CONTRACT NO. 200274  
(RFP 302744)  
Data Center Modernization

CONTRACTOR: Freeit Data Solutions, Inc  
1214 W. 6th Street, Suite 210  
AUSTIN, TEXAS  78703  
Phone: (512) 593-5212  
FAX: (888) 461-0471  
Wayne Orchid, President  
info@freeitdata.com

AWARD DATE: January 10, 2018

CONTRACT TERM: 2 years from Notice to Proceed

PRICE: $1,319,946.48

SBE GOAL: 10%

PROJECT MANAGER: Steven Salinas  
Telephone #: (512) 369-6544  
Email Address: steven.salinas@capmetro.org

CONTRACT ADMINISTRATOR: Kimberley Craft  
Telephone #: (512) 389-7579  
Email Address: Kimberley.craft@capmetro.org
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>EXHIBIT</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Award/Contract Form</td>
</tr>
<tr>
<td>A-REVISED-4</td>
<td>PRICING SCHEDULE (3rd FPR)</td>
</tr>
<tr>
<td>B</td>
<td>REPRESENTATIONS AND CERTIFICATIONS</td>
</tr>
<tr>
<td>D</td>
<td>SMALL BUSINESS ENTERPRISE (SBE) PROGRAM AND SCHEDULE C FORMS</td>
</tr>
<tr>
<td>E</td>
<td>CONTRACTUAL TERMS AND CONDITIONS</td>
</tr>
<tr>
<td>F-REVISED-1</td>
<td>SCOPE OF SERVICES</td>
</tr>
<tr>
<td>G</td>
<td>IT (SAAS/PAAS) - ADDITIONAL TERMS AND CONDITIONS FOR CONTRACTOR-Hosted IT</td>
</tr>
<tr>
<td>H</td>
<td>CONTRACTOR PERFORMANCE MANAGEMENT PLAN PERFORMANCE DEFICIENCY CREDITS</td>
</tr>
<tr>
<td>I</td>
<td>ADDITIONAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF IT PRODUCTS AND SERVICES</td>
</tr>
<tr>
<td>J</td>
<td>PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM</td>
</tr>
<tr>
<td>Attachment 1</td>
<td>DATA CENTER RFP DISCOVERY SCHEDULE</td>
</tr>
<tr>
<td>Attachment 2</td>
<td>TEST AND DEVELOPMENT VMWARE ENVIRONMENT</td>
</tr>
<tr>
<td>Attachment 3</td>
<td>CAPITAL METRO SERVERS</td>
</tr>
<tr>
<td>Attachment</td>
<td>Description</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Attachment 4</td>
<td>ENVIRONMENT SCAN SUMMARY</td>
</tr>
<tr>
<td>Attachment 5</td>
<td>ENVIRONMENT SCAN DETAIL</td>
</tr>
<tr>
<td>Attachment 6</td>
<td>ENVIRONMENT SCAN FIXED CARE PACKS</td>
</tr>
<tr>
<td>Attachment 7</td>
<td>STORAGE SYSTEMS : CMTACOLO3PAR : PHYSICAL DISKS</td>
</tr>
<tr>
<td>Attachment 8</td>
<td>2015 SAID RENEWAL SUMMARY</td>
</tr>
<tr>
<td>Attachment 9</td>
<td>HP PROACTIVE 1043 1310 1440</td>
</tr>
<tr>
<td>Attachment 10</td>
<td>HP SUPPORT -1040 3997 4246</td>
</tr>
<tr>
<td>Attachment 11</td>
<td>HP SUPPORT PLUS -1040 4012 2290</td>
</tr>
<tr>
<td>Attachment 12</td>
<td>HP SUPPORT PLUS -1040 4017 3620</td>
</tr>
<tr>
<td>Attachment 13</td>
<td>HP SOFTWARE 24X7 SUPPORT -1040 4059 3954</td>
</tr>
<tr>
<td>Attachment 14</td>
<td>HP SOFTWARE 24X7 SUPPORT -1040 4968 9408</td>
</tr>
<tr>
<td>Attachment 15</td>
<td>HP PROACTIVE SELECT -1040 5024 8847</td>
</tr>
<tr>
<td>Attachment 16</td>
<td>HP 4 HOUR 24X7 PRACTIVE CARE -1040 6129 5628</td>
</tr>
<tr>
<td>Attachment 17</td>
<td>HP 4 HOUR 24X7 PROACTIVE CARE -1040 6616 0264</td>
</tr>
<tr>
<td>Attachment 18</td>
<td>HP SUPPORT PLUS 24 SERVICE -1040 5170 5979</td>
</tr>
<tr>
<td>Attachment 19</td>
<td>NETWORK OVERVIEW</td>
</tr>
<tr>
<td>Attachment 20</td>
<td>STORAGE SYSTEMS CMTA29103PAR PHYSICAL DISKS – 2910 (TESTDEV) 3PAR</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>Attachment 21</td>
<td>DISCOVERY DATA</td>
</tr>
<tr>
<td></td>
<td>CONTRACTOR’S 3RD FINAL PROPOSAL REVISION, OCTOBER 26, 2017</td>
</tr>
<tr>
<td></td>
<td>CONTRACTOR’S 2ND FINAL PROPOSAL REVISION, SEPTEMBER 24, 2017</td>
</tr>
<tr>
<td></td>
<td>CONTRACTOR’S FINAL PROPOSAL REVISION, AUGUST 24, 2017</td>
</tr>
<tr>
<td></td>
<td>CONTRACTOR’S INITIAL PROPOSAL, MAY 24, 2017</td>
</tr>
<tr>
<td></td>
<td>AMENDMENTS 1 THROUGH 9</td>
</tr>
</tbody>
</table>
**AWARD/CONTRACT**

1. **SOLICITATION NO.:** 302744
2. **CONTRACT NO.:** 200274
3. **EFFECTIVE DATE:** December 20, 2017

4. **BUYER**
   - **NAME:** Kimberley Craft
   - **PHONE:** (512) 389-7579

5. **SHIP TO ADDRESS:**
   - **Capital Metro**
   - **2810 East 5th Street**
   - **Austin, Texas 78702**

6. **DELIVERY TERMS:**
   - **FOB Destination**

7. **DISCOUNTS FOR PROMPT PAYMENT:** None

8. **CONTRACTOR NAME & ADDRESS:**
   - **Freelite Data Solutions, Inc.**
   - **1214 W. 6th Street, Suite 210**
   - **Austin, Texas 78703**

9. **REMITTANCE ADDRESS:**
   - **Email:** info@freelite.com

10. **DBE GOAL:** 10%

**CONTRACT EXECUTION**

A false statement in any bid or proposal submitted to CMTA may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

**NEGOTIATED AGREEMENT:**

Contractor agrees to perform, furnish, and deliver all the services set forth or otherwise identified in Contractor’s Proposal, Exhibit A-Revised-4 (Pricing Schedule), Exhibit E (Contractual Terms and Conditions), Exhibit F-Revised-1 (Scope of Services) and all relevant attachments and addenda for the base and option years. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this Award/Contract, (b) the Schedule; (c) Contractual Terms and Conditions, as amended if applicable, and (d), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.

**SIGNATURE OF CONTRACTOR:**

**Signature:**

**Date:** 12/21/2017

**AWARD:** Items listed below are changes from the original offer and solicitation as submitted.

This Award/Contract Form may be executed in multiple originals, and an executed facsimile shall have the same force and effect as an original document.

**ALTERATIONS IN CONTRACT:**

1. Exhibit I (On-Premises Solutions) – Additional Terms and Conditions for the performance of Information Technology (IT) Products and Services in its entirety, is attached hereto and made a part hereof for all pertinent purposes to this contract.

2. Exhibit J – Proprietary Rights and Data Security Addendum in its entirety, is attached hereto and made a part hereof for all pertinent purposes to this contract.

**ACCEPTED AS TO:**

Exhibit A-Revised-4, Section 7B-Production Only On-Premise Solution-With Dedicated Environments, Provision + 20%, Item 4 (Grand Total Items 1 through 3) for a total Lump Sum of $1,210,658.01, PLUS Section 7C Test/Dev Only: On-Premise Solution Provision + 20%, Item 1 for a total Lump Sum of $109,288.47, for a GRAND TOTAL LUMP SUM FOR THE BASE PERIOD OF $1,319,946.48.

**SIGNATURE OF CONTRACTING OFFICER:**

**Typed Name:** Muhammad Abdullah
**Contracting Officer**

**Signature:**

**Date:** 11/10/2018
1. **IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT**

<table>
<thead>
<tr>
<th>Company Name (Printed)</th>
<th>Freit Data Solutions, Inc</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>1214 West 6th Street</td>
</tr>
<tr>
<td>City, State, Zip</td>
<td>Austin, TX 78703</td>
</tr>
<tr>
<td>Phone, Fax, Email</td>
<td>512-593-5212, 888-416-0471, <a href="mailto:info@freitdata.com">info@freitdata.com</a></td>
</tr>
</tbody>
</table>

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) | Wayne Orchard, President |
Signature and Date                         | 10/18/17 |

2. **ACKNOWLEDGEMENT OF AMENDMENTS**

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

<table>
<thead>
<tr>
<th>Amendment #</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>10/18/2017</td>
</tr>
<tr>
<td>9</td>
<td>10/24/2017</td>
</tr>
</tbody>
</table>

3. **PROMPT PAYMENT DISCOUNT**

<table>
<thead>
<tr>
<th># Days</th>
<th>n/a</th>
<th>Percentage</th>
<th>n/a%</th>
</tr>
</thead>
</table>

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

4. **SBE GOAL (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)**

The SBE participation commitment for this contract is the following percentage of the total contract:

10%

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

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed) | Muhammad Abdullah, Contracting Officer |
Signature and Date                         |                                   |
Accepted as to:                           | Exhibit A-Revised-4, Section 7B-Production Only On-Premise Solution-With Dedicated Environments, Provision + 20%, Item 4 (Grand Total Items 1 through 3) for a total Lump Sum of $1,210,658.01, PLUS Section 7C Test/Dev Only: On-Premise Solution Provision + 20%, Item 1 for a total Lump Sum of $109,288.47, for a GRAND TOTAL LUMP SUM FOR THE BASE PERIOD OF $1,319,946.48. |
The remainder of Exhibit A – Pricing Schedule has been redacted.

For further information regarding Exhibit A, you may:

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

  OR

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

For more information regarding the Public Information Act and submitting public information requests, follow this link to our website: https://www.capmetro.org/legal/
1. **TYPE OF BUSINESS**
   (a) The offeror operates as (mark one):
       ☑ A corporation
       ☐ An individual
       ☐ A partnership
       ☐ A sole proprietor
       ☐ Another entity ______

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

2. **PARENT COMPANY AND IDENTIFYING DATA**
   (a) The offeror (mark one):
       ☑ is
       ☐ is not

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

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

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

3. **CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**
   (a) The offeror certifies (and all joint venture members, if the
       offer is submitted by a joint venture) that in connection with this
       solicitation:

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

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

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

4. **SMALL BUSINESS ENTERPRISE GOAL**
   The goal established for this solicitation must be met or the offeror
   must submit clear evidence of a “good faith effort” along with the
   offeror’s completed Schedule C of Subcontractor Participation form
   (listing all proposed subcontractors, SBE and non-SBE) and an
   executed Intent to Perform as a SBE Subcontractor form for each
   SBE subcontractor listed on the Schedule C as part of the proposal
   or sealed bid. By submission of this offer, the offeror certifies that it
   will comply with the provisions of Exhibit D attached to this
   solicitation entitled “Small Business Enterprise Program” and will
   meet the goal as established in any ensuing contract.

5. **DEBARMENT, SUSPENSION, INELIGIBILITY AND
   VOLUNTARY EXCLUSION**
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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

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

2. have not within a three (3) year period preceding this offer been convicted of or had a civil judgement rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

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

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

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

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

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

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

6. 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:

<table>
<thead>
<tr>
<th>Individual’s Name</th>
<th>Date/Subject of Communication</th>
</tr>
</thead>
</table>

(Attach continuation form, if necessary.)

7. 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.

8. CODE OF CONDUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) adhere to Capital Metro policies and procedures;  

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

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

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

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

(7) disclose immediately any information regarding unethical or wrongful conduct related to Capital Metro transactions to the Board Vice Chair or the Capital Metro Ethics Officer.  

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) No Board Member or employee shall:

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

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

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

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

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

(1) The failure of a Board Member to comply with the requirements of this policy shall constitute grounds for censure or removal from the Board in accordance with Section 451.011 of the Texas Transportation Code.

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

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

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

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

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

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

(i) To report suspected ethical abuses or fraud, contact the ethics hotline at (512) 365-0371. It is available 24 hours a day, 365 days a year. All calls are strictly confidential.
(j) In accordance with section 176.006, Texas Local Government Code, "vendor" is required to file a conflict of interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at www.ethics.state.tx.us. The questionnaire shall be sent to the Authority's Contract Administrator.

9. CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

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

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

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

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

10. VENDOR PERFORMANCE SCORING

(a) In compliance with the Texas Government Code, Title 10, Subtitle D, Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2177.125, and Texas Administrative Code, Title 1, Chapter 113.6, information obtained from the Texas Building and Procurement Commission's Vendor Performance Tracking System (VPTS) which may be found at TBPC's website at http://www.window.state.tx.us and may be used in evaluating responses to solicitations for goods and services to determine the best value for the Authority.

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

The Small Business Enterprise (SBE) program is designed to work with the small business community to enhance SBE participation in locally funded procurements. The intent of the SBE program is to provide full and fair opportunities for equal participation by all small businesses at the Authority. The program provides specific thresholds to create opportunities, promote competitiveness, and assist SBEs in overcoming potential barriers to participating in contracting opportunities.

2. **DEFINITION**

(a) Capital Metro defines small business as any business whose annual gross income averaged over the past three (3) years does not exceed the Small Business Administration’s (SBA) size standards as set forth in 13 CFR, Part 121. A size standard is the largest that a firm can be and still qualify as a small business.

(b) Any Small Business that is certified as a Small Business Enterprise (SBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE) and Historically Underutilized Business (HUB) meeting the SBA size requirement will be accepted as meeting the Capital Metro SBE requirements.

3. **SUBMISSION OF SBE FORMS**

Offerors shall submit with their offer a completed Schedule C of Subcontractor Participation form (listing all proposed subcontractors,) and an executed Intent to Perform as a SBE Subcontractor form for each SBE subcontractor listed on the Schedule C. As required in Section 5 of this Exhibit, complete Good Faith Effort documentation (if necessary) must be submitted at this same time. The listing of a SBE by an Offeror shall constitute a representation by the Offeror to the Authority that it believes such SBE firm to be technically and financially qualified and available to perform the work. It shall also represent a commitment by the Offeror that if it is awarded the contract it will enter into a subcontract with such SBE for the work described and at the price set forth in both the Schedule C of Subcontractor Participation and the Intent to Perform as a SBE Subcontractor forms. If the price changes after the forms have been submitted but prior to award of the contract, the Offeror will immediately notify the Authority's Procurement Department of the changed amount and the reason(s) for the change. No substitutions of SBE firms may be effected without the Authority's prior written approval. If an offeror is a SBE and wishes to count its participation on the project towards the goal, it is required to perform that portion with its own work force.

4. **CREDIT TOWARDS GOALS**

(a) No credit toward meeting SBE goals will be allowed unless the SBE is determined to be eligible by the Capital Metro Office of Diversity. Offerors are strongly encouraged to contact the Authority's Office of Diversity well in advance of the date set for receipt of offers in order to enable review of the proposed SBEs eligibility to participate in the Authority's SBE Program. The dollar value of work performed under a contract with a firm after it has graduated from the SBE program cannot count toward a contract goal. Participation of a SBE subcontractor cannot count toward the prime contractor's SBE achievements until the amount being counted has been paid to the SBE.

(b) Only expenditures to SBEs that perform a Commercially Useful Function may be counted towards goals. A SBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. If a SBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the SBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a commercially useful function.

(c) The Contractor may count only the value of the work actually performed by the SBE toward SBE goals. Count the entire amount of that portion of a construction contract that is performed by a SBE's own forces. Include the cost of supplies and materials obtained by the SBE for the work of the contract, including supplies purchased or equipment leased by the SBE (except supplies and equipment the SBE subcontract purchases or leases from the prime contractor or its affiliate). Count the entire amount of fees or commissions charged by a SBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, toward SBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. When a SBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward SBE goals only if the SBE's subcontractor is itself a SBE. Work that a SBE subcontractors to a non-SBE firm does not count toward SBE goals.

(d) The Contractor may credit towards the SBE goal only 60% of the total dollar cost for material and supplies purchased from SBEs that are regular dealers and not manufacturers. A regular dealer is an established firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock,
and regularly sold or leased to the public in the usual course of business. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

(e) A Contractor may count toward its SBE goals the following expenditures to SBE firms that are not manufacturers or regular dealers.

(1) The fees or commissions charged for a bona fide services such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment materials or supplies required for performance of the contract, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in, the materials and supplies.

(3) The fees charged for providing any bonds or insurance specifically required for the performance of the contract.

(4) The fees charged for assistance in the procurement of the materials and supplies provided that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

5. DEMONSTRATION OF GOOD FAITH EFFORT

(a) If an Offeror does not meet the SBE goals, it shall nevertheless be eligible for award of the contract if it can demonstrate to the satisfaction of the Authority that it has made a good faith effort to meet the SBE goals. In evaluating an Offeror’s good faith effort submission, the Authority will only consider those documented efforts that occurred prior to receipt of competitive sealed proposals (SOQ).

(1) Possible subcontracting opportunities include, but are not limited to:

<table>
<thead>
<tr>
<th>Industry</th>
<th>COA Code</th>
<th>NAICS Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Processing and Hosting Services</td>
<td>92000 / 92022</td>
<td>518210</td>
</tr>
<tr>
<td>Computer Systems Design Services</td>
<td>92047 / 92031 / 92040 / 92045</td>
<td>541512</td>
</tr>
<tr>
<td>Computer Facilities Management Services</td>
<td>92029</td>
<td>541513</td>
</tr>
</tbody>
</table>

(b) In making a determination that the Offeror has made a good faith effort to meet the SBE goals, the Authority shall consider among other things it deems relevant, the criteria set forth below. Additionally, in determining whether a bidder has made good faith efforts, the Authority will take into account the performance of other bidders in meeting the contract goal. The Offeror shall furnish as part of its SBE utilization information provided under Section 5 such specific documentation concerning the steps it has taken to obtain SBE participation, with a consideration of, by way of illustration and not limitation the following:

(1) Whether the Offeror solicited through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified SBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the SBEs to respond to the solicitation. The bidder must determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.

(2) Whether the Offeror provided interested SBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(3) Whether the Offeror negotiated in good faith with interested SBEs. It is the bidder's responsibility to make a portion of the work available to SBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SBE subcontractors and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for SBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a bidder's failure to meet the contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.

(4) Whether the Offeror rejected SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

(5) Whether the Offeror made efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
(6) Whether the Offeror made efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(c) In determining whether an Offeror has demonstrated good faith, the Authority will look not only at the different kinds of efforts that the Offeror has made, but also the quantity and intensity of those efforts. Efforts that are mere pro forma are not good faith efforts to meet the goals (even if they are sincerely motivated) if, given all relevant circumstances, the Offeror's efforts could not reasonably be expected to produce a level of SBE participation sufficient to meet the goals.

6. CERTIFICATION OF SBEs

(a) The City of Austin will serve as the certifying agency for the Austin region, which includes the counties of Bastrop, Caldwell, Hays, Travis and Williamson County. All prospective SBEs must submit appropriate forms, available through the City of Austin Certification Department, to prove actual ownership and control by SBEs. All such firms shall cooperate in supplying additional information as requested by the City of Austin DSMBR Certification Department, which will determine the certification of eligible SBEs. Blank forms may be obtained by contacting the City of Austin Certification Department, 4201 Ed Bluestein Blvd, (512) 974-7645, fax: (512) 974-7609. Vendor may also contact Capital Metro at (512) 389-7512 to obtain information.

(b) In the event the Authority determines that a firm identified by the Offeror as a potential SBE does not qualify as a SBE, the Offeror shall be informed and will be provided with an opportunity to substitute firms meeting the certifying agency’s SBE eligibility criteria for the Authority’s consideration.

(c) Capital Metro will accept Small Business Certification from any government agency that certifies Small Business Enterprises.

(d) Information concerning SBEs currently certified can be obtained by contacting the Office of Diversity Department at the address in subparagraph (a) above. Offerors may access the SBE directory at http://www.ci.austin.tx.us/smb/vendors/CertVendor.cfm.

(e) Offerors are reminded that only SBEs may participate in Authority contracts in such capacities. If an offeror proposes using a SBE from another state, the firm must produce evidence that it is SBE certified in the state in which the business is headquartered.

7. SBE MODIFICATION OR SUBSTITUTION

In the event that an Offeror wishes to modify its Schedule C of Subcontractor Participation after its offer is submitted and/or a contract awarded, the Offeror/Contractor must notify the Authority in writing and request approval of the modification. This will include any changes to items of work, material, services or SBE firms which differ from those identified on the Schedule C of Subcontractor Participation on file. The Offeror/Contractor must cooperate in supplying the Authority with additional information with respect to the requested modification. If the modification involves a substitution and if it is approved by the Authority, the Offeror/Contractor must make every good faith effort to replace the SBE with another SBE. In the event that the Offeror/Contractor is unable to contract with another SBE firm, such good faith efforts must be documented to the Office of Diversity Department. The substitute SBE firm must be certified by the Authority in order for the Offeror/Contractor to receive credit towards fulfilling its SBE participation goals for the contract.

8. PAYMENT DOCUMENTATION

Concurrently with the submission of the invoice or each request for a progress payment under this contract, the Contractor shall provide on the Vendor Payment Report Form a breakdown of the amounts paid to date to SBEs identified by the Contractor to participate on this contract. As provided elsewhere in this contract, the Authority may withhold all or part of any progress payment otherwise due the Contractor if the Contractor fails to submit the Vendor Payment Report Form and make prompt payment to its subcontractors, suppliers and laborers.

9. SANCTIONS FOR NONCOMPLIANCE WITH THE AUTHORITY’S SBE PROGRAM PROVISIONS

Failure of the Contractor to carry out the Authority's SBE Program provision shall constitute a breach of contract and may result in termination of the contract for default or such remedy as the Authority may deem appropriate. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.
REQUIRED SUBMITTAL IF SUBCONTRACTORS ARE UTILIZED
CAPITAL METRO
Schedule C, Subcontractor Participation (Local Funds)

Instructions: The Offeror shall complete this form by listing 1) Names of all proposed subcontractors, 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Age of the firm, 5) Number of employees, 6) % or $ amount of Total Contract.
NOTE: AS DEFINED BY THE SMALL BUSINESS ADMINISTRATION; A SMALL BUSINESS IS ANY BUSINESS WHOSE ANNUAL GROSS INCOME AVERAGED OVER THE PAST THREE (3) YEARS DOES NOT EXCEED THE SMALL BUSINESS ADMINISTRATION'S (SBA) SIZE STANDARDS AS SET FORTH IN 13 CFR, PART 121.

Size Standards for principal NAICS Sectors: Construction General building and heavy construction contractors: $33.5 million Special trade construction contractors: $14 million Land subdivision: $7 million Dredging: $20 million Services Most common: $7 million Computer programming, data processing and systems design: $25.5 million The highest annual-receipts size standard in any service industry: $35.5 million Manufacturing About 75 percent of the manufacturing industries: 500 employees A small number of industries: 1,500 employees The balance: either 750 or 1,000 employees All Other Types of Small Business Less than 500 employees or three years of gross receipts under $10 Million.

Name of Prime Contractor (Offeror): Freit
Project Name: Data Center Modernization
RFP Number: 302744

<table>
<thead>
<tr>
<th>1) Name of Subcontractor</th>
<th>2) Address, Telephone # of Sub Firm (Including name of contact person)</th>
<th>3) Description of Work, Services Provided. Where applicable, specify “supply” or “install” or both.</th>
<th>4) Age of Firm</th>
<th>5) Number of employees</th>
<th>6) Sub % or $ amount of Total Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Network Alliance</td>
<td>9330 Colonnade Blvd Ste.100, San Antonio TX 78230 Phone 210-870-1652 Contact: Rod Tanner</td>
<td>Data Center Equipment supply and Professional Services</td>
<td>6 year</td>
<td>11</td>
<td>10%</td>
</tr>
</tbody>
</table>

This form must be completed as instructed above and include every subcontractor proposed on this project.
The undersigned will enter into a formal agreement with Sub contractors for work listed in this form upon execution of a contract with Capital Metro.

[Signature]
Authorized Representative of Offeror

5/24/17
Date Signed
REQUISITE SUBMITTAL

CAPITAL METRO
(Local) Intent to Perform as a SBE Contractor/SBE Subcontractor
RFP # 302744

1. TO: (name of Offeror/Prime Contractor) Freeit

2. The undersigned is either currently certified as a SBE or will be at the time this solicitation is due.

The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) Provide Data Center Equipment and Professional Services

__________________________

and at the following price $340,000.00 and/or 10% of the total contract amount (should be the same $ or % found on Schedule C).

With respect to the proposed subcontract described above, the undersigned SBE anticipates that 10% of the dollar value of this subcontract will be sublet and/or awarded to other contractors. Any and all subcontractors that a SBE subcontractor uses must be listed in Schedule C and must also be SBE certified. (The SBE subcontractor should complete this section only if the SBE is subcontracting any portion of its subcontract.)

Network Alliance
(Name of SBE Firm)
(Signature of Authorized Representative)
210-870-1951
(Phone Number)
5/23/17
(Date Signed)

Freeit Data Solutions, Inc.
(Name of Offeror/Prime Contractor)
(Signature of Authorized Representative)
512-818-9650
(Phone Number)
5/24/17
(Date Signed)
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. FIXED PRICE CONTRACT
This is a fixed price contract for the supplies or services specified and stated elsewhere in the contract.

3. TERM
The term of the contract shall be two (2) years from the contract 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 five (5) option periods of twelve (12) months in duration each for warranty.

5. OPTION TO EXTEND SERVICES
The Authority may require continued performance of any services within the limits and rates specified in the contract. 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. PERFORMANCE BOND
(a) Performance Bond. The Contractor shall provide a Performance Bond if the contract amount exceeds $100,000.

(b) All required bonds shall be in an amount equal to fifty percent (50%) of the contract amount. The surety company providing the bonds must be authorized to do business in the State of Texas. The surety company shall be approved for the amount of the bonds and, either hold a certificate of authority from the U.S. Department of Treasury or have obtained reinsurance from a Treasury listed insurer, in accordance with the requirements of Article 7.19-1, Vernon’s Texas Insurance Code, as amended.

(b) The Contractor shall be required to submit all required bonds to the Contracting Officer within ten (10) days from the date of Notice of Award.

7. INVOICING AND PAYMENT
(a) Invoices may be submitted once per month, and marked “original” to the attention of:

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

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

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

8. MILESTONE PAYMENTS
For On Premise Only

<table>
<thead>
<tr>
<th>Payment Milestone</th>
<th>Payment Value (% of On-Premise Contract Amount)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule</td>
<td>1%</td>
</tr>
<tr>
<td>Design and Work Plan</td>
<td>1%</td>
</tr>
<tr>
<td>Equipment Installation</td>
<td>30%</td>
</tr>
<tr>
<td>Testing</td>
<td>15%</td>
</tr>
<tr>
<td>Migration</td>
<td>15%</td>
</tr>
</tbody>
</table>
The payment milestones will be paid once each milestone is formally accepted by Capital Metro.

For Hosted / Cloud Solution

Proposer must provide a work plan defining logical payment milestones and their percentages of the total value of the hosted cloud solution.

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

Comprehensive 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 and Property Damage including Products Liability.

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

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).

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. Minimum limits of liability shall be not less than One Million Dollars and No/100 Dollars ($1,000,000) on an annual aggregate basis.

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.

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.

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.

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.

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.

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.

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.

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.

10. REPRESENTATIONS

Contractor represents that the Services shall be performed in conformity with the descriptions and other data set forth in this contract and with sound professional principles and practices in accordance with accepted industry standards, and that work performed by Contractor's personnel shall reflect sound professional knowledge, skill and judgment. If any breach of the applicable standard of professional care is discovered by the Authority during the process of the work or within one year after acceptance of the work by the Authority, Contractor shall again cause the nonconforming or inadequate Services to be properly performed at Contractor's sole expense and shall reimburse for costs directly incurred by the Authority as a result of reliance by the Authority on services failing to comply with the applicable standard of professional care.

11. 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.

12. 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.

13. 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.

14. PERSONNEL ASSIGNMENTS

(a) Contractor shall perform the Services in an orderly and workmanlike manner, and shall employ persons skilled and qualified for the performance of the Services assigned to such persons under the contract. The Authority will have the right to review the experience of each candidate, and approve assignments of Contractor's personnel.

(b) Contractor certifies that contractor has established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that contractor conducts criminal history checks on its assigned personnel 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 contractor to disclose any criminal or military criminal convictions of assigned personnel and the right to disapprove the use of assigned personnel with criminal or military convictions.

(c) Contractor shall provide a list of candidates to be used to provide the Services and shall certify that a criminal history background check has been completed within the preceding 6-month period. Criminal background checks shall include the following:

1) State Criminal History: Contractor shall research criminal history, including driving records (where applicable), covering all jurisdictions within the state, including local counties and municipalities.

2) Out of State Criminal History: Contractor shall research criminal history, including state driving records (where applicable), for all 50 states.

3) Military Discharge: For any candidates that have served in the military, contractor shall review the DD Form 214 "Certificate of Release or Discharge from Active Duty" (Long Form).
Contractor shall disclose the type of offense to the Authority according to the timetable below:

<table>
<thead>
<tr>
<th>Offense Type</th>
<th>Action Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crimes Against the Person (other than sex crimes)</td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>Submit to Capital Metro for review if less than 10 years from date of release from confinement</td>
</tr>
<tr>
<td>Class A or B Misdemeanor</td>
<td>Submit to Capital Metro for review if less than 7 years from date of conviction</td>
</tr>
<tr>
<td>Class C Misdemeanor</td>
<td>Submit to Capital Metro for review if less than 5 years from date of conviction</td>
</tr>
<tr>
<td>Crimes Against the Person - Sex Crimes</td>
<td></td>
</tr>
<tr>
<td>ALL</td>
<td>Submit to Capital Metro for review</td>
</tr>
<tr>
<td>Crimes Against Property</td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>Submit to Capital Metro for review if less than 10 years from date of release from confinement</td>
</tr>
<tr>
<td>Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography</td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>Submit to Capital Metro for review if less than 10 years from date of release from confinement</td>
</tr>
<tr>
<td>Class A or B Misdemeanor</td>
<td>Submit to Capital Metro for review if less than 7 years from date of conviction</td>
</tr>
<tr>
<td>Class C Misdemeanor</td>
<td>Submit to Capital Metro for review if less than 5 years from date of conviction</td>
</tr>
<tr>
<td>Driving Offenses</td>
<td>Disqualified if less than 7 years from date of conviction or deferred adjudication. Submit to Capital Metro for review if between 7-10 years since conviction or deferred adjudication or more than 2 convictions in a lifetime</td>
</tr>
<tr>
<td>Class A or B Misdemeanor</td>
<td>Disqualified from driving if more than 2 moving violations in the past 5 years (Any more than one driving safety course taken for a moving violation that appears on a five (5) year record will be treated as a moving violation and will count against the employee)</td>
</tr>
<tr>
<td>Moving Violations</td>
<td></td>
</tr>
</tbody>
</table>

Contractor may not assign an employee to provide Services if the employee has any conviction in the applicable categories listed above, unless an exception is granted by the Authority in accordance with subsection (d).

(d) Contractor may request the Authority perform an individual assessment of a candidate with a criminal conviction meeting one of the above categories. In conducting an individual assessment the Authority’s review will include, but not be limited to, the following factors:

1. The nature and gravity of the offense or conduct
2. The degree of harm caused by the offense or conduct
3. The time that has elapsed since the conviction or completion of probation or jail time
4. The nature of the job sought, including the job duties, environment and level of supervision
5. Any incorrect criminal history
6. Wrongful identification of the person
7. The facts and circumstances surrounding the offense or conduct
8. The number of offenses for which the candidate was convicted
9. The subsequent conviction for another relevant offense
10. The age of the person at the time of conviction or completion of probation or jail time
11. Evidence that the person performed the same type of work, post-conviction, with the same or different employer, with no known incidents of criminal conduct
12. The length and consistency of employment history before and after the conviction in a similar field as the current position sought
13. Rehabilitation efforts, e.g., education, treatment, training
14. Employment or character references and any other information regarding fitness for the particular position
15. Whether the person is bonded or licensed under any federal, state or local program or any licensing authority
16. The person’s statement of the circumstances surrounding the offense and conviction and relevant factors is consistent with publicly available record related to the crime and conviction, and
17. Any other factors deemed relevant in the consideration of a particular assessment.

At the time a request is made for an individual assessment, contractor must include the following documentation:
15. BADGES AND ACCESS CONTROL DEVICES

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

(b) Access Control Devices will be issued to contractor employees as necessary to perform the duties specified in the contract. Access Control Devices are not transferable between contractor employees. Contractor employees are prohibited from loaning Access Control Devices or providing access to an unauthorized person into restricted areas without prior arrangements with the Project Manager and the Manager of Security or the Project Manager of Security. Lost Access Control Devices must be reported to the Project Manager, the Manager of Security or the Project Manager of Security immediately. If contractor fails to return all Access Control Devices provided for their employees upon completion of the contract or termination of the contractor’s employee replacement cost shall be calculated at current market value to include labor and materials. Replacement key costs shall be deducted from the contractor current or final invoice. Misuse of Capital Metro key(s) may result in termination of the contract.

16. 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.

17. TERMINATION FOR DEFAULT

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

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

2. if the Contractor 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.

18. 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.

19. 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.

20. DRAWINGS AND OTHER DATA

All designs, drawings, specifications, notes, documents, reports, data, graphs, and other works developed in the performance of this contract shall become the sole property of the Authority and may be used in any manner by the Authority and without additional compensation to the Contractor. 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.

21. 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.

22. 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.

23. 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.

24. FEDERAL, STATE AND LOCAL TAXES

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

25. EQUAL EMPLOYMENT OPPORTUNITY

(a) Equal Opportunity Clause. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(b) Federally-assisted construction contracts. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that
applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(c) Subcontracts. Each nonexempt prime Contractor or Subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

26. CONFLICT OF INTEREST

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

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

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

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

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

27. 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.

28. 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.

29. 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.

30. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

(a) All documentation related to or prepared in connection with any proposal, including the contents of any proposal contracts, responses, inquiries, correspondence, and all other material submitted in connection with 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 ser-
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.

36. 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.

37. 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.

38. INDEMNIFICATION

(a) Contractor will indemnify, defend and hold the Authority and its officers, directors, employees, agents and representatives (the Authority and each such person or entity is an “Indemnified Party”) harmless from and against and pay any and all Damages (as defined herein) directly or indirectly resulting from, relating to, arising out of or attributable to any of the following:

1. any breach of any representation or warranty that Contractor has made in this contract;

2. any breach, violation or default by or through Contractor or any of its Subcontractors of any obligation of Contractor in this contract or any other agreement between Contractor and the Authority;

3. the use, condition, operation or maintenance of any property, vehicle, facility or other asset of the Authority to which Contractor has access or as to which the Contractor provides services; or

4. any act or omission of the Contractor or any of its Subcontractors or any of their officers, directors, employees, agents, customers, invitees, representatives or vendors.

“Damages” means all direct or indirect damages, losses, liabilities, deficiencies, settlements, claims, awards, interest, penalties, judgments, fines, or other costs or expenses of any kind or nature whatsoever, whether known or unknown, contingent or vested, matured or unmatured, and whether or not resulting from third-party claims, including costs (including, without limitation, reasonable fees and expenses of attorneys, other professional advisors and expert witnesses) related to any investigation, action, suit, arbitration, appeal, claim, demand, inquiry, complaint, mediation, investigation or similar event, occurrence or proceeding.

(b) If any Action is commenced or threatened that may give rise to a claim for indemnification (a “Claim”) by any Indemnified Party against the Contractor, then such Indemnified Party will promptly give notice to the Contractor after such Indemnified Party becomes aware of such Claim. Failure to notify the Contractor will not relieve the Contractor of any liability that it may have to the Indemnified Party, except to the extent that the defense of such Action is materially and irrevocably prejudiced by the Indemnified Party’s failure to give such notice. The Contractor will assume and thereafter diligently and continuously conduct the defense of a Claim with counsel that is satisfactory to the Indemnified Party. The Indemnified Party will have the right, at its own expense, to participate in the defense of a Claim without relieving the Contractor of any obligation described above. In no event will Contractor approve the entry of any judgment or enter into any settlement with respect to any Claim without the Indemnified Party’s prior written approval, which will not be unreasonably withheld. Until the Contractor assumes the diligent defense of a Claim, the Indemnified Party may defend against a Claim in any manner the Indemnified Party reasonably deems appropriate. The Contractor will reimburse the Indemnified Party promptly and periodically for the Damages relating to defending against a Claim and will pay promptly the Indemnified Party for any Damages the Indemnified Party may suffer relating to a Claim.

(c) This Section will survive any termination or expiration of this contract.

39. 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.

40. 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 Contractor shall maintain, and the Contracting Officer 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.

41. 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.

42. 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.

43. CONTRACTOR CONTACT/AUTHORITY DESIGNEE

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

44. QUALITY ASSURANCE

A daily review of the Contractor’s scheduled work will be performed by the Authority. If work is deemed incomplete or unacceptable in any way, the Authority will determine and cause and require the Contractor to take corrective measures in accordance with the terms of the contract.

45. 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.

46. 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 re-
sponsible 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.

47. **TOBACCO FREE WORKPLACE:**

(a) **Definitions:**

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

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

(b) **Policy:**

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

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

   (i) Protecting employees and visitors from second hand smoke

   (ii) Encouraging tobacco users to quit tobacco use

   (iii) Lowering health plan costs

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

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

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

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

48. **ORDER OF PRECEDENCE**

In the event of any inconsistency between the provisions of the solicitation (including any resulting contract), the inconsistency shall be resolved by giving precedence in the following order: (1) the Schedule; (2) Solicitation Instructions and Conditions; (3) Contractual Terms and Conditions; (4) other provisions of the contract whether incorporated by reference or otherwise; and (5) the specifications or statement of work.

49. **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.

50. **ORGANIZATIONAL CONFLICT OF INTEREST (OCI)**

(a) This contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions. The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.5.

(b) For the purposes of this clause, the term “contractor” means the contractor, its subsidiaries and affiliates, joint ventures involving the contractor, any entity with which the contractor may hereafter merge or affiliate and any other successor or assignee of the contractor.

(c) The Contractor acknowledges the full force and effect of this clause. It agrees to be bound by its terms and conditions and understands that violation of this clause may, in the judgment of the Contracting Officer, be cause for Termination for Default. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Authority in the event the Contractor breaches this or any other Organizational Conflict of Interest clause.

51. **NO THIRD PARTY BENEFICIARIES**

No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
EXHIBIT F - REVISED-1 (3rd FPR)
SCOPE OF SERVICES
DATA CENTER MODERNIZATION

1. BACKGROUND

(a) Capital Metropolitan Transportation Authority ("Capital Metro" or "the Authority") is a public agency responsible for providing mass transit service within the City of Austin and the surrounding communities of Leander, Lago Vista, Jonestown, Manor, San Leanna, and Point Venture, as well as the unincorporated area of Travis County within Commissioner Precinct 2 and the Anderson Mill area of Williamson County. Capital Metro services include MetroRail, MetroRapid, MetroBus, MetroShare as well as special event services, and special transit services for the mobility impaired. Currently, Capital Metro serves Austin and 11 surrounding cities with approximately 82 bus routes, express bus service, paratransit, and a vanpool program with a service area of approximately 500 square miles.

(b) Capital Metro wants to ensure that industry standard best practices are the guide in the implementation to be consistent with its strategic plan to improve business practices.

2. GENERAL SCOPE

(a) Capital Metro’s storage area network (SAN), server, and backup system technology is approaching end of life. Capital Metro is seeking to upgrade or replace these systems with the most current technology available.

(b) Capital Metro is seeking a vendor to provide available technology solutions, hardware, cloud-based hosting services or On-Premise, software, software licensing, software configuration, design, technical training, ongoing support, and implementation services. The vendor may propose on either the On-Premise solution or the hosted/cloud solution or both.

(c) Capital Metro wants to ensure that industry standard best practices are the guide in the implementation to be consistent with its strategic plan to improve business practices.

3. SCOPE OF SERVICES

(a) Vendor shall perform discovery of Capital Metro environment, demonstrate available technology solutions, and provide recommendations and proposal for the associated pricing, work plan, and a schedule to execute the recommendations. The discovery and demonstration activity is considered a pre-sales activity and is to be non-billable.

(b) Vendor shall perform upgrade or replacement of the Backup System. Capital Metro prefers a tapeless backup solution that is site-to-site; however, legacy tape solutions will be accepted as an option. The site-to-site solution location is to be in the second floor MDF room at the North Operations facility at 9315 Old McNeil Road, Austin, Texas, 78758.

(c) Vendor shall perform upgrade or replacement of the Storage Area Network to include storage and network fabric hardware or any other interconnection components: fiber channel, iSCSI, cabling, etc. if applicable to the solution.

(d) Vendor shall perform upgrade or replacement of designated Servers.

(e) Rail System: as part of the On-Premise solution, the Rail system is to be replaced in a highly available and secure configuration and be as dedicated and isolated as possible. Example: Rail system resides on dedicated servers, storage, and virtual environment to minimize any risk of being affected by other systems, maintenance activities, or upgrades. If possible, the redundancy should span across more than one location.

(f) Vendor shall provide pricing to include all costs for hardware, cloud-based hosting services (if any), software, software licensing, software configuration, design, technical training, ongoing support, and implementation services. All On-Premise solutions are to be sourced and priced as High Availability. Microsoft software and licensing pricing is not in scope. Microsoft software and licensing will be obtained separately via the existing Department of Information Resources (DIR) contractor for the product. However, the vendor must provide all Microsoft software requirements and configuration recommendations for the proposed solution. Capital Metro will be responsible for all data migration activity; however, the vendor may provide a solution and pricing as an option.

(g) Vendor shall provide specifications for all of the necessary On-Premise hardware. All delivered hardware must be accompanied with complete spec sheets. The proposer will provide pricing for all solutions indicated in Exhibit A-Revised-3 and the Authority may implement the Production Only On-Premise Solution with or without Dedicated Environments. Additionally, the Authority may implement the Test/Dev Only environment as an On-Premise Solution or as a Hosted/Cloud Services Solution.

(h) Vendor shall provide design, migration plan, security recommendations, complete as-built documentation, and schedule for the solution. The expectation is to perform the Backup System upgrade or replacement as the highest priority. The vendor is expected to work with the Capital Metro staff to develop the design and perform the installation, migration, and implementation. As an example: the vendor performs the initial installation / implementation / migrations with the technical staff so that they are completely aware of the process, components, and design decisions. For subsequent installations, implementations, or
migrations, the vendor provides oversight and support to the Capital Metro staff as they complete the work.

(i) Vendor shall provide recommendations and pricing for: (1) configuration of Microsoft software and any other SAN component; (2) data migration for existing data, if any, to be implemented into new system or system upgrade; (3) required interconnections for all components comprising SAN and back-up system technology; (4) proposed network security plan (or amendments to Capital Metro existing data security plan) associated with upgrade or new SAN; and (5) perform interviews of Capital Metro IT personnel to determine business requirements and address all business requirements in the proposed specifications.

1) **Training:** A formal knowledge transfer event is to be included in the implementation process. A formal listing of the parameters and goals of the knowledge transfer is to be provided in the proposal. In addition to knowledge transfer during the implementation, formal training is to be provided for all new technologies for five (5) persons. Training is to include train-the-trainer documentation. Training should include train-the-trainer documentation so that 5 trainees are sufficiently prepared to train others on standard installations, configuration and maintenance of upgraded or new SAN technology. The training milestone will be met once the training plan and all training documentation has been formally accepted by Capital Metro and all training events have been completed.

2) **Design Guidelines:** Capital Metro is interested in a solution that can be initially phased in incrementally over a two (2) year period. Capital Metro does not want to continue the practice of a “forklift” replacement of the equipment once it is at the end of life. Instead, we are interested in “normalizing” the upgrade/replacement process to be a regular and on-going, continuous practice. Vendor shall provide milestones for the two (2) year phased implementation. A flexible capacity model will also be acceptable. The most current version of the hardware/software solution at the time of installation must be provided. The hardware and software must be fully supported by the vendor for the duration of the five (5) year warranty period. Replacement and new SAN and Back-Up technology should be sourced and priced as High Availability.

   i. The solution is to be designed according to industry standard best practices to include, but not be limited to, the following characteristics:

      - As a Highly Available implementation: uptime goal = 99.99%.
      - Scalable.
      - Modular.
      - Compact (converged/hyper-converged solutions are acceptable).
      - Simple as possible.
      - Secure.

   ii. High Performance appropriate to the size and needs of the Capital Metro Environment.

   iii. Enable Disaster Recovery / Business Continuity.

   iv. Enable Information Lifecycle Management.

   v. Robust on-going Support.

   vi. Virtualization goal (On-Premise) is approximately 80% or more.

   vii. Two-site design: Primary (On-Premise Production Site) is CTECC (Combined Transportation, Emergency & Communications Center), Secondary (Disaster Recovery / Development / Test Environment site) to be hosted/cloud-based as one option or On-Premise as a second option.

   viii. Sizing for On-Premise SAN and Backup System should be approximately 200% of existing capacity for a static solution. If a flexible capacity model is proposed, then the vendor is to make recommendations for the percentage of buffer space to be allocated.

   ix. Virtual Host Server specifications should have at least 512 GB of RAM, 2 – 8 core processors of 2.0 GHz or above with local redundant storage.

   x. Standalone Server specifications should have at least 64 GB of RAM, 2 – 8 core processors of 2.0 GHz or above with local redundant storage.

   xi. Vendor’s list of recommendations for this solution should include: (1) Detailed list of all Capital Metro resources (including personnel and access to facilities/technology) needed to complete implementation; (2) if hosted/cloud-based technology is recommended, then the proposal must include copies of all security certifications and clearances of host data center (such as SSAE 16); and (3) Milestones for 2-year phased “normalizing” implementation.

4. **WARRANTY**

Software licensing, Hardware and Software support is to be five (5) years for On-Premise solutions to begin upon its successful and accepted implementation. A plan for a co-terminus annual licensing/warranty renewal must be proposed. Please provide a cost breakdown of every level of support (with a detailed description including service level agreements) available from the vendor. The support may include technologies other than those being implemented. For example, Microsoft technology support. The technologies should be pertinent to the Capital Metro infrastructure environment.

5. **DELIVERABLES**

Vendor shall provide a detailed work plan (“Project Plan”) to include but not be limited to:

(a) Project risks, assumptions and constraints.
(b) Roles and responsibilities.

(c) Detailed description of deliverables.

(d) Acceptance criteria. A detailed system acceptance plan must be provided for all technology implemented. It is to include a list of items including, but not limited to, the following categories: Functionality, Performance, Interoperability, and Documentation. The system acceptance plan is subject to approval by Capital Metro prior to any delivery of hardware, software, or cloud services. Capital Metro reserves the right to modify the system acceptance plan during the implementation process if it is evident that items in the categories of the plan have been missed or are not appropriate for the successful provisioning of the solutions. Payment for implementation of the solutions will occur only after the installation and formal acceptance by Capital Metro that the system acceptance plan for that technology has been successfully completed. Implementation includes both installation and formal acceptance by Capital Metro.

(e) Project completion criteria.

(f) Project schedules to be achieved by vendor.

(g) Comprehensive design drawing.

(h) Knowledge Transfer parameters and goals (syllabus).

(i) Cloud migration plan.

(j) Interoperability of Cloud solution and On-Premise solution.

(k) Detailed list of all Capital Metro resources (including personnel, facilities, technology, etc.) needed to complete the implementation.

(l) Hosted/cloud-based technology proposals must include copies of all security certifications and clearances of host data center (such as SSAE 16).

(m) Hosted/cloud-based proposals must include a formal knowledge transfer to include best practice recommendations for the management and maintenance of the solution to include, but not be limited to, provisioning methods, cost control, backup methods, security methods, redundancy methods, migration methods (both On-Premise-to-cloud and cloud-to-On-Premise), routine maintenance, and system reporting.

This detailed work plan is due at the completion of the discovery or demonstration stage of this project. This detailed work plan is subject to review and acceptance by Capital Metro. Capital Metro will notify Vendor in writing of Capital Metro’s acceptance of the detailed work plan unless there are deficiencies or corrections required to the plan. Vendor shall have a reasonable period of time (not to exceed ten (10) business days) to submit a revised detailed work plan for Capital Metro’s review. Capital Metro reserves the right to terminate this Agreement without penalty if the detailed work plan is incomplete or otherwise unacceptable.

6. BUYBACK

Please list opportunities for buyback of existing equipment and buyback for the proposed (On-Premise) equipment.
EXHIBIT G - IT (SAAS/PAAS) - ADDITIONAL TERMS AND CONDITIONS FOR CONTRACTOR-HOSTED INFORMATION TECHNOLOGY SYSTEMS

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 “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 Project, 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.

1.1.2 “Application” means the technical system, platform, application and/or subscription services to be provided by the Contractor, as may be further described in the Technical Specifications.

1.1.3 “Authority Data” means all data, content and information (i) submitted by or on behalf of the Authority or Customers to the Contractor or loaded into the System, (ii) obtained, developed, produced or Processed by the Contractor or by the Application or System in connection with this contract, or (iii) to which the Contractor has access in connection with this contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.

1.1.4 “Authority Electronic Property” means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any interfaces to the Authority’s information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by Customers.

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 1.4.2 of this Exhibit.

1.1.7 “Contractor Technology” means (i) the System, (ii) the Application, and (ii) any technology, information, content and data, together with Intellectual Property Rights related thereto, owned or used by the Contractor in the performance of the Services.

1.1.8 “Customer” means any purchaser of products or services from the Authority.

1.1.9 “Deliverables” means all information, data, materials, devices (including equipment and hardware), software (including the Application) and other items to be delivered by the Contractor to the Authority, as specified in the Project Plan.

1.1.10 “Documentation” means the documentation provided to the Authority, including user manuals and operator instructions related to the Application furnished by the Contractor to the Authority in any format, including paper and electronic.

1.1.11 “Intellectual Property Rights” means any and all intellectual property rights, including without limitation, invention, patents, patent and patent applications (including all reissues, divisions, renewals, continuations, continuations-in-part, extensions, provisional, and reexaminations) and all rights therein provided by international treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application, 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, and all rights therein provided by international treaties or conventions, works of authorship and copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, all internet uniform resource locators, and domain names, including any domain
name application or registration, all industrial designs and any registration or application thereof anywhere in the world, data and database rights, trade secrets, proprietary know-how and show-how, whether or not reduced, all rights to obtain and rights to apply for patents, and to register trademarks and copyrights, and any similar or equivalent rights to any of the foregoing anywhere in the world.

1.1.12 “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.

1.1.13 “Project” means the project related to the Application and the Authority’s information technology systems as described in more detail in this Exhibit.

1.1.14 “Project Plan” means the work plan for the implementation, customization, configuration and/or installation or hosting of the Application and the Services and Deliverables required for the Project, as approved by the Authority in writing.

1.1.15 “Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident which may be required by Applicable Law or by the Authority’s or the Contractor’s policies or procedures or under the Security Requirements, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident.

1.1.16 “Security Incident” means: (i) the loss or misuse of Authority Data; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data; or (iii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) or (ii).

1.1.17 “Service Levels” shall have the meaning set forth in Section 3.1 of this Exhibit.

1.1.18 “Security Requirements” means industry best 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 and the Authority’s information technology systems from unauthorized Processing, destruction, modification and use, as approved in writing by the Authority.

1.1.19 “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 Application, the specific term or period for subscription services set forth in Exhibit A of this contract.

1.1.20 “Services” means all services to be performed by the Contractor for or on behalf of the Authority or Customers, as described in the Project Plan and this Exhibit.

1.1.21 “System” means an application, network, database or system provided or used to perform the Services by the Contractor.

1.1.22 “Technical Specifications” means the technical specifications, functional specifications, descriptions, designs, standards, instructions, and business requirements of the Authority related to the Application and the Authority’s information technology systems, as may be further described in this contract. Unless otherwise agreed upon in writing by the Authority, the Technical Specifications shall be outlined in detail in Exhibit H to this contract.

1.1.23 “Termination Assistance Services” means the Contractor’s 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 Application at such time when the Authority may obtain authorization and/or funding for such replacement.

1.1.24 “Virus” means any malicious data, code, program, or other internal component that could damage, destroy, alter or disrupt any computer program, data, firmware or hardware.

1.2 Contractor Requirements.

1.2.1 Unless specified in the applicable Project Plan, the Contractor will furnish, at its own expense, all resources, personnel, equipment, tools, and supplies necessary for the full access and use of the Application and the timely performance of the Services and the Deliverables. The Contractor may use any means necessary and appropriate to perform the Services and the Deliverables under this Contract; provided, however, that in no event shall the Contractor take any action that may subject either it or the Authority to civil or criminal liability.

1.2.2 The Contractor will establish and manage all Security Requirements necessary to protect Authority Data integrity and permit appropriate access to the Application and the Authority Electronic Property. The Contractor will enable and stop access as users enter and leave the Application. The Contractor will cooperate with and assist the Authority and its other Project contractors to implement security protocols (e.g., firewalls, SSI, etc.) and take appropriate actions with respect to the Application and all Authority Data stored therein and the Authority Electronic Property so as to enable the Contractor to satisfy its obligations under this Contract and to help prevent the loss, alteration or unauthorized access to the Application and all Authority Data stored therein, or the Authority Electronic Property, to the extent within the Contractor’s control. 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 monthly firewall logs and third party audit reports, summaries of 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 Application 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-Virus protections and other reasonable commercial means to ensure 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, at all times while on-site at the Authority's facilities or remotely accessing the Authority's systems or facilities (including Authority Electronic Property). The Contractor and/or its designated third party auditor(s) will perform all audits necessary to ensure Authority Data integrity and adherence to the Security Requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority or its Project contractors.

1.2.3 The Contractor shall adopt and implement all facility and network security, disaster recovery plans and back-up plans as to protect against theft and unauthorized access, disclosure and use of the Application, Authority Data, Authority Electronic Property and the Authority’s Confidential Information and to ensure the integrity and continuity of the performance of Services and the Project under this contract. The Contractor will use best efforts in accordance with industry best practices and standards for this requirement and consult and cooperate with the Authority and its Project contractors who operate or access the Authority’s data center and network systems (including Authority Electronic Property) in the performance of the Services.
1.2.4 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.

1.3 Project Plan and Milestone Deadlines.

1.3.1 The Contractor shall provide Services necessary to assess and evaluate the Authority’s business requirements and information technology systems in order to create, deploy, configure, customize, migration and implement the Application and any Authority Data to be migrated, interfaced to or used in conjunction with the Application. To the extent not specified in Exhibit H to this contract, the Contractor will prepare for the Authority’s review and approval a Project Plan setting forth in detail (i) the scope of the Project and the Services required to complete the Project, (ii) the milestones and schedule for completing all tasks and requirements for the Project (including the creation, deployment, configuration, customization, migration, and implementation of the Application and any Authority Data, (iii) all Authority Electronic Property required for access and use of the Authority and any Authority Data hosted by the Contractor, (iv) all Deliverables and (v) all acceptance criteria, testing and post-implementation tasks. No Project Plan will be effective until approved in writing by the Authority’s designated project manager.

1.3.2 This is a fast track Project with completion deadlines that cannot reasonably be extended. For this reason, it is the desire of the Authority to recognize any likely budget overruns as soon as possible, and by this contract it is employing the Contractor to perform design monitoring, estimating, value analysis and other functions to help the Authority meet the Project budget. At any time that the Contractor develops concerns about the integrity of the budget for the Project, the Contractor shall promptly advise the Authority of the concerns through a variance report, which shall, at a minimum, state: (i) the Contractor’s concern; (ii) the apparent cause of the concern, delay, or budgetary issue; (iii) in the event of a concern about a delay, specifically demonstrate the negative impact of the delay to the critical path for the Project Plan; (iv) define any cost impacts to the Project; and (v) provide the Contractor’s proposed resolution to the concern. If any estimate submitted to the Authority exceeds previously approved estimates or the Authority’s budget, the Contractor shall make appropriate recommendations to the Authority.

1.3.3 If, using reasonable project monitoring techniques, the Authority determines, in its sole discretion, that it is unlikely or fails to meet a completion date or a cost estimate due under the Project Plan, in addition to any other rights and remedies that may be available to the Authority, at no additional cost to the Authority and at the Authority’s option, the Contractor shall provide all necessary additional personnel at its own cost to accelerate performance as may be required or necessary to complete the activities required under the Project Plan within a re-adjusted time frame agreed to by both parties in a Change Order. The completion date shall be considered met if completed in accordance with the terms of this contract within three (3) working days of the originally estimated completion date. The Contractor will provide the Authority with prior written notice for any delays impacting Application module/track delivery or other Services completion under the Project Plan in the form of a proposed Change Order.

1.3.4 The Contractor shall use its best efforts to re-sequence the Services to overcome and/or mitigate, to the greatest practicable extent, the effect of any delays regardless of the cause of such delays. Without limiting the foregoing, the Contractor shall diligently prosecute its Services in order to meet the proposed start date for the Application despite a dispute with the Authority relating in any way to this contract, including without limitation any and all the Contractor’s claims for modifications to the payments due to the Contractor. The Contractor and the Authority shall attempt in good faith to resolve all disputes.
1.3.5 Should the Contractor not progress in its performance of Services at a rate commensurate with the Service Term of this contract, or fail to meet any scheduled date under the Project Plan, the Authority may, in its sole discretion, direct the Contractor to accelerate the Services by employing additional personnel and equipment or providing overtime to existing personnel as is necessary to complete the Application by the start date, or any portion of the Application by the milestone date specified in the Project Plan. Such the Authority-ordered acceleration shall be at the cost of the Contractor.

1.4 Acceptance

1.4.1 Implementation of the Application shall be completed in a timely manner and appropriate tests conducted by the Contractor with the cooperation of the Authority to facilitate Acceptance of the Application as more fully set forth in the Project Plan.

1.4.2 When each component of the Application has been developed and tested by the Contractor as being ready for installation (if installed by the Contractor) or operational testing (if hosted by the Contractor), the Contractor shall notify the Authority in writing. The Authority shall provide reasonable assistance to (i) promptly facilitate such installation if the component of the Application is installed in the Authority’s facilities or operating environment or (ii) commence operational testing if the component of the Application is hosted by the Contractor.

1.4.3 Unless otherwise specified in the Project Plan, within thirty (30) days after installation or availability for operational testing, the Contractor shall certify in writing that the Application component conforms to the Technical Specifications and is capable of being put into full commercial productive use in accordance with the Technical Specifications and otherwise meets the functional and business requirements set forth in this Contract ("the Contractor’s Certification"). The Contractor Certification shall not be issued by the Contractor unless the Contractor has completed all tasks required for the installation, configuration, deployment (including data migration) and hosting or operational testing of the Application and such instance is ready for final testing and launch for production use by the Authority and Customers.

1.4.4 The Application shall be finally accepted by the Authority when (i) each component of the Application is fully installed and operational on the Authority’s facilities or operating environment properly configured by the Contractor, as applicable, and/or (ii) when the instance of the Application is properly configured and made available to the Authority for operational testing on the Contractor’s hosted environment, each in conformity with the Security Requirements and Technical Specifications outlined in this Contract (“Acceptance”).

1.4.5 If there is any objection to Acceptance, the Authority will provide the Contractor with a written notice (the "Defect Notice") reasonably identifying any claimed discrepancies between the actual performance of the Application component and the requirements set forth in this Contract within thirty (30) days after the issuance of the Contractor’s Certification.

1.4.6 Upon receiving a Defect Notice from the Authority, the Contractor shall confer with the Authority and jointly review each asserted discrepancy to determine if the claimed discrepancy is valid. The Contractor shall either promptly correct the discrepancy and resubmit the Application component for acceptance by the Authority on the same basis as initially submitted or terminate this contract. If, in the reasonable professional judgment of the Contractor such discrepancy is not valid, the Contractor shall so notify the Authority in writing.

1.4.7 The written explanation of the Contractor set forth herein shall be deemed accepted by the Authority within thirty (30) days after the Authority’s receipt of the written explanation and Acceptance shall be deemed to have occurred unless the Contractor receives from the Authority written notice rejecting such explanation and detailing exactly how the Application component does not conform with the Technical Specifications and/or Security Requirements. If the
Application is not accepted by the Authority following two (2) attempts by the Contractor to provide an undisputed Contractor’s Certification, the Authority may terminate this Contract with respect to that particular component or the entire Application, at its sole discretion.

1.4.8 The foregoing Acceptance procedure shall apply with respect to the Authority's Acceptance of the overall turn-key system comprising all components of the Application (including migrated Authority Data, if applicable) in a condition ready for immediate use and operation by the Authority (i) in its facilities and/or the operating environment if a component of the Application is installed, or (ii) via the Contractor’s hosted servers for the instance of the Application is hosted, as applicable, on or before the start date set forth in the Project Plan.

1.4.9 In the event that the Authority, upon final review, does not accept the Application or only makes a partial acceptance of the Application, the Authority may elect to: (i) accept delivery of the Application “AS IS” at a negotiated equitable reduction in the price and payment schedule for both the Application and any Services; or (ii) terminate the Project and receive a refund of all fees paid in advance to the Contractor, which in such event, the Contractor shall immediately repay all fee advances paid by the Authority under the Project Plan and the Authority may retain all holdbacks.

1.5 Training. The Contractor will perform all training required for access and use of the Application upon initial deployment and during the Service Term, as reasonably requested by the Authority. The Contractor will at a minimum provide the Authority with sufficient training and instruction on the use and operation of the Application. Such training will be performed at the Authority’s facilities (unless otherwise agreed upon by the parties in the Project Plan).

1.6 Application Support and Performance.

1.6.1 The Contractor shall (i) promptly notify the Authority of any errors in the Application of which it learns from any source; (ii) respond to user identified Application errors in no more than 4 hours after notification, and implement corrected Application copies or corrections or bypasses such that the Application performs in all material respects in accordance with the Documentation, within 1 business day thereafter; (iii) provide to all authorized users 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 Application; 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.

1.6.2 The Contractor will periodically release maintenance updates. At no additional cost to the Authority, the Contractor will provide access to all maintenance updates and all new features and functionalities of the Application that are provided by the Contractor to any of its other customers. In each case, the Contractor will provide the Authority with prior written notice (by as much time as practicable but in no event less than one (1) day(s) of the release by the Contractor of any updates, and will implement such updates (including any configuration or integration thereto) for access and use by the Authority at no additional cost to the Authority. If the Authority requests the Contractor to test such updates, the Contractor will promptly test such update to the Authority at no additional cost. If any update is installed, such update will thereupon be deemed to be part of the relevant Application upon delivery subject to Acceptance by the Authority. All such updates, where reasonably necessary, will be accompanied by updated Documentation. The Company covenants that each upgrade will be backwards compatible with all parts of the Application.

1.6.3 The Contractor will use commercially reasonable efforts to maintain the Application with a high level of quality and performance consistent with industry standards and the state of the art technology.
1.6.4 To the greatest extent possible, the Contractor will schedule maintenance during times least disruptive to the Authority’s use of the Application. Scheduled maintenance is a period in which the Authority is notified in advance, during which the Contractor may suspend availability of all or part of the Application in order to carry out maintenance activities. Scheduled Maintenance will be scheduled after normal business hours (Maintenance Window). To the extent possible, the Contractor will perform maintenance without suspending the Application (i.e., hot) and will coordinate with the Authority by written notice to schedule maintenance requiring downtime at such hours and date least disruptive to its business.

1.6.5 The Authority will be notified by e-mail not less than three (3) calendar days in advance of any period of Scheduled Maintenance that will require suspension of all or the majority of the Application for a period of one (1) hour or more. The Authority will be notified by email not less than seven (7) calendar days in advance of any period of Scheduled Maintenance that will require suspension of all or the majority of the Application for a period of more than one (1) hour. The Contractor will schedule any period of Scheduled Maintenance that requires suspension of all or a major part of the Application for more than three (3) hours during a Maintenance Window on a Friday night, or Saturday or Sunday morning.

1.7 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:

1.7.1 it is not contractually prohibited from engaging in the Services or providing the Deliverables, and that it is not a party to any contract or under any obligation which conflicts with the terms of this Contract or which prohibits Contractor from carrying out its responsibilities under this contract;

1.7.2 it is fully able to furnish the Services as contemplated by this contract;

1.7.3 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 contract, and the Contractor agrees not to enter into any such contract during the pendency of this contract;

1.7.4 it is experienced in the type of software engineering necessary for completion of the Project, and it understands the complexity involved in this type of project and the necessity of coordination of its Services with governmental authorities and the community within which the Project will be constructed;

1.7.5 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 contract, and the Contractor agrees not to enter into any such contract during the pendency of this contract;

1.7.6 the Application will not contain any Virus at all times during which the Application is made available for access and use by the Authority’s user or Customers, or any Authority Data is processed using the Application. Any patches, updates, upgrades or error corrections to the Application provided by the Contractor likewise will not contain any Virus;

1.7.7 the Application 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;

1.7.8 the Application will comply with all Applicable Laws at all times from the date of Acceptance to the expiration of the applicable Warranty Period; and

1.7.9 With respect to the Application, (i) all modules and other materials (other than third party software and hardware approved by the Authority) will be original; (ii) there is, and on the date
of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect to the Application, or any component thereof, alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country; and (iii) the Application, and any use thereof, shall not infringe upon any Intellectual Property Right of any third party in any country.

1.8 Additional Warranty Remedies. The Authority is entitled to all warranties implied by law or regulation. These warranties shall survive any Acceptance and payment by the Authority for the Services and are in addition to, and shall not be construed as restricting or limiting the warranties of the Contractor, express or implied, that are provided by law or exist by operation of law. For any breach of the warranties contained in this Section, the Authority’s remedy, in addition to all remedies available at law or in equity, shall be:

1.8.1 For Application. The correction of errors that cause breach of the warranty. If the Contractor is unable to provide such error corrections or otherwise make the Application operate as warranted within the periods specified in this contract, the Authority shall be entitled to terminate this Contract with respect to the affected module/track and recover a prorated amount paid to the Contractor based on each module, which prorated amount will be calculated based on a useful life of five years from the date of final Acceptance. If, however, the loss of functionality cause by such error impacts the overall turn-key system performance of the Application, then the Authority shall be entitled to terminate this contract with respect to all modules/tracks and recover all amounts paid to the Contractor by the Authority. The Contractor shall not be responsible or liable for any errors that are determined to be attributable to the Authority’s failure to comply with any user requirements under the applicable Technical Specifications, or any Force Majeure event.

1.8.2 For Deliverables. The correction of errors that cause breach of the warranty by re-performing the Services necessary to create the Deliverables and by providing Deliverables conforming with the Technical Requirements at no cost to the Authority.

1.8.3 For Services. The re-performance of any Services not conforming to the warranty at no cost to the Authority.


2.1 The Contractor will not (i) use or register any trademark, service mark or domain name that is identical to or confusingly similar to any trademark, service mark, logo or other name owned or used by the Authority, including domain names and trade dress; or (ii) create, acquire, license or support any internet keyword or search term that contains any such marks or other Intellectual Property Rights owned or licensed by the Authority, except as expressly provided in the Project Plan and only in the performance of the Services for the benefit of the Authority. All use thereof inures solely to the benefit of the Authority and is subject to the Authority’s quality control and standard guidelines.

2.2 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 and Authority Electronic Property and all Deliverables (excluding any Contractor Technology embodied in the Deliverables), together with all improvements, derivative works or enhancements to any of the foregoing and all Intellectual Property Rights related thereto (“Authority IP”). Except as expressly authorized in this Exhibit in the performance of the Services solely for the benefit of the Authority or Customers, the 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 or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is
harmful to the Authority. To the extent possible, the Deliverables (excluding any Contractor Technology embodied therein) shall be a work made for hire specifically commissioned for the Authority. In order to protect and preserve the Authority’s rights, the Contractor hereby irrevocably and unconditionally assigns and transfers to the Authority all right, title and interest in and to the Authority IP that the Contractor may acquire without further consideration.

2.3 As between the parties, and except for the licenses granted or as otherwise provided in this contract, the Contractor retains all right, title and interest in and to the System and all Contractor Technology and all Intellectual Property Rights related thereto. The Contractor grants to the Authority a non-exclusive, perpetual, royalty free, fully paid up, irrevocable, and transferable license, with the right to sublicense, in and to any Contractor Technology embodied in the Deliverables for the Authority and its Customers and service providers to exercise and exploit its and their ownership rights in the Deliverables in any manner. The foregoing license does not authorize the Authority to separate any Contractor Technology from the Deliverable in which it is incorporated for creating a standalone product for marketing to others.

2.4 [OPTIONAL FOR SERVICES WHERE PERSONAL OR SENSITIVE INFORMATION WILL BE PROCESSED BY THE CONTRACTOR: The Contractor further agrees to perform all obligations set forth in the Authority’s Proprietary Rights and Data Security Exhibit attached to this Exhibit.]

3. Proprietary Information and Non-Disclosure.

3.1 The Contractor acknowledges and agrees that this contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the Term of this contract, the Contractor may acquire certain “Confidential Information” (as defined herein) from or regarding the Authority employees, agents and representatives or documents, or otherwise as a result of performing the Services of the Contractor hereunder.

3.2 “Confidential Information” as used herein, shall mean and include, without limitation:

3.2.1 Any information concerning the Authority or the Project, which is provided by the Authority or any Project team members to the Contractor, such as accounting and financial data, product, marketing, development, pricing and related business plans and budgets, and all of the information and plans related to the Project, which are not published;

3.2.2 All Authority Data; and

3.2.3 The Deliverables (including without limitation all work in progress) other than any Contractor Technology embodied in the Deliverables.

3.3 The Contractor acknowledges and agrees that all such Confidential Information is and shall be deemed the sole, exclusive, confidential and proprietary property and trade secrets of the Authority at all times during the Service Term and following any expiration of termination hereof. The Contractor agrees to hold in confidence without disclosing or otherwise using any Confidential Information, except as such disclosure or use may be required in connection with and limited to the Services of the Contractor hereunder.

3.4 The Contractor acknowledges and agrees that the Authority would not have entered into this contract unless the Authority were assured that all such Confidential Information would be held in confidence by the Contractor in trust for the sole benefit of the Authority.

3.5 During the Service Term, the Contractor shall not improperly use or disclose any proprietary information or trade secrets of any third party and will not bring on to the premises of the Authority any unpublished documents or any property belonging to any third party unless consented to in writing by the third party.
3.6 The Contractor’s obligation of confidentiality hereunder shall not apply to information that: (i) is already in the Contractor’s possession without an obligation of confidentiality; (ii) is rightfully disclosed to the Contractor by a third party with no obligation of confidentiality; or (iii) is required to be disclosed by court or regulatory order, provided the Contractor gives the Authority prompt notice of any such order.

3.7 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 this Contract, which copy shall be held in confidence in accordance with this Section.

4. Hosted Services. With respect to the Application 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 Application available 24 hours per day 7 days a week. The Contractor represents that access to the Application for the Authority and its Customers will be maintained at an availability standard of 99.99% as measured over the course of a calendar month, excluding Standard Exceptions (the “Service Levels”). “Standard Exceptions” to the 99.99% service-availability standard shall mean scheduled maintenance, maintenance downtime to resolve extraordinary technical problems with the Application 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 Application 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 Application as compared to the Service Levels.

4.2 Unless otherwise approved in writing by the Authority, the Contractor must host the Application 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, upon the Authority’s written request, the Contractor will provide Termination Assistance Services for a period of time commencing on the effective date of termination or expiration of this Contract and ending on a date designated in advance by the Authority.

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) at the Authority’s direction 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) ensure 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.

4.5 In addition to any other indemnification obligations set forth in this Exhibit and the contract, the Contractor will indemnify, defend and hold harmless all the Authority Indemnitees from and against any and all losses, damages, liabilities, judgments, awards, penalties, interest, fines, costs and fees or expenses of whatever kind, including reasonable attorneys’ fees (“Losses”) incurred by such the Authority Indemnitee as a result of any claim, demand, suit, action, investigation, allegation or any other proceeding (collectively, “Claims”) arising out of or relating to: (i) any Security Incident and/or (ii) the Contractor’s or its employees’, agents’ or contractors’ breach of any of the terms,
conditions or obligations relating to data security, privacy, or any Authority Data set forth in the contract or this Exhibit. However, if the Contractor can demonstrate through clear and convincing evidence that the Authority was the sole cause of a Security Incident and the Contractor was fully compliant with the Contractor’s obligations, then this Section will not apply to such Security Incident. For the purposes of this Section, Losses will include, without limitation, the cost of Remediation Efforts. The Contractor’s obligations in this Section are in addition to any indemnification or similar obligations that the Contractor may have under the contract. The rights and remedies of the Authority under this Exhibit will not be subject to any limitation or exclusion of actions or remedies or any other similar limiting provisions stated in the contract. Without limiting the foregoing: (a) there will be no limitations or exclusions on the Contractor’s liability arising under this Exhibit, the contract or otherwise relating to Claims pertaining to privacy, security, or confidentiality or relating to unauthorized use of Authority Data, and (b) the Contractor will be liable for all obligations under this Section and for reimbursement of Losses for Remediation Efforts regardless of whether such amounts are characterized by any person, court or other third party as direct, indirect, consequential, special, or punitive damages.

4.6 Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances 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 notify the Authority in writing promptly after concluding that the Contractor has the legal obligation 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 such Customers and employees to those required by the legal obligation or as pre-approved by the Authority. The Contractor will reasonably cooperate in connection with notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

5. **Rights to Access and Use Application.** The Contractor hereby grants to the Authority, Customers (but only in their capacity as Customers), 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 Application 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 Application in the course of performing services for the Authority, including application development services, data processing and facilities management services.

6. **No Publicity.** 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 Contractor acknowledges and agrees that the remedy at law for the breach of provisions of this contract (particularly with respect to ownership of intellectual property and Confidential Information) may be inadequate and that the Authority may be entitled to injunctive relief without bond, in addition to any other rights or remedies which the Authority may have for such breach.

8. **Indemnification.** In addition to general indemnification set forth elsewhere in the contract, the following indemnification obligations shall apply:

8.1 The Contractor shall, to the proportionate extent that they are responsible, indemnify, defend and hold harmless the Authority and its trustees, directors, officers, employees, Customers and agents from and against any and all Claims and Losses of any nature or kind to the extent arising out of,
caused by, or resulting from: (i) any failure of the Application or the Services to conform with Applicable Laws or the Technical Specifications or Security Requirements set forth in this Contract; (ii) any Security Incident; and (iii) any actual or alleged violation, infringement or misappropriation of any Intellectual Property Right of a third party related to the Services and the Application, regardless of whether or not any such Claim or Loss is caused in part by any indemnitee. In particular, the Contractor acknowledges that the Contractor’s obligation to indemnify the Authority extends to any liability arising out of any actual negligence by the Contractor in the delivery of any products or services under this contract. Notwithstanding the foregoing, the Contractor shall not be liable to an indemnitee for any losses incurred by such indemnitee to the extent such claim is attributable solely to that indemnitee’s sole negligence.

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 indemnitees and conduct with due diligence and in good faith the defense thereof with counsel 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. This indemnification shall not be limited to damages, compensation, or benefits payable under insurance policies, workers’ compensation acts, disability benefit acts, or other employees/benefit acts.

8.3 If the Application or any use thereof by the Authority or Customers is held to infringe or it is believed by the Authority to infringe the rights of third parties, the Contractor’s will, at its expense and upon the Authority’s request, to: (i) modify the Application (and each affected module) to be non-infringing so long as the utility or performance of the Application is not materially impaired and the Application continues to conform to Applicable Laws, the Technical Specifications and the Authority’s original requirements in all respects, subject to the Authority’s approval; or (ii) obtain for the Authority a license to continue using the infringing Application (or affected component thereof).

8.4 The indemnity obligations contained in this Section shall survive the termination, suspension, abandonment and/or completion of this contract.

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.

10. Waivers. No failure by the Authority to insist upon the performance by the Contractor of any provision of this Contract, and no failure of the Authority to exercise any right or remedy consequent upon a breach or other default, and no payment by the Authority or its use of the Application or the Project during the continuance of any breach or other default, shall constitute a waiver of the Contractor’s breach or default or of any provision of this contract.
EXHIBIT H
CONTRACTOR PERFORMANCE MANAGEMENT PLAN
PERFORMANCE DEFICIENCY CREDITS

The foundation of a successful project is the adherence to scope, schedule, and budget with the quality expected. The Project Schedule as agreed between the parties and incorporated into the contract will be used to manage Contractor performance. The Contractor will receive an incentive when performance is early. At the discretion of Capital Metro and for reasons caused solely by Contractor, the Contractor will be assessed a Performance Deficiency Credit (PDC), when a Phase End Milestone due date is missed. When that occurs, the Contractor is expected to provide additional resources or other measures needed to get back on schedule. The Contractor will not be assessed a PDC for any delays caused by Capital Metro.

This only applies to the on premise work.

<table>
<thead>
<tr>
<th>Phase End Milestone</th>
<th>Payment Value (% of Contract)</th>
<th>Performance Measurement</th>
<th>Incentive</th>
<th>Disincentive</th>
<th>Payment Received</th>
<th>Payment Withheld</th>
<th>Payment Lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule</td>
<td>1%</td>
<td>Early</td>
<td>Prompt Payment of Invoice 10 days versus Normal 45 days</td>
<td>&gt; 30 days late</td>
<td>50%</td>
<td>50%</td>
<td>0%</td>
</tr>
<tr>
<td>Design and Work Plan</td>
<td>1%</td>
<td>Early</td>
<td>Prompt Payment of Invoice &amp; Retainage 10 days versus Normal 45 days</td>
<td>&gt; 90 days late</td>
<td>70%</td>
<td>0%</td>
<td>30%</td>
</tr>
<tr>
<td>Equipment Installation</td>
<td>50%</td>
<td>Early</td>
<td>Prompt Payment of Invoice 10 days versus Normal 45 days</td>
<td>&gt; 30 days late</td>
<td>90%</td>
<td>0%</td>
<td>10%</td>
</tr>
<tr>
<td>Testing</td>
<td>20%</td>
<td>Early</td>
<td>Prompt Payment of Invoice &amp; Retainage 10 days versus Normal 45 days</td>
<td>31-90 days late</td>
<td>80%</td>
<td>0%</td>
<td>20%</td>
</tr>
<tr>
<td>Migration</td>
<td>20%</td>
<td>Early</td>
<td>Prompt Payment of Invoice &amp; Retainage 10 days versus Normal 45 days</td>
<td>&gt; 90 days late</td>
<td>70%</td>
<td>0%</td>
<td>30%</td>
</tr>
<tr>
<td>Knowledge Transfer / Formal Training</td>
<td>1%</td>
<td>Early</td>
<td>Prompt Payment of Invoice &amp; Retainage 10 days versus Normal 45 days</td>
<td>&gt; 90 days late</td>
<td>70%</td>
<td>0%</td>
<td>30%</td>
</tr>
</tbody>
</table>

* Performance Deficiency Credit (PDC): A fixed dollar amount for Contractor’s failure to perform its obligations under this contract with actual amount is difficult or incapable of estimate and is a reasonable forecast of just compensation for such failure: also, “penalty” under Texas Transportation Code 451.137, which amount shall be reflected as a credit against amounts owing Contractor under the contract.
EXHIBIT I (ON-PREMISES SOLUTIONS) – ADDITIONAL 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 hereto), the following definitions shall apply, if applicable:

1.1.1 “Acceptance” shall have the meaning set forth in Section 1.4.4 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 Project, 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 “Authority Data” means all data, content and information (i) submitted by or on behalf of the Authority or Customers to the Contractor, (ii) obtained, developed, produced or processed by the Contractor in connection with this Contract, or (iii) to which the Contractor has access in connection with this Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.

1.1.4 “Authority Electronic Property” means (i) any websites, servers, hardware, equipment, routers and other system components, software or networks owned or controlled by the Authority, (ii) any Authority mobile device apps, (iii) any interfaces to the Authority’s information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by Customers.

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 1.4.3 of this Exhibit.

1.1.7 “Contractor Technology” means the Software, Hardware, and On-Premises System, as applicable, and any technology, information, content and data, together with Intellectual Property Rights related thereto, owned or used by the Contractor in the performance of the Services.

1.1.8 “Customers” means any purchaser of products or services from the Authority.

1.1.9 “Deliverable(s)” means all information, data, materials, devices (including equipment and Hardware), software (including the Software), systems (including the On-Premises System), interfaces to any software and hardware, system or operating environment (including Authority Electronic Property) and other items to be delivered by the Contractor to the Authority, as specified in the Project Plan.

1.1.10 “Documentation” means the documentation provided to the Authority including, but not limited to, user manuals, system administration manuals, maintenance manuals, diagrams and operator instructions related to the On-Premises System, Software, or Hardware furnished by the Contractor to the Authority in any format, including paper and electronic.

1.1.11 “Hardware” means all equipment, hardware, routers and other system components to be delivered by the Contractor to the Authority, as specified in the Project Plan.

1.1.12 “Intellectual Property Rights” means any and all intellectual property rights, including without limitation, invention, patents, patent and patent applications (including all reissues, divisions, renewals, continuations, continuations-in-part, extensions, provisional, and reexaminations) and all rights therein provided by international treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application, 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, and all rights therein provided by international treaties or conventions, works of authorship and copyrights (registered or otherwise) and registrations and
applications for registration thereof, and all rights therein provided by international treaties or conventions, all internet uniform resource locators, and domain names, including any domain name application or registration, all industrial designs and any registration or application thereof anywhere in the world, data and database rights, trade secrets, proprietary know-how and show-how, whether or not reduced, all rights to obtain and rights to apply for patents, and to register trademarks and copyrights, and any similar or equivalent rights to any of the foregoing anywhere in the world.

1.1.13 “License Term” means the specific term or period (annually or perpetual) for each license to the On-Premises System and/or Software set forth in Exhibit A of this Contract. If no term is specified in Exhibit A, then the applicable term shall be perpetual.

1.1.14 “Maintenance Support Services” means the maintenance support services for the On-Premises System, Software and/or Hardware to be performed by Contractor as defined and described in Section 1.5 of this Exhibit.

1.1.15 “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.

1.1.16 “On-Premises System” means the turn-key system comprised of Hardware and Software to be installed in the premises, facilities, networks or transportation vehicles controlled or managed by the Authority.

1.1.17 “Project” means the project from pre-production launch to pre-final notice related to the Software, Hardware and On-Premises System and any Deliverables and Services as described in more detail in this Exhibit.

1.1.18 “Project Plan” means the project plan for the delivery, implementation, customization, configuration and/or installation of the Software, Hardware and/or On-Premises System and any Deliverables and Services required for the Project, as provided or approved by the Authority.

1.1.19 “Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident, which may be required by Applicable Law or by the Authority’s or the Contractor’s policies or procedures or under the Security Requirements, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident.

1.1.20 “Security Incident(s)” means: (i) the loss or misuse of Authority Data; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data; (iii) unauthorized access to internal resources; (iv) programmatic manipulation of a system or network to attack a third party; (v) elevation of system privileges without authorization; (vi) unauthorized use of system resources; (vii) denial of service to a system or network; or (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).

1.1.21 “Security Requirements” means industry best 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 unauthorized access, processing, destruction, modification, distribution and use, as approved in writing by the Authority.

1.1.22 “Service Term” means (i) the term of the contract as set forth in Exhibit A to the Contract, or (ii) with respect to any Maintenance Support Services related to the On-Premises System, Software and/or Hardware, the specific term or period (monthly, quarterly or annual) set forth in Exhibit A of this Contract.
1.1.23 “Services” means collectively all services to be performed by the Contractor for or on behalf of the Authority or Customers, as described in the Project Plan and this Exhibit.

1.1.24 “Software” means the software to be provided by the Contractor, as may be further described in the Technical Specifications.

1.1.25 “Technical Specifications” means the technical specifications, functional specifications, descriptions, designs, standards, instructions, and business requirements of the Authority related to the On-Premises System, Software and/or Hardware, as may be further described in this Contract. Unless otherwise agreed upon in writing by the Authority, the Technical Specifications shall be outlined in detail in Exhibit H to this Contract.

1.1.26 “Updates” means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of the On-Premises System and/or Software created or acquired by the Contractor during the Service Term.

1.2 Contractor Requirements.

1.2.1 Unless specified in the applicable Project Plan, the Contractor will furnish, at its own expense, all resources, personnel, equipment, tools, and supplies necessary for the timely performance of the Services and the Deliverables. The Contractor may use any means necessary and appropriate to perform the Services and the Deliverables under this Contract; provided, however, that in no event shall the Contractor take any action that may subject either it or the Authority to civil or criminal liability.

1.2.2 The parties agree that the Contractor will not be tasked or responsible for establishing and managing Security Requirements necessary to protect Authority Data integrity in performance of the Services. The Authority agrees that it will be solely responsible for and ensure that all desired Security Requirements necessary to protect Authority Data integrity are established, implemented and managed internally. If requested, however, by the Authority, the Contractor will reasonably cooperate with and assist the Authority and the Authority's other Product contractors to implement security protocols (e.g., firewalls, SSI, McAfee anti-virus, configuring the system for Cisco ICE, configuring the system for the Netscaler application firewall, monthly Microsoft security patches, etc.) and take appropriate actions with respect to the On-Premises System, Software and/or Hardware and all Authority Data and Authority Electronic Property disclosed or provided to the Contractor so as to enable the Contractor to satisfy its obligations under this Contract and to help prevent the loss, alteration or unauthorized use of the Authority Data and the Authority Electronic Property, to the extent within the Contractor’s access, possession or control. 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’s, at all times while on-site at the Authority's facilities or remotely accessing the Authority's systems or facilities. In event that the Contractor utilizes computers, laptops or other devices comprising development software, applications or tools in its performance of the Services, Contractor is required to consult in advance of use thereof with Authority and review security measures installed on such computers or devices and sign-off that it will ensure its computers and devices are consistently maintained during the term of this Agreement per Authority with all patches and upgrades at all times to minimize potential induced security issues from such Contractor devices.

1.2.3 The Contractor will perform formal classroom training and provide necessary related documentation required or requested for the operation and use of the On-Premises System, Software and/or Hardware, upon initial deployment, as various entities come on to the Project, and during the Service Term, as reasonably requested by the Authority. Such training will be performed on the operating environment at the Authority’s facilities or via the Internet as an on-line class (unless otherwise agreed upon by the parties in the Project Plan).
1.2.4 The Contractor and/or its designated third party auditor(s) will perform all audits necessary to ensure data integrity and adherence to the requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority’s or its Project contractors.

1.2.5 The Contractor shall adopt and implement all facility and network security, disaster recovery plans and back-up plans as to protect against theft and unauthorized access, disclosure and use of the Authority Data, the Authority Electronic Property and the Authority’s Confidential Information, to the extent within the Contractor’s access, possession or control, and to ensure the integrity and continuity of the performance of Services and the Project under this Contract. The Contractor will use commercially reasonable efforts to reasonably assist the Authority, if requested, to adopt and implement all facility and network security, disaster recovery plans and back-up plans as to protect against theft and unauthorized access, disclosure and use of the Authority Data, the Authority Electronic Property and the Authority’s Confidential Information, to the extent within the Contractor’s access, possession or control, and to ensure the integrity and continuity of the performance of Services and the Project under this Contract and consult and cooperate with the Authority and any contactors it designates, in its performance of these obligations.

1.2.6 The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority rules, regulations, and guidelines then in effect when on-site at the Authority and all Applicable Laws.

1.2.7 The Contractor will promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data. Following any Security Incident the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable.

1.2.8 Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances 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 notify the Authority in writing promptly after concluding that the Contractor has the legal obligation 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 such Customers and employees to those required by the legal obligation or as pre-approved by the Authority. The Contractor will reasonably cooperate in connection with notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

1.3 Project Plan and Milestone Deadlines.

1.3.1 The Contractor shall provide Services necessary to assess and evaluate the Authority’s business requirements and information technology systems in order to create, deploy, configure, customize, migrate, deliver and/or implement the On-Premises System, Software, the Hardware and, if required by the Authority, any Authority Data to be migrated, interfaced to or used in conjunction with the On-Premises System, Software and/or Hardware. Unless otherwise provided or specified by the Authority, the Contractor will prepare for the Authority’s review and approval a Project Plan setting forth in detail (i) the scope of the Project and the Services required to complete the Project, (ii) the milestones and schedule for completing all tasks and requirements for the Project (including the creation, deployment, configuration, customization, migration, delivery and/or implementation of the Software, the Hardware and any Authority Data), (iii) all Authority Electronic Property required for the Contractor to perform the Services, if any, (iv) all Deliverables, and (v) all acceptance criteria, testing and post-implementation tasks. No Project Plan will be effective until approved in writing by the Authority’s designated project manager.
1.3.2 This is a fast track Project with completion deadlines that cannot reasonably be extended. For this reason, it is the desire of the Authority to recognize any likely budget overruns as soon as possible, and by this Contract it is employing the Contractor to perform design monitoring, estimating, value analysis and other functions to help the Authority meet the Project budget. At any time that the Contractor develops concerns about the integrity of the budget for the Project, the Contractor shall promptly advise the Authority of the concerns through a variance report, which shall, at a minimum, state: (i) the Contractor’s concern; (ii) the apparent cause of the concern, delay, or budgetary issue; (iii) in the event of a concern about a delay, specifically demonstrate the negative impact of the delay to the critical path for the Project Plan; (iv) define any cost impacts to the Project; and (v) provide the Contractor’s proposed resolution to the concern. If any estimate submitted to the Authority exceeds previously approved estimates or the Authority’s budget, the Contractor shall make appropriate recommendations to the Authority.

1.3.3 If, using reasonable project monitoring techniques, the Contractor determines that it is unlikely or fails to meet a completion date or a cost estimate due under the Project Plan for any reason regardless of which party is at fault, in addition to any other rights and remedies that may be available to the Authority, at no additional cost to the Authority and at the Authority’s option, the Contractor shall provide all necessary additional personnel at its own cost to accelerate performance as may be required or necessary to complete the activities required under the Project Plan within a re-adjusted time frame agreed to by both parties in a Change Order. The completion date shall be considered met if completed in accordance with the terms of this Contract within ten (10) working days of the originally estimated completion date. The Contractor will provide the Authority with prior written notice for any delays impacting delivery or other Services completion under the Project Plan in the form of a proposed Change Order.

1.3.4 The Contractor shall use its best efforts, after obtaining explicit consent from the Authority, to re-sequence the Services to overcome and/or mitigate, to the greatest practicable extent, the effect of any delays regardless of the cause of such delays. Without limiting the foregoing, the Contractor shall diligently prosecute its Services in order to meet the proposed start date for the Software despite a dispute with the Authority relating in any way to this Contract including, without limitation, any and all the Contractor’s claims for modifications to the payments due to the Contractor. The Contractor and the Authority shall cooperate to resolve all disputes and to adjust the Project Plan accordingly by Contract modification in a timely manner (not to exceed two (2) weeks from the date of notice).

1.3.5 Should the Contractor not progress in its performance of Services at a rate commensurate with the Service Term of this Contract, or fail to meet any scheduled date under the Project Plan, the Authority may, in its sole discretion, direct the Contractor to accelerate the Services by employing additional personnel and equipment or providing overtime to existing personnel as is necessary to complete the Software by the start date, or any portion of the Software by the milestone date specified in the Project Plan. Notwithstanding any dispute, controversy, or question that might arise in the interpretation of any provision of this Contract, the performance of any Services, the delivery of any material, the payment of any monies to the Contractor, or otherwise, the Contractor agrees that it will not directly or indirectly stop or delay any Services or part thereof on its part required to be performed, nor will it stop or delay the delivery of any materials on its part required to be furnished for the Software or Deliverables, pending the determination of such dispute or controversy so long as the Authority pays the Contractor for undisputed amounts in accordance with the Contract.
1.4 **Acceptance.**

1.4.1 Unless otherwise defined or specified in an Exhibit to this Contract, the provisions set forth in this Section 1.4 shall apply to determine the Authority’s Acceptance of the On-Premises System, Software and/or Hardware.

1.4.2 Implementation of the On-Premises System, Software and/or Hardware shall be completed in a timely manner and appropriate tests conducted by the Authority to facilitate Acceptance of the On-Premises System, Software, and/or Hardware and each Deliverable as more fully set forth in this Exhibit and the Project Plan; provided, however, that the Authority may upon written request require that the Contractor perform testing with cooperation of the Authority.

1.4.3 Unless otherwise specified in the Project Plan, within thirty (30) days after installation and testing are completed, the Contractor shall certify in writing that the On-Premises System, Software and/or Hardware (as configured) conforms to the Technical Specifications and is capable of being put into full commercial productive use in accordance with the Technical Specifications and otherwise meets the functional and business requirements set forth in this Contract (the “Contractor’s Certification”). The Contractor Certification shall not be issued by the Contractor unless the Contractor has completed all tasks required for the delivery, installation, configuration, deployment (including Authority Data migration) and operational testing of the On-Premises System, Software and/or Hardware and such items are ready for final testing and launch for production use by the Authority and Customers.

1.4.4 The On-Premises System, Software and/or Hardware shall be finally accepted by the Authority when all action items opened from the beginning of the Project through the Warranty Period are closed and each component is fully installed and operational on the Authority’s facilities, network, transportation vehicles or operating environment properly configured by the Contractor, and in conformity with the requirements outlined in this Contract (”Acceptance”). The final invoice will not be issued by the Contractor until final Acceptance by the Authority. The Authority reserves the right to modify the Acceptance plan during the implementation process if it is evident that anything related to Acceptance has been missed or are not appropriate for the successful provisioning of any solution.

1.4.5 If there is any objection to Acceptance, the Authority will provide the Contractor with a written notice (the “Defect Notice”) reasonably identifying any claimed discrepancies between the actual performance and the requirements set forth in this Contract within reasonable time after the issuance of the Contractor’s Certification.

1.4.6 Upon receiving a Defect Notice from the Authority, the Contractor shall confer with the Authority and jointly review each asserted discrepancy to determine if the claimed discrepancy is valid. The Contractor shall promptly correct the discrepancy and resubmit the On-Premises System, Software and/or Hardware for Acceptance by the Authority for review and testing on the same basis as initially submitted. If, in the reasonable professional judgment of the Contractor such discrepancy is not valid, the Contractor shall so notify the Authority in writing.

1.4.7 In the event that the Authority, upon final review, does not accept the On-Premises System, Software and/or Hardware or only makes a partial acceptance thereof, the Authority may elect to: (i) accept delivery of the On-Premises System, Software and/or Hardware “AS IS” at a negotiated equitable reduction in the price and payment schedule for both the On-Premises System, Software and/or Hardware and any Maintenance Support Services; or (ii) terminate the Project and receive a refund of all fees paid in advance to the Contractor, which in such event. The Contractor shall immediately repay all fee advances paid by the Authority under the Project Plan and the Authority may retain all holdbacks.

1.5 **Maintenance Support Services.** Unless otherwise defined or specified in an Exhibit to this Contract, this Section 1.5 shall be the default provision governing and shall define the Maintenance Support Services.
1.5.1 The Contractor shall (i) promptly notify the Authority of any errors in the On-Premises System, and/or Software of which it learns from any source; (ii) respond to user identified errors in no more than thirty (30) minutes after notification and use best efforts to provide the Authority with a practical solution or work-around to correct the problem within four (4) hours after notification, and implement corrected Updates (preferably in batch manner and in accordance with a pre-approved schedule coordinated in advance with the Authority) or other work-arounds or bypasses such that the On-Premises System and/or Software performs in all material respects in accordance with the Documentation, within 1 business day thereafter; (iii) provide to all authorized users on a 24 hours per day, 7 days per week basis, all reasonably necessary telephone, email and/or web consultation requested by them in connection with their use and operation of the On-Premises System and/or Software; and (iv) treat any Authority Data, Authority Electronic Property or any other information, code or documentation provided from users to resolve a reported problem as Confidential Information of the Authority. The Contractor will cooperate fully with the Authority’s personnel in the diagnosis of any error or defect and provide status reports to the Authority regularly for as long as the problem remains unresolved.

1.5.2 The Contractor will periodically release Updates with minimum impact and downtime to Authority and after business hours. At no additional cost to the Authority, the Contractor will provide the Authority true and correct copies of all Updates to the On-Premises System and/or Software that are provided by the Contractor to any of its other customers purchasing Maintenance Support Services. In each case, the Contractor will provide the Authority with prior written notice (by as much time as practicable) but in no event less than fifteen (15) days of the release by the Contractor of any Updates, and if contractually obligated, will implement such Updates, but only upon receipt of written approval or request from the Authority, (including any configuration, data migration or integration thereto) for the delivery, installation and use by the Authority at no additional cost to the Authority; provided that the Contractor may proceed with Updates without prior notice to the extent necessary to prevent or correct the occurrence of a Security Incident. If the Authority requests the Contractor to test such updates, the Contractor will promptly test such update to the Authority at no additional cost. If any Update is installed, such Update will thereupon be deemed to be part of the relevant Software upon delivery subject to Acceptance by the Authority. The Authority shall have the right to not implement any Update in whole or in part (other than any Updates to correct Security Incidents). All such updates, where reasonably necessary, will be accompanied by detailed release notes, installation instructions and updated Documentation. The Contractor covenants that each Update will be backwards compatible with all parts of the On-Premises System and/or Software. The Contractor will continue to provide Maintenance Support Services during the Service Term for at least the current version and one prior major release of the Software and each version of the On-Premises System installed for the Authority.

1.5.3 If and only after Contractor’s execution of an agreement to abide by Authority’s security policy and to the extent thereafter authorized or approved in writing by the Authority, the Contractor may remotely access the On-Premises System and/or Software using the Authority Electronic Property in order to perform Maintenance Support Services, in a manner least disruptive to the Authority’s business. The Contractor shall notify the Authority in advance of any remote access.

1.5.4 The Contractor shall provide the following Maintenance Support Services for the Hardware during and after the expiration of the applicable Warranty Period: (i) promptly issue Return Material Authorizations for Hardware; (ii) repair, test, configure and return the Hardware to the Authority in operational condition; and (iii) provide for the deployment and optionally installation of replacement Hardware. The Authority is responsible for costs for the shipment of the Hardware to the Contractor or its designated repair facility using best commercial practices in the packaging and shipment of the Hardware, after the expiration of the Warranty.
1.6 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:

1.6.1 it is not contractually prohibited from engaging in the Services or providing the Deliverables, and that it is not a party to any contract or under any obligation which conflicts with the terms of this Contract or which prohibits Contractor from carrying out its responsibilities under this Contract;

1.6.2 it is fully able to furnish the Services as contemplated by this Contract;

1.6.3 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 Contract, and the Contractor agrees not to enter into any such contract during the pendency of this Contract;

1.6.4 it is experienced in the type of engineering necessary for completion of the Project, and it understands the complexity involved in this type of project and the necessity of coordination of its Services Authority project stakeholders within which the Project will be performed;

1.6.5 the On-Premises System and/or Software will not contain any Malware, and any Updates likewise will not contain any Malware;

1.6.6 the On-Premises System, Software and/or Hardware 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 features, components or other software or erase or corrupt data;

1.6.7 the On-Premises System, Software and/or Hardware will comply with all Applicable Laws at all times from the date of Acceptance to the expiration of the applicable License Term;

1.6.8 with respect to the On-Premises System, Software and/or Hardware, (i) all modules and other materials (other than third party software and hardware sufficiently documented to the Authority with evidence of proper licensing thereof and preapproved by the Authority) will be original; (ii) there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect to the On-Premises System, Software and/or Hardware, or any component thereof, alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country; and (iii) the On-Premises System, Software and/or Hardware, and any use thereof, shall not infringe upon any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country; and

1.6.9 the On-Premises System and/or Software will not contain or otherwise be developed using any Open Source Software (as defined below) in a manner that subjects the Authority to any license obligations of such Open Source Software. "Open Source Software" means any software licensed under terms requiring that other software combined or use or distributed with such software: (i) be disclosed or distributed in source code form, or (ii) be licensed on terms inconsistent with the terms of this Contract.

1.7 Additional Warranty Remedies. The Authority is entitled to all warranties implied by law or regulation. These warranties shall survive any inspection, testing, acceptance and payment by the Authority for the Services and are in addition to, and shall not be construed as restricting or limiting the warranties of the Contractor, express or implied, that are provided by law or exist by operation of law. For any breach of the warranties contained in this Section, the Authority’s remedy, in addition to all remedies available at law or in equity, shall be:
1.7.1 **For the On-Premises System.** The correction of Software errors or Hardware malfunctions in the On-Premises System that cause breach of the warranty. If the Contractor is unable to provide such corrections or otherwise make the On-Premises System operate as warranted within the periods specified in this Contract, the Authority shall be entitled to terminate this Contract with respect to the affected component and recover a prorated amount paid to the Contractor based on each component, which prorated amount will be calculated based on a useful life of five years from the date of final Acceptance. If, however, the loss of functionality cause by such error impacts the overall turn-key system performance of the On-Premises System, then the Authority shall be entitled to terminate this Contract with respect to the On-Premises System and recover all amounts paid to the Contractor by the Authority. The Contractor shall not be responsible or liable for any errors that are determined to be attributable to the Authority’s failure to comply with any user requirements under the applicable Technical Specifications, or any Force Majeure event.

1.7.2 **For the Software.** The correction of errors in the Software that cause breach of the warranty. If the Contractor is unable to provide such error corrections or otherwise make the Software operate as warranted within the periods specified in this Contract, the Authority shall be entitled to terminate this Contract with respect to the affected feature and recover a prorated amount paid to the Contractor based on each feature, which prorated amount will be calculated based on a useful life of five years from the date of final Acceptance. If, however, the loss of functionality cause by such error impacts the overall performance of the Software, then the Authority shall be entitled to terminate this Contract with respect to all components of the Software and recover all amounts paid to the Contractor by the Authority. The Contractor shall not be responsible or liable for any errors that are determined to be attributable to the Authority’s failure to comply with any user requirements under the applicable Technical Specifications, or any Force Majeure event.

1.7.3 **For Hardware.** The repair or replacement of Hardware with any defects in material and workmanship for a period of ninety (90) days following the date of delivery and/or the completion of each repair. If any unit requires repair for the same failure as identified during the preceding repair during this period due to defective material and/or workmanship, Contractor shall, solely at its option, repair the defective unit free of charge or provide a replacement in exchange for the defective unit.

1.7.4 **For Maintenance Support Services.** The satisfactory re-performance of the Maintenance Support Services within thirty (30) days following the Authority’s notice to the Contractor that the Maintenance Support Services were not performed satisfactorily. If the Maintenance Support Services are repeatedly performed in an unsatisfactory manner or if the Contractor is unable to perform the Maintenance Support Services as warranted, the Authority shall be entitled to recover the fees paid to the Contractor’s for the unsatisfactory Maintenance Support Services; however, if the failure of the Contractor to satisfactorily perform the Maintenance Support Services substantially impairs the utility of the On-Premises System, Software and/or Hardware to the Authority, the Authority shall be entitled to terminate this Contract and recover all Maintenance Support Services fees paid to the Contractor by the Authority.

1.7.5 **For Services (Other than Maintenance Support Services).** The satisfactory re-performance of the Services within ten (10) days (or such other reasonable period of time approved by the parties in writing) following the Authority’s notice to the Contractor that the Services were not performed satisfactorily in accordance with the Project Plan.

1.8 **Intellectual Property Rights.**

1.8.1 The Contractor hereby grants to the Authority, Customers (but only in their capacity as Customers), 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 copy, install, modify and use the On-Premises System and/or Software (including all
Updates) during the License Term. Such license shall be enterprise-wide for an unlimited number of users or transactions, unless otherwise limited in an Exhibit to this Contract. The Authority may allow its contractors and service providers to host and use the On-Premises System and/or Software in the course of performing services for the Authority, including application development services, hosting services, data processing and transportation vehicle and facilities management services.

1.8.2 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 and Authority Electronic Property and all Deliverables (excluding the Contractor Technology included in or embodied in the Deliverables), together with all improvements, derivative works or enhancements to any of the foregoing and all Intellectual Property Rights related thereto (“Authority IP”). Except as expressly authorized in this Exhibit in the performance of the Services solely for the benefit of the Authority or Customers, the 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 or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is harmful to the Authority. To the extent possible, the Deliverables (excluding any Contractor Technology embodied therein) shall be a work made for hire specifically commissioned for the Authority. In order to protect and preserve the Authority’s rights, the Contractor hereby irrevocably and unconditionally assigns and transfers to the Authority all right, title and interest in and to the Authority IP that the Contractor may acquire without further consideration.

1.8.3 As between the parties, and except for the licenses or rights granted or as otherwise provided in this Contract, the Contractor retains all right, title and interest in and to the On-Premises System and Software and all Intellectual Property Rights related thereto. The Contractor grants to the Authority a non-exclusive, perpetual, royalty free, fully paid up, irrevocable, and transferable license, with the right to sublicense, in and to any Contractor Technology embodied in the Deliverables for the Authority and its Customers and service providers to exercise and exploit its and their ownership rights in the Deliverables in any manner. The foregoing license does not authorize the Authority to separate any Contractor Technology from the Deliverable in which it is incorporated for creating a standalone product for marketing to others.

1.8.4 The Contractor further agrees to perform all obligations set forth in the Authority’s Proprietary Rights and Data Security Exhibit attached to this Exhibit.

2. Proprietary Information and Non-Disclosure.

2.1 The Contractor acknowledges and agrees that this Contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the Term of this Contract, the Contractor may acquire certain “Confidential Information” (as defined herein) from or regarding the Authority employees, agents and representatives or documents, or otherwise as a result of performing the Services of the Contractor hereunder.

2.2 “Confidential Information” as used herein, shall mean and include, without limitation:

2.2.1 Any information concerning the Authority or the Project, which is provided by the Authority or any Project team members to the Contractor, such as accounting and financial data, product, marketing, development, pricing and related business plans and budgets, and all of the information and plans related to the Project, which are not published;

2.2.2 All Authority Data and Authority Electronic Property; and

2.2.3 All Deliverables (including without limitation all work in progress) excluding the On-Premises System, Software and any Contractor Technology included or embodied therein.
2.3 The Contractor acknowledges and agrees that all such Confidential Information is and shall be deemed the sole, exclusive, confidential and proprietary property and trade secrets of the Authority at all times during the Service Term of this Contract and following any expiration or termination hereof. The Contractor agrees to hold in confidence without disclosing or otherwise using any Confidential Information, except as such disclosure or use may be required in connection with and limited to the Services of the Contractor hereunder.

2.4 The Contractor acknowledges and agrees that the Authority would not have entered into this Contract unless the Authority was assured that all such Confidential Information would be held in confidence by the Contractor in trust for the sole benefit of the Authority.

2.5 The Contractor shall not improperly use or disclose any proprietary information or trade secrets of any third party and will not bring on to the premises of the Authority any unpublished documents or any property belonging to any third party unless consented to in writing by the third party.

2.6 The Contractor’s obligation of confidentiality hereunder shall not apply to information that: (i) is already in the Contractor’s possession without an obligation of confidentiality; (ii) is rightfully disclosed to the Contractor’s by a third party with no obligation of confidentiality; or (iii) is required to be disclosed by court or regulatory order, provided the Contractor’s gives the Authority prompt notice of any such order.

2.7 The Authority shall have the perpetual and unrestricted right to use, copy, and incorporate into other works all reports, materials, presentations and other work product prepared by the Contractor and delivered to the Authority.

2.8 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 this Contract, which copy shall be held in confidence in accordance with this Section.

3. 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 the Authority Data or Authority Electronic Property 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.

4. Specific Performance. The Contractor acknowledges and agrees that the remedy at law for the breach of provisions of this Contract (particularly with respect to ownership of intellectual property and Confidential Information) may be inadequate and that the Authority may be entitled to injunctive relief without bond, in addition to any other rights or remedies which the Authority may have for such breach.

5. Indemnification. In addition to general indemnification set forth elsewhere in the Contract, the following indemnification obligations shall apply:

5.1 The Contractor shall indemnify, defend and hold harmless the Authority and its affiliates and their trustees, directors, officers, employees, Customers and agents from and against any and all Damages of any nature or kind to the extent arising out of, caused by, or resulting from: (i) any bodily injury or death of any person incurred by the Authority or any third party resulting from the negligence or willful misconduct of the Contractor or its employees, contractors or representatives; (ii) any failure of the On-Premises System, Software and/or Hardware to conform with Applicable Laws or the Technical Specifications or other requirements set forth in this Contract; (iii) any Security Incident; and (iv) any actual or alleged violation, infringement or misappropriation of any copyright, patent, trademark, trade secret, product name, right of privacy or persona or other intellectual property right and proprietary right of a third party related to the Services and the On-Premises System, Software and/or Hardware regardless of whether or not such claim, damage, loss, or expense is caused in part by any indemnitee. In particular, the Contractor acknowledges that the Contractor’s obligation to indemnify the Authority extends to any liability arising out of any actual negligence by the Contractor in the delivery of any products or services under this Contract. Notwithstanding the foregoing, the
Contractor shall not be liable to an indemnitee for any losses incurred by such indemnitee to the extent such claim is attributable solely to that indemnitee's sole negligence.

5.2 If the On-Premises System, Software and/or Hardware is held to infringe or it is believed by the Authority to infringe the rights of others, the Contractor’s will, at its expense and upon the Authority’s request, to: (i) modify the infringing item to be non-infringing so long as the utility or performance of the On-Premises System, Software and/or Hardware is not materially impaired and the On-Premises System, Software and/or Hardware continues to conform to the Technical Specifications and the Authority’s original requirements in all respects, subject to the Authority’s approval; or (ii) obtain for the Authority a license to continue using the infringing item.

5.3 The indemnity obligations contained in this Section shall survive the termination, suspension, abandonment and/or completion of this Contract.

6. **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.

7. **Waivers.** No failure by the Authority to insist upon the performance by the Contractor of any provision of this Contract, and no failure of the Authority to exercise any right or remedy consequent upon a breach or other default, and no payment by the Authority or its use of the Software or the Project during the continuance of any breach or other default, shall constitute a waiver of the Contractor’s breach or default or of any provision of this Contract.

8. **UCITA.** Neither the Uniform Computer Information Transactions Act nor any state laws incorporating such Act apply to this Contract or the transactions contemplated hereunder.
EXHIBIT J - PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM

Capital Metro Transportation Authority (“the Authority”) has invested extensive time, money and specialized resources into developing, collecting and establishing its tangible and intangible proprietary assets. This Proprietary Rights and Data Security Addendum (this “Addendum”) identifies and acknowledges the Authority’s proprietary rights, establishes baseline commitments regarding data security and represents a set of standard terms applicable to service providers and business partners when they enter into contracts with the Authority. Capitalized terms used in this Addendum have the meanings set forth in this Addendum, unless differently defined in this Addendum. The Contractor is responsible for ensuring compliance with the terms of this Addendum by the Contractor’s employees, agents and contractors and all of the restrictions and obligations in this Addendum that apply to the Contractor also apply to the Contractor’s employees, agents and contractors. The term “including” or “includes” means including without limiting the generality of any description to which such term relates.

1. Definitions. The following terms will have the meanings described below in this Addendum.

“Authority Data” means all data, content or information, in any form or format, including interim, Processed, compiled, summarized, or derivative versions of such data, content or information, and any insights that may be learned from such data, content or information, that may exist in any system, database, or record that is either (i) provided by or on behalf of the Authority or its customers to the Contractor, or (ii) is obtained, developed, produced or Processed by the Contractor or its systems, in each of (i) and (ii) in connection with the relationship or arrangements established by the Agreement, but excluding any data or information that is expressly defined as owned by the Contractor in the Agreement.

“Authority Electronic Property” means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (iv) versions and successors of the foregoing, any form or format now known or later developed, that may be used by the Authority’s customers.

“Data Law” means, as in effect from time to time, any law, rule, regulation, declaration, decree, directive, statute or other enactment, order, mandate or resolution, which is applicable to either the Contractor or the Authority, issued or enacted by any national, state, county, municipal, local, or other government or bureau, court, commission, board, authority, or agency, relating to data security, data protection and/or privacy. Data Laws also include ISO 27001 and ISO 27002, the most current Payment Card Industry Data Security Standard (the “PCI DSS”); and other industry standard practices.

“Personal Identifying Information” means any data that identifies or could be used to identify a natural person, including name, mailing address, phone number, fax number, email address, Social Security number, credit card or other payment data, date of birth, driver’s license number, account number or user ID, PIN, or password.

“Process” or “Processing” means, with respect to Authority Data, to 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 Authority Data with information from other sources and the application of algorithmic analysis to create new or derivative data sets from Authority Data.

“Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident which may be required by a Data Law or by the Authority’s or the Contractor’s policies or procedures, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident. Remediation Efforts may include: (i) development and delivery of legal notices to affected individuals or other third parties; (ii) establishment and operation of toll-free telephone numbers for affected individuals to receive specific information and assistance; (iii) procurement of credit monitoring, credit or identity repair services and identity theft insurance from third parties that provide such services for affected individuals; (iv) provision of identity theft insurance for affected individuals; (v)
cooperation with and response to regulatory, government and/or law enforcement inquiries and other similar actions; (vi) undertaking of investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics; (vii) public relations and other crisis management services; and (viii) cooperation with and response to litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each case of examples (i) through (viii), payment of legal costs, disbursements, fines, settlements and damages.

“Security Policies” means statements of direction for Security Requirements and mandating compliance with applicable Data Laws. Typically, Security Policies are high level instructions to management on how an organization is to be run with respect to Security Requirements.


“Security Requirements” means the security requirements set forth below in Section 7 of this Addendum.

“Security Technical Controls” means any specific hardware, software or administrative mechanisms necessary to implement, maintain, comply with and enforce the Security Requirements. Security Technical Controls specify technologies, methodologies, implementation procedures, and other detailed factors or other processes to be used to implement and maintain Security Policies and Procedures relevant to specific groups, individuals, or technologies.

2. **Authority Marks, Patents and Copyrights.** The Contractor will not: (i) use or register any domain name that is identical to or confusingly similar to any of trademarks, service marks, logos or other source identifiers owned or used by the Authority (the “Authority Marks”); or (ii) create, acquire, license, or support any internet keyword or search term that contains any Authority Marks or other intellectual property rights owned or licensed by the Authority.

3. **Authority Data.** 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 Authority Data. Except as expressly authorized in the Agreement, the 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. The Contractor will not use Authority Data in a manner that is harmful to the Authority.

4. **Personal Identifying Information.** The Contractor will comply with any Data Laws relating to the use, safeguarding, or Processing of any Personal Identifying Information, including any requirement to give notice to or obtain consent of the individual. In Processing any Personal Identifying Information, the Contractor will at all times comply with any posted privacy policy or other representations made to the person to whom the information is identifiable, and to communicate any limitations required thereby to any authorized receiving party (including any modifications thereto) in compliance with all Data Laws. The Contractor will ensure that any such receiving party abides by any such limitations, in addition to the requirements of the Agreement. Notwithstanding the foregoing, the Contractor represents and warrants that Personal Identifying Information will not be Processed, transmitted, or stored outside of the U.S.

5. **No Implied Rights.** No right, license, permission, or ownership or other interest of any kind in or to any Authority Data or other intellectual property rights owned or licensed by the Authority is or is intended to be given or transferred to or acquired by the Contractor except as expressly stated in writing in the Agreement.

6. **Prohibited Internet Practices.** The Contractor 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 in relation to advertisements or Internet promotions on Authority Electronic Property or in relation to advertisements or Internet promotions of the Authority (or its products or services) on
third party websites; or (ii) collect or Process data from an Authority Electronic Property other than as has been expressly authorized by the Authority in the Agreement or another written agreement with the Authority. Except as expressly allowed in the Agreement, the Contractor will not “screen-scrape” Authority Electronic Property or conduct any automated extraction of data from Authority Electronic Property or tracking of activity on Authority Electronic Property.

7. **Security Requirements.** The Contractor will apply reasonable physical, technical and administrative safeguards for Authority Data that is in the Contractor’s possession or control in order to protect the same from unauthorized Processing, destruction, modification, or use that would violate the Agreement or any Data Law. The Contractor represents and warrants that the Security Policies, Security Procedures and Security Technical Controls as they pertain to the services being rendered to the Authority by the Contractor or its subcontractors and any Processing of Authority Data by the Contractor or its subcontractors will at all times be in material compliance with all Data Laws. In addition, the Contractor will require any of its employees, agents or contractors with access to Authority Data to adhere to any applicable Data Laws, and the Contractor represents and warrants that such employees, agents and contractors have not been involved in any violation of applicable Data Laws in the twenty-four months before the Effective Date. The Contractor will take into account the sensitivity of any Authority Data in the Contractor’s possession in determining reasonable controls used to safeguard such Authority Data.

8. **Data Segregation and Access.** The Contractor will physically or logically segregate stored Authority Data from other data and will ensure that access to Authority Data is restricted to only authorized personnel through security measures. The Contractor will establish and maintain appropriate internal policies, procedures and systems that are reasonably designed to prevent the inappropriate use or disclosure of Authority Data.

9. **PCI Compliance.** If the Contractor Processes payment card data, cardholder data, or sensitive authentication data on behalf of the Authority or if the Contractor otherwise can impact the security of said data belonging to the Authority, the Contractor is responsible for the security of said data. The Contractor represents and warrants that it has performed an assessment to confirm that the material aspects of the Contractor’s Security Policies, Security Procedures and Security Technical Controls (as they pertain to the services being rendered to the Authority by the Contractor or its subcontractors and any Processing of Authority Data by the Contractor or its subcontractors) comply with the PCI DSS and the Contractor will repeat this assessment each year during the Term. The Contractor will provide certification of compliance with this requirement upon request from the Authority.

10. **Security Reviews and Audits.** The Contractor will, upon request, provide the Authority with reports of any audits performed on the Contractor’s Security Policies, Security Procedures or Security Technical Controls. At a minimum, such reports will include any certifications of the Contractor’s agents and contractors. Additionally, the Contractor will respond within a reasonable time period to any inquiries from the Authority relating to the Contractor’s and its agents’ and contractors’ Security Policies, Security Procedures and Security Technical Controls. The Contractor will, upon the Authority’s request, provide the Authority or its representatives access to the Contractor’s and its agents’ and contractors’ systems, records, processes and practices that involve Processing of Authority Data so that an audit may be conducted. The Authority will not exercise such audit right more frequently than once per twelve (12) month period and the Authority will bear the full cost and expense of any such audit, unless such audit discloses a Security Incident or a breach of this Addendum or the Agreement, in which case the Contractor will bear the full cost and expense of such audit and a further audit may be conducted by the Authority or its representatives within the current twelve (12) month period.

11. **Security Incidents.** 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) at the Authority’s direction 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 it elects to undertake,
(ii) ensure 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.

12. **Liability for Security Incidents and/or Data Misuse.** The Contractor will indemnify, defend and hold harmless the Authority and its officers, directors, employees, agents and contractors (each an “Authority Indemnitee”) from and against any Losses incurred by such Authority Indemnitee as a result of any claim, demand, suit, action, investigation, allegation or any other proceeding (collectively, “Claims”) arising out of or relating to: (i) any Security Incident and/or (ii) the Contractor’s or its employees’, agents’ or contractors’ breach of any of the terms, conditions or obligations relating to data security, privacy, or Authority Data set forth in the Agreement or this Addendum. However, if the Contractor can demonstrate through clear and convincing evidence that the Authority was the sole cause of a Security Incident and the Contractor was fully compliant with its obligations, then this Section will not apply to such Security Incident. For the purposes of this Section, Losses will include, without limitation, the cost of Remediation Efforts. The Contractor’s obligations in this Section are in addition to any indemnification or similar obligations that the Contractor may have under the Agreement. The rights and remedies of the Authority under this Addendum will not be subject to any limitation or exclusion of actions or remedies or any other similar limiting provisions stated in the Agreement. Without limiting the foregoing: (a) there will be no limitations or exclusions on the Contractor’s liability arising under this Addendum, the Agreement or otherwise relating to Claims pertaining to privacy, security, or confidentiality or relating to unauthorized use of Authority Data, and (b) the Contractor will be liable for all obligations under this Section and for reimbursement of Losses for Remediation Efforts regardless of whether such amounts are characterized by any person, court or other third party as direct, indirect, consequential, special, or punitive damages.

13. **Notice to the Authority Customers and Employees.** Any notifications to any of the Authority’s customers or employees regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact the Authority’s customers or employees relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal obligation 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 any of the Authority’s customers and employees to those required by the legal obligation or as pre-approved by the Authority. The Contractor will reasonably cooperate in connection with notices to the Authority’s customers and employees regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

14. **Equitable Relief.** The Contractor acknowledges that the Authority may have no adequate remedy at law if there is a breach or threatened breach of any of the obligations set forth in this Addendum and, accordingly, that the Authority may, in addition to any legal or other remedies available to the Authority, seek injunctive or other equitable relief to prevent or remedy such breach without requirement of a bond or notice. The Contractor will not object or defend against such action on the basis that monetary damages would provide an adequate remedy.