreement shall be extended for a non-cancellable term of twelve (12) months commencing February 16, 2018 through February 15, 2019 ("Renewal Term"). Customer shall have the option to extend the Contract for up to seven (7) renewal terms of twelve (12) months each upon written agreement by the Parties.
4. At the commencement of the Renewal Term, the following shall apply:
  - a. The SaaS Agreement pricing as set forth in Exhibit A-1, shall be replaced with Exhibit A attached hereto.
  - b. Exhibit B (Representations and Certifications) as set forth in the SaaS Agreement shall be deleted and replaced with Exhibit B (Representations and Certifications) attached hereto.
  - c. Exhibit F (Scope of Services) as set forth in the SaaS Agreement shall be deleted and replaced with Exhibit F (HRIS Subscription and Maintenance Scope of Services) attached hereto.
  - d. Exhibit I (Data Security and Privacy) attached hereto shall be added to the SaaS Agreement as Exhibit I.
  - e. Exhibit J (SaaS (HOSTED SOLUTIONS) - TERMS AND CONDITIONS FOR THE PERFORMANCE OF INFORMATION TECHNOLOGY (IT) PRODUCTS AND SERVICES) attached hereto shall be added to the SaaS Agreement as Exhibit J.
5. Exhibit E (Contractual Terms and Conditions) shall be amended as follows:
  - i. Section 2(c) entitled FIRM, FIXED PRICE CONTRACT – Travel Contract Prices shall reflect the deletion of the second sentence and the reference to (10/01/01 – 9/30/06 rate is \$132.)
  - ii. Section 6 entitled INVOICING AND PAYMENT, shall be deleted and replaced with the following:

Invoices may be submitted once per month, electronically to [AP\\_invoices@capitalmetro.org](mailto:AP_invoices@capitalmetro.org).

or via mail marked "original" to the attention of:

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

iii. Section 43 entitled ORDER OF PRECEDENCE shall deletion of sections 1 and 2 and only section 1 be replaced with the following, all other sections shall be respectively renumbered:

(1) The Pricing Schedule, Exhibit A, (2)

6. During the Renewal Term and during any of the seven optional renewal terms thereafter as applicable, the pricing as set forth in Exhibit A herein, shall apply.
7. All other provisions of the SaaS Agreement remain unchanged and are hereby reaffirmed by the Parties.

**N WITNESS WHEREOF**, the Parties have hereto by their duly authorized representatives executed this Amendment.

Capital Metropolitan Transportation Authority

By: *Jean Burnett*  
Name: Jean Burnett  
Title: Contracting Officer  
Date: 02/14/2018

The Ultimate Software Group, Inc.

By: *Sheryl Stein*  
Name: *Sheryl Stein*  
Title: *Vice President*  
Date: *2/28/18*