



CONTRACT NO. 200335
(RFP # 303911)

**General Transit Feed Specification For
Real Time Data System**

CONTRACTOR: Swiftly, Inc.
1 Sutter Street
San Francisco, CA 94104
415-483-9777

AWARD DATE: November 19, 2018

CONTRACT TERM: 12 months from Notice to Proceed

PRICE: \$317,000.00

DBE GOAL None

PROJECT MANAGER: Shawn Brown
Telephone # (512) 369-6599
Email Address shawn.brown@capmetro.org

CONTRACTS ADMINISTRATOR: Kirk Perry, CPSM
Telephone # (512) 389-7528
Fax # (512) 389-7594
Email Address Kirk.Perry@capmetro.org

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

CONTRACT 200335
(RFP 303911)
GENERAL TRANSIT FEED SPECIFICATION FOR
REAL-TIME DATA SYSTEM
TABLE OF CONTENTS

EXHIBIT	DESCRIPTION
	AWARD / CONTRACT FORM
1	EXHIBIT A Revised-3 - PRICING SCHEDULE
2	EXHIBIT B - REPRESENTATIONS AND CERTIFICATIONS
3	EXHIBIT E Revised-1 - CONTRACTUAL TERMS AND CONDITIONS
4	EXHIBIT F - SCOPE OF SERVICES
5	EXHIBIT H – COMPLIANCE MATRIX
6	EXHIBIT J Revised-1 – IT ADDITIONAL TERMS AND CONDITIONS
7	EXHIBIT K Revised-1 – PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM
8	AMENDMENTS: #1 – DATED 08/27/18 #2 – DATED 10/02/18 #3 – DATED 11/01/18
9	FINAL PROPOSAL DATED 10/05/18, INCORPORATED BY REFERENCE
10	INITIAL PROPOSAL DATED 09/05/18, INCORPORATED BY REFERENCE

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS**

AWARD/CONTRACT FORM

1. SOLICITATION NO: RFP 303911		2. CONTRACT NO: 200335		3. EFFECTIVE DATE: Upon Execution	
4. CONTRACTS ADMINISTRATOR: Kirk Perry				PHONE: 512-389-7528	
5. SHIP TO ADDRESS:			6. DELIVERY TERMS:		
Capital Metro 2910 East 5 th Street Austin, Texas 78702			F.O.B. Destination		
8. CONTRACTOR NAME & ADDRESS:			7. DISCOUNTS FOR PROMPT PAYMENT:		
Swiftly, Inc. 1 Sutter Street San Francisco, CA 94104			9. REMITTANCE ADDRESS:		(If different from Item 8)
PHONE:		415-483-9777		EMAIL: jonny@goswift.ly	
10. SBE GOAL: NONE					
CONTRACT EXECUTION					
CAUTION: 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.					
<input checked="" type="checkbox"/>	NEGOTIATED AGREEMENT:		(Contractor is required to sign below and return to the Contracting Officer within three (3) calendar days of receipt.)		
Contractor agrees to perform, furnish and deliver all the services set forth or otherwise identified in Contractor's Initial Proposal dated September 5, 2018 and Final Proposal Revision dated October 5, 2018, Exhibit A Revised-3 (Pricing Schedule) and all exhibits, 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 solicitation, as amended, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.					
SIGNATURE OF CONTRACTOR:					
<input checked="" type="checkbox"/>	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: Exhibit E Revised-1, Exhibit J Revised-1 and Exhibit K Revised-1 per agreed-upon exceptions.					
11. ACCEPTED AS TO: Exhibit A Revised-3 (Pricing Schedule), Sections 6 & 7 all items inclusive, total not to exceed amount \$317,000.					
SIGNATURE OF CONTRACTING OFFICER:					
Typed Name:		Muhammad Abdullah, CPM, Contracting Officer		Signature:  Date: 11/28/2018	

EXHIBIT A - Revised 3

PRICING SCHEDULE

RFP 303911

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

1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT

Company Name (Printed)	Swiftly, Inc.		
Address	1 Sutter Street		
City, State, Zip	San Francisco, CA 94104		
Phone, Fax, Email	415.483.9777	801.207.2604	jonny@goswift.ly
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)	Jonathan Simkin, CEO		
Signature and Date		Date	11/1/2018

2. ACKNOWLEDGEMENT OF AMENDMENTS

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

Amendment #	Date	Amendment #	Date
1	8/27/18		
2	10/2/18		

3. PROMPT PAYMENT DISCOUNT

# of Days		%	
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Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

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

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	
Signature and Date	
Accepted as to:	

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/>

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

EXHIBIT B

REPRESENTATIONS AND CERTIFICATIONS

(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)

MUST BE RETURNED WITH THE OFFER

1. **TYPE OF BUSINESS**

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

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

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

Delaware

2. **PARENT COMPANY AND IDENTIFYING DATA**

(a) The offeror (mark one):

- is
- is not

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

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

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

██████████

(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:

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CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

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

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

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

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(i) has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision _____ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) as an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) as an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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

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

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

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

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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

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

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

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

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

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

5. COMMUNICATIONS

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

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

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

6. CONTINGENT FEE

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

- has
- has not

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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

- has
 has not

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

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

7. CODE OF CONDUCT

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

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

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

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

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

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

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

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

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

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

(i) the interest is ownership of ten percent (10%) or more of the voting stock or shares of the business entity or ownership of ten percent (10%) 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 percent (10%) of the Board Member’s/employee’s gross income for the previous year;

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

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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

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

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

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

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

- (1) ensure that Capital Metro complies with all applicable laws and regulations;
- (2) adhere to Capital Metro's policies and procedures;
- (3) efficiently transact Capital Metro business and safeguard Capital Metro assets from waste, abuse, theft or damage;
- (4) exhibit a desire to serve the public, and display a helpful, tolerant manner;
- (5) treat fellow Board members, employees, agents, contractors and the public with honesty, respect and dignity;
- (6) reveal all material facts known to them when reporting on work projects; and
- (7) disclose immediately any information regarding unethical or wrongful conduct related to Capital Metro transactions to the Board Vice Chair or the Capital Metro Ethics Officer.

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

- (1) participate in a contract or real property transaction in which he/she has a substantial interest;
- (2) solicit, accept, or agree to accept any benefit as consideration for his/her decision, vote, opinion or recommendation;
- (3) solicit, accept, or agree to accept any benefit as consideration for his/her violation of any law or duty;
- (4) solicit, accept or agree to accept any benefit from a person that is interested in any Capital Metro contract or transaction;
- (5) no Board Member or employee may receive or accept any gift or favor from a contractor or potential contractor of Capital Metro;
- (6) act as a surety for a business that has a contract with Capital Metro;

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(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.

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

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

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

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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

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

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

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

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

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

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

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

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

(j) In accordance with Texas Local Government Code, § 176.006, a "Vendor" is required to file a conflict of interest questionnaire within seven (7) business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at www.ethics.state.tx.us. The questionnaire shall be sent to the Authority's Contract Administrator.

8. RESERVED

9. TEXAS ETHICS COMMISSION CERTIFICATION

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

10. TEXAS LABOR CODE CERTIFICATION (CONSTRUCTION ONLY)

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

11. CERTIFICATION REGARDING ISRAEL

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

In accordance with Section 2270.002 of the Texas Government Code, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

12. **CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION**

(a) The Prime Contractor certifies that it shall perform no less than thirty percent (30%) of the work with his own organization. The on-site production of materials produced by other than the Prime Contractor's forces shall be considered as being subcontracted.

(b) The organization of the specifications into divisions, sections, articles, and the arrangement and titles of the project drawings shall not control the Prime Contractor in dividing the work among subcontractors or in establishing the extent of the work to be performed by any trade.

(c) The offeror further certifies that no more than seventy percent (70%) of the work will be done by subcontractors.

13. **SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS**

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

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

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

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

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

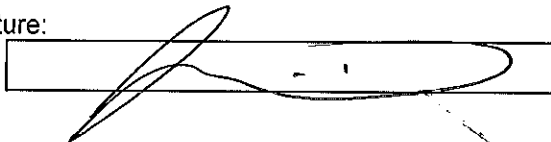
Name of Offeror:

Swiftly, Inc.

Type/Print Name of Signatory:

Jonathan Simkin

Signature:



Date:

9/5/2018



EXHIBIT E - Revised-1
CONTRACTUAL TERMS AND CONDITIONS
(SERVICES CONTRACT)

1. DEFINITIONS

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

- (a) "Applicable Anti-Corruption and Bribery Laws" means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor's provision of goods and/or services to Authority, including without limitation "FCPA" or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.
- (b) "Authority," "Capital Metro," "Cap Metro," "CMTA" means Capital Metropolitan Transportation Authority.
- (c) "Change Order" means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (d) "Contract" or "Contract Documents" means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (e) "Contract Award Date" means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by the Authority.
- (f) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (g) "Contract Sum" means the total compensation payable to the Contractor for performing the Services as originally contracted for or as subsequently adjusted by Contract Modification.
- (h) "Contract Term" means period of performance set forth in the paragraph entitled "Term" contained in Exhibit E.
- (i) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of the Authority. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (j) "Contractor" means the entity that has assumed the legal obligation to perform the Services as identified in the Contract.
- (k) "Days" means calendar days. In computing any period of time established under this Contract, 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.
- (l) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (m) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (n) "Force Majeure Event" means strikes, lockouts, or other industrial disputes; explosions, epidemics, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.

- (o) "FTA" means the Federal Transit Administration.
- (p) "Fully Burdened Hourly Labor Rate" means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- (q) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights, and any derivative works thereto; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- (r) "Manufacturing Materials" mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.
- (s) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.
- (t) "Notice to Proceed" means written authorization for the Contractor to start the Services.
- (u) "Project Manager" means the designated individual to act on behalf of the Authority, to monitor and certify the technical progress of the Contractor's Services under the terms of this Contract.
- (v) "Proposal" means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.
- (w) "Services" means the services to be performed by the Contractor under this Contract, and includes services performed, workmanship, and supplies furnished or utilized in the performance of the Services.
- (x) "Subcontract" means the Contract between the Contractor and its Subcontractors.
- (y) "Subcontractor" means subcontractors of any tier.
- (z) "Works" means any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced, developed, incorporated, provided or obtained by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract, solely for or on behalf of the Authority under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, and (vii) all other goods, services or deliverables to be provided to the Authority under the Contract.

2. FIXED PRICE CONTRACT

- (a) This is a fixed price Contract for the Services specified and stated elsewhere in the Contract.

3. TERM

The term of the Contract shall be one (1) year from the notice to proceed. No services shall be performed under this Contract prior to issuance of a Notice to Proceed.

4. OPTION TO EXTEND CONTRACT TERM

The Authority shall have the unilateral right and option to extend the Contract for up to four (4) option periods for a twelve (12) month duration each at the option prices set forth in Exhibit A – Revised-3 Pricing Schedule upon written notice to Contractor.

5. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE

If the options granted in Paragraph 4 have been exercised in their entirety, the Authority shall have the unilateral right and option to require continued performance of any services within the limits and rates specified in the Contract. This option may be exercised more than once, but the extension of performance hereunder shall not exceed a total of 6 months. The Authority may exercise the option by written notice to the Contractor.

6. INVOICING AND PAYMENT

- (a) Invoices may be submitted once per month for work completed and accepted by the Authority, and marked "Original" to:

Accounts Payable
Capital Metropolitan Transportation Authority
P.O. Box 6308
Austin, Texas 78762-6308

Or via e-mail to: ap_invoices@capmetro.org

and shall conform to policies or regulations adopted from time to time by the Authority. Invoices shall be legible and shall contain, as a minimum, the following information:

- (1) the Contract and order number (if any);
 - (2) a complete itemization of all costs including quantities ordered and delivery order numbers (if any);
 - (3) any discounts offered to the Authority under the terms of the Contract;
 - (4) evidence of the acceptance of the supplies or services by the Authority; and
 - (5) any other information necessary to demonstrate entitlement to payment under the terms of the Contract.
- (b) All undisputed invoices shall be paid within the time period allowed by law through the Texas Prompt Payment Act, Tex. Gov't. Code § 2251.021(b).
- (c) The Contractor shall be responsible for all costs/expenses not otherwise specified in this Contract, including by way of example, all costs of equipment provided by the Contractor or Subcontractor(s), all fees, fines, licenses, bonds, or taxes required or imposed against the Contractor and Subcontractor(s), travel related expenses, and all other Contractor's costs of doing business.
- (d) In the event an overpayment is made to the Contractor under this Contract or the Authority discovers that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset the amount of such overpayment or unauthorized charges against any indebtedness owed by the Authority to the Contractor, whether arising under this Contract or otherwise, including withholding payment of an invoice, in whole or in part, or the Authority may deduct such amounts from future invoices. If an overpayment is made

to the Contractor under this Contract which cannot be offset under this Contract, the Contractor shall remit the full overpayment amount to the Authority within thirty (30) calendar days of the date of the written notice of such overpayment or such other period as the Authority may agree. The Authority reserves the right to withhold payment of an invoice, in whole or in part, or deduct the overpayment from future invoices to recoup the overpayment.

7. PAYMENT MILESTONES

Upon the Authority’s receipt and acceptance, as follows:

- I) Plan: 10%
- II) Design: 15%
- III) Develop: 15%
- IV) Test: 15%
- V) Deploy/Go Live: 30%
- VI) Closeout: 15%

8. ACCEPTANCE TEST CRITERIA

A review of the Contractor’s Services will be performed by the Authority upon delivery. If any Services performed under this Contract are deemed incomplete or unacceptable in any way, per Acceptance Criteria referenced in Exhibit F, Scope of Services, the Authority will require the Contractor to take corrective measures at no additional cost to the Authority.

9. INSURANCE

- (a) The 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. The 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, Professional Liability insurance if required by this Contract. 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. The 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 the Contractor. The 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.

CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS

(1) **Comprehensive General Liability Insurance** Coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) with an aggregate of Two Million Dollars and No/100 Dollars (\$2,000,000) with coverage that includes:

- (i) Products and Completed Operations Liability.
- (ii) Independent contractors.

- (iii) Personal Injury Liability extended to claims arising from employees of Contractor and the Authority.
 - (iv) Contractual Liability pertaining to the liabilities assumed in the agreement.
- (2) **Automobile Liability Insurance** covering all owned, hired and nonowned automobiles used in connection with work with limits not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage.
- (3) **Statutory Workers' Compensation** coverage in the State of Texas. Employers Liability Insurance with minimum limits of liability of One Million Dollars and No/100 Dollars (\$1,000,000).
- (4) **Technology Error's & Omissions Insurance:** Combined Technology & Omissions Policy with a minimum One Million and No/100 Dollars (\$1,000,000) claim limit, including (a) Professional Liability Insurance covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated (such coverage to be maintained for at least two (2) years after termination of this contract, which obligation shall expressly survive termination of this contract; and (b) Privacy, Security and Media Liability Insurance providing liability for unauthorized access or disclosure, security breaches or system attacks, as well as infringement of copyright and trademark that might result from this contract.
- (5) Cyber endorsement in favor of CMTA on General Liability Policy: \$1,000,000.
- (6) Third Party extension in favor of CMTA endorsement on Privacy, Security and Media Policy: \$1,000,000.
- (b) The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.
- (c) The 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 Services performed by or on behalf of the Contractor under this Contract and/or use of any Authority premises or equipment under this Contract.
- (d) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTRIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement. All required endorsements shall be evidenced on the Certificate of Insurance, which shall be evidenced on the Certificate of Insurance. Proof that insurance coverage exists shall be furnished to the Authority by way of a Certificate of Insurance before any part of the Contract work is started.
- (e) If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority may terminate this Contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due the Contractor.
- (f) If any part of the Contract is sublet, the 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 Services 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 the Contractor's policies.

- (g) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by The Authority. The Authority reserves the right to inspect in person, prior to the commencement of the Services, all of the Contractor's insurance policy required under this Contract.
- (h) 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 furnished to the attention of the Contracting Officer.
- (i) The Contractor and its lower tier Subcontractors are required to cooperate with the Authority and report all potential claims (workers' compensation, general liability and automobile liability) pertaining to this Contract to the Authority's Risk Management Department at (512) 389-7549 within two (2) days of the incident.

10. PERFORMANCE OF SERVICES BY THE CONTRACTOR

Except as otherwise provided herein, the Contractor shall perform no less than thirty percent (30%) of the Services with its own organization. If, during the progress of Services hereunder, the Contractor requests a reduction in such performance percentage and the Authority determines that it would be to the Authority's advantage, the percentage of the Services required to be performed by the Contractor may be reduced; provided, written approval of such reduction is obtained by the Contractor from the Authority.

11. REMOVAL OF ASSIGNED PERSONNEL

The Authority may require, in writing, that the Contractor remove from the Services any employee or Subcontractor of Contractor that the Authority deems inappropriate for the assignment.

12. REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants to the Authority, that the Services shall be performed in material 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 the Contractor's personnel shall reflect sound professional knowledge, skill and judgment. If any breach of the representations and warranties is discovered by the Authority during the process of the work or within one (1) year after acceptance of the work by the Authority, the Contractor shall again cause the nonconforming or inadequate work to be properly performed at the 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 representations and warranties.

13. INDEPENDENT CONTRACTOR

The Contractor's relationship to the Authority in the performance of this Contract is that of an independent contractor. The personnel performing services under this Contract shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor and not employees of the Authority. The 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 the Contractor and the Authority by virtue of this Contract. The 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.

14. 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.

15. 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.

16. EQUITABLE ADJUSTMENTS

(a) Any requests for equitable adjustments under any provision shall be governed by the following provisions:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this Paragraph, for Services involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request for any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling \$5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of Services involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract. The itemized breakdown shall, at the least, include the items specified in subparagraph (a)(2), below.

(b) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

17. 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.

18. BADGES AND ACCESS CONTROL DEVICES

(a) The Contractor and each of the Contractor's employees, as well as each Subcontractor of any tier and any workers working on behalf of Subcontractor, shall be required to wear a Capital Metro Contractor Photo Identification Badge ("badge") at all times while on the Authority's premises. The badge will be provided by Capital Metro. If any badge holder loses or misplaces his or her badge, the Contractor shall immediately notify the Project Manager upon discovery. The Contractor will be charged a \$50.00 replacement fee for each lost or misplaced badge, which fee shall be deducted any amounts due and owing to the Contractor or if the Contract is terminated upon demand by the Authority. The Contractor shall return all badges provided when any badge holder is no longer working on the Contract, and all badges shall be returned upon completion of the Contract. In the event the Contractor fails to do so, the Contractor will pay a \$50.00 per badge fee deducted from any amounts due and owing to the Contractor or if the Contract is terminated upon demand by the Authority. All badges should be returned to the Project Manager. All requests for new and replacement badges must be submitted in writing to the Project Manager. The misuse of a badge may result in termination of the Contract.

(b) Access Control Devices will be issued to employees of the Contractor and to each Subcontractor of any tier and any worker working on behalf of Subcontractor as necessary to perform the Contract. Access Control Devices

are not transferable between the Contractor employees or workers working on behalf of the Subcontractor. The Contractor employees and workers on behalf of the Subcontractor are prohibited from loaning Access Control Devices or providing access to an unauthorized person into restricted areas without prior arrangements with the Project Manager. All requests for new and replacement Access Control Devices must be submitted in writing to the Project Manager. Lost Access Control Devices must be reported to the Project Manager immediately upon discovery. All Access Control Devices should be returned to the Project Manager. The misuse of an Access Control Device(s) may result in termination of the Contract. The Contractor shall return all Access Control Devices once an assigned employee or worker is no longer working on the Contract or upon termination of the Contract. In the event the Contractor fails to do so, then the Contractor shall be responsible for the replacement cost of an Access Control Device which shall be deducted from any amounts due and owing to the Contractor or payable on demand if the Contract has terminated. The replacement cost will be calculated at current market value to include labor and materials.

(c) The provisions of this paragraph survive termination of the Contract.

19. CHANGES

- (a) 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 paragraph 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.
- (b) 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.
- (c) Any other written order (which, as used in this paragraph (c), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change in the Contractor's obligations shall be treated as a Change Order under this paragraph; provided that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a Change Order.
- (d) Except as provided in this paragraph, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this paragraph or entitle the Contractor to an equitable adjustment.
- (e) If any change under this paragraph causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Services under this Contract, whether or not changed by any such order, the Contracting Officer may make an equitable adjustment and modify the Contract in writing in accordance with the provisions in paragraph entitled, "Equitable Adjustments" contained in Exhibit E.

20. TERMINATION FOR DEFAULT

(a) The Authority may, subject to the provisions of subparagraph (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 perform the Services 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 and does not cure such failure within a period of ~~ten (10)~~ thirty (30) 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 subparagraph (a) of this paragraph, 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 paragraph.

(c) Except with respect to the 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 Force Majeure Events; provided, however, in every case the failure to 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 subparagraph (a), the Authority, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority any 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 Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed 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 paragraph, it is determined by the Authority that the Contractor was not in default or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be those provided in the paragraph entitled "Termination for Convenience" contained in this Exhibit E.

(f) The rights and remedies of the Authority provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

21. TERMINATION FOR CONVENIENCE

(a) 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.

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

(c) 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: (1) any completed supplies; and (2) 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.

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

- (1) Contract prices for supplies accepted under the Contract;

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(2) Costs incurred in preparing to perform and performing the terminated portion of the Services plus including, but not limited to, reasonable costs associated with implementing the work under the contract in an amount not to exceed \$36,600.00, as evidenced by an itemized invoice submitted to the Authority, plus a fair and reasonable profit on such portion of the Services (such profit shall not include anticipatory profit or consequential damages), less amounts paid or to be paid for accepted supplies; 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 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 thereunder, 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.

(e) The total sum to be paid the Contractor under this paragraph shall not exceed the total Contract Sum 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 orders not terminated.

22. 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.

23. INTELLECTUAL PROPERTY PROVISIONS

(a) As between the Contractor and the Authority, ~~the all~~ Works and Intellectual Property Rights that may be developed, modified or created under this Contract or Contact Documents, if any, by Capital Metro or Contractor ~~therein are and~~ shall be owned exclusively by Capital Metro, and not the Contractor. To that end, Contractor hereby assigns all such Works and Intellectual Property Rights that are developed, modified or created to Authority and will execute, upon Authority's provision and request, any necessary documents required to ensure such is properly memorialized. For clarity, Capital Metro agrees that it shall have no ownership rights in or to the Software or the Application provided by the Contractor under this Contract. The Contractor specifically agrees that all Works shall be considered "works made for hire" and that the Works shall, upon creation, be owned exclusively by the Authority. To the extent that the Works, under applicable law, may not be considered works made for hire, the Contractor ~~hereby agrees that this Contract effectively~~ transfers, grants, conveys, assigns, and relinquishes exclusively to the Authority all right, title and interest in and to all worldwide ownership rights in the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the Authority shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works.

(b) The Contractor, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the Authority to evidence more fully the transfer of ownership of all Works to the Authority to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the Authority. In the event the Authority shall be unable for any reason to obtain the Contractor's signature on any document necessary for any purpose set forth in the foregoing sentence, the Contractor hereby irrevocably designates and appoints the Authority and its duly authorized officers and agents as the Contractor's agent and the Contractor's attorney-in-fact to act for and in the Contractor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Contractor.

(c) To the extent that any pre-existing rights and/or third-party rights or limitations are embodied, contained, reserved or reflected in the Works, the Contractor shall either:

(1) grant to the Authority the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to:

(i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale, offering for sale, marketing, advertising, and promotion of the Authority's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and

(ii) authorize others to do any or all of the foregoing, or

(2) where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Authority of such pre-existing or third party rights or limitations, request the Authority's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated, and obtain the Authority's written approval of such pre-existing or third party rights and the limited use of same. The Contractor shall provide the Authority with documentation indicating a third party's written approval for the Contractor to use any pre-existing or third-party rights that may be embodied, contained, reserved or reflected in the Works. **THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, REGULATORY PROCEEDINGS AND/OR CAUSES OF ACTION, AND ALL LOSSES, DAMAGES, AND COSTS (INCLUDING ATTORNEYS' FEES AND SETTLEMENT COSTS) ARISING FROM OR RELATING TO, DIRECTLY OR INDIRECTLY, ANY CLAIM OR ASSERTION BY ANY THIRD PARTY THAT THE WORKS INFRINGE ANY THIRD-PARTY RIGHTS.** The foregoing indemnity obligation shall not apply to instances in which the Authority either:

(i) exceeded the scope of the limited license that was previously obtained by the Contractor and agreed to by the Authority, or

(ii) obtained information or materials, independent of the Contractor's involvement or creation, and provided such information or materials to the Contractor for inclusion in the Works, and such information or materials were included by the Contractor, in an unaltered and unmodified fashion, in the Works.

(d) The Contractor hereby warrants and represents to the Authority that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed by or on behalf of the Contractor for the use by or benefit of the Authority, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. **THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE AUTHORITY HARMLESS FROM ANY THIRD PARTY CLAIMS, INCLUDING BUT NOT LIMITED TO CLAIMS FOR INVASION OF PRIVACY, INFRINGEMENT OF THE RIGHT OF PUBLICITY, LIBEL, UNFAIR COMPETITION, FALSE ADVERTISING, INTENTIONAL OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, COPYRIGHT OR TRADEMARK INFRINGEMENT, AND/OR CLAIMS FOR ATTORNEY'S FEES, RESULTING FROM SUCH USE, ETC., OF THE PERSONALITY RIGHTS.**

(e) The Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Contractor may now have or which may accrue to the Contractor's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a Moral Right.

(f) The Contract is intended to protect the Authority's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the Authority's business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction

should immediately enjoin any material breach of the intellectual property and confidentiality provisions of this Contract, upon a request by the Authority, without requiring proof of irreparable injury as same should be presumed.

(g) Upon the request of the Authority, but in any event upon termination of this Contract, the Contractor shall surrender to the Authority all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Contractor or furnished by the Authority to the Contractor, including all materials embodying the Works, any Authority confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This paragraph is intended to apply to all Works made or compiled by the Contractor, as well as to all documents and things furnished to the Contractor by the Authority or by anyone else that pertains to the Works.

24. STANDARDS OF PERFORMANCE

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

25. INSPECTIONS AND APPROVALS

(a) All Services performed by the 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 the Contractor of responsibility for the proper performance of the Services. The Contractor shall provide sufficient, safe, and proper facilities at all times for such inspection of the Services and shall furnish all information concerning the Services and give the Authority or its representatives free access at all reasonable times to the facilities where the Services are performed.

(b) 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.

(c) 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 Services.

(d) 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 the Contract Sum. 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 Sum to reflect the reduced value of the Services performed.

(e) 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.

26. SUSPENSION OF SERVICES

(a) The Authority may order the Contractor in writing to suspend all or any part of the Services 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 Services is 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) for more than 10 consecutive days or 20 days in the aggregate, 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, and the Authority shall be obligated to promptly pay Contractor the amount of all previously waived fees in the aggregate amount of \$36,600.

However, no adjustment shall be made under this paragraph for any suspension or delay to the extent (1) that performance would have been 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 paragraph 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 paragraph 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 paragraph.

27. PAYMENT TO SUBCONTRACTORS

(a) Payments by contractors to subcontractors associated with Authority contracts are subject to the time periods established in the Texas Prompt Payment Act, Tex. Gov't Code § 2251.

(b) A false certification to the Authority under the provisions of the paragraph entitled "Invoicing and Payment" hereof may be a criminal offense in violation of Tex. Penal Code § 10.

28. FEDERAL, STATE AND LOCAL TAXES

The Contract Sum includes all applicable federal, state, and local taxes and duties. The Authority is exempt from taxes imposed by the State of Texas and local sales and use taxes under Texas Tax Code § 151.309, and any such taxes included on any invoice received by the Authority shall be deducted from the amount of the invoice for purposes of payment. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The Contractor bears sole and total responsibility for obtaining information pertaining to such exemption.

29. EQUAL OPPORTUNITY

During the performance of this Contract, the Contractor agrees that it will, in good faith, afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability or any other characteristic protected by federal, state or local law.

30. 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 paragraph and not otherwise defined shall have the meanings as described to them in the Code of Conduct.

(b) The Contractor represents that no Employee has a Substantial Interest in the Contractor or this Contract, which Substantial Interest would create or give rise to a Conflict of Interest. The 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 the 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 Paragraph II, subparagraphs (1) and (3) of the Code of Conduct) in a business entity or real property.

(c) The Contractor agrees to ensure that the Code of Conduct is not violated as a result of the Contractor's activities in connection with this Contract. The 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 the Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of the 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 the Contractor shall render this Contract voidable by the Authority.

(e) In accordance with paragraph 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.

31. GRATUITIES

The Authority may cancel this Contract, without liability to the 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 Contract. In the event this Contract 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.

32. PUBLICATIONS

All published material and written reports submitted under this Contract 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.

33. 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 any deliverables shall be referred to the Authority.

34. 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 the Contractor's professional obligation to maintain copies of its work product.

35. LIMITATION OF LIABILITY

In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to the 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. The Contractor shall include similar liability provisions in all its Subcontracts.

IN NO EVENT SHALL EITHER PARTY BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS CONTRACT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEM-

PLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS AND GOODWILL OR (B) DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS PAID TO IT (IN THE CASE OF SWIFTLY) OR PAID AND PAYABLE BY IT (IN THE CASE OF AUTHORITY) HEREUNDER DURING THE SIX (6) MONTHS PRECEDING SUCH CLAIM, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

36. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

The Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental requirements, regulations or standards prevailing during the term of this Contract.

37. 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 arising out of this Contract, 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 5th Street, Austin, Texas 78702.

38. 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 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.

39. 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 paragraph, including this subparagraph (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.

40. PUBLICITY RELEASES

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the Services 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.

41. INTEREST OF PUBLIC OFFICIALS

The Contractor represents and warrants that no employee, official, or member of the Board of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this Contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any employee, official, or member of the Board of the Authority with a view toward securing favorable treatment in the awarding,

amending, or evaluating the performance of this Contract. For breach of any representation or warranty in this paragraph, the Authority shall have the right to terminate this Contract without liability and/or have recourse to any other remedy it may have at law or in equity.

42. INDEMNIFICATION

- (a) THE 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 ANY THIRD PARTY CLAIMS 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 THE CONTRACTOR HAS MADE IN THIS CONTRACT;
 - (2) ANY BREACH, VIOLATION OR DEFAULT BY OR THROUGH THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OF ANY OBLIGATION OF THE CONTRACTOR IN THIS CONTRACT OR ANY OTHER AGREEMENT BETWEEN THE CONTRACTOR AND THE AUTHORITY;
 - (3) THE USE, CONDITION, OPERATION OR MAINTENANCE OF ANY PROPERTY, VEHICLE, FACILITY OR OTHER ASSET OF THE AUTHORITY TO WHICH THE CONTRACTOR HAS ACCESS OR AS TO WHICH THE CONTRACTOR PROVIDES SERVICES; OR
 - (4) ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CUSTOMERS, INVITEES, REPRESENTATIVES OR VENDORS.
- (b) "ACTION" MEANS ANY ACTION, APPEAL, PETITION, PLEA, CHARGE, COMPLAINT, CLAIM, SUIT, DEMAND, LITIGATION, MEDIATION, HEARING, INQUIRY, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING COMMENCED OR THREATENED BY A THIRD PARTY.
- (c) "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.
- (d) "THREATENED" MEANS A DEMAND OR STATEMENT HAS BEEN MADE (ORALLY OR IN WRITING) OR A NOTICE HAS BEEN GIVEN (ORALLY OR IN WRITING), OR ANY OTHER EVENT HAS OCCURRED OR ANY OTHER CIRCUMSTANCES EXIST THAT WOULD LEAD A PRUDENT PERSON OR ENTITY TO CONCLUDE THAT AN ACTION OR OTHER MATTER IS LIKELY TO BE ASSERTED, COMMENCED, TAKEN OR OTHERWISE PURSUED IN THE FUTURE.
- (e) 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 THE 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.

- (f) THE INDEMNIFICATION OBLIGATIONS AND RIGHTS PROVIDED FOR IN THIS CONTRACT DO NOT REQUIRE (AND SHALL NOT BE CONSTRUED AS REQUIRING) THE CONTRACTOR TO INDEMNIFY, HOLD HARMLESS, OR DEFEND ANY INDEMNIFIED PARTY (OR ANY THIRD PARTY) AGAINST ANY ACTION OR CLAIM (OR THREATENED ACTION OR CLAIM) CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF ANY INDEMNIFIED PARTY, ITS AGENTS OR EMPLOYEES, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF ANY INDEMNIFIED PARTY, OTHER THAN THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER.
- (g) THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CONTRACT.

43. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS

- (a) The Contractor will retain and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- (b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and the Authority and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.
- (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 Contractor shall maintain all books, records, accounts and reports required under this paragraph for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- (e) The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.
- (f) The Contractor agrees to permit the Authority and its contractors access to the sites of performance under this Contract as reasonably may be required.
- (g) If an audit pursuant to this paragraph reveals that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset or recoup such amounts against any indebtedness owed by it to the Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.

(h) This Paragraph will survive any termination or expiration of this Contract.

44. 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 Force Majeure Events. 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 performance of the Services.
- (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 obtain these 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 Authority 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 this Contract.

45. 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 the Contractor or any Subcontractor at any tier, or any employee thereof, while such person is on the premises of the Authority as an employee of the Contractor or Subcontractor.

46. 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.

47. QUALITY ASSURANCE

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

48. INTERPRETATION OF CONTRACT – DISPUTES

All questions concerning interpretation or clarification of this Contract or the acceptable fulfillment of this Contract by the 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 (2) weeks after the Authority notifies the 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 (2) weeks of the protest filing of his or her 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, the Contractor shall proceed with the Services in accordance with the determinations, instructions, and clarifications of the President/CEO. The Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses

arising from its failure to do so. The Contractor's failure to protest the Contracting Officer's determinations, instructions, or clarifications within the two-week period shall constitute a waiver by the Contractor of all of its rights to further protest.

49. TOBACCO-FREE WORKPLACE

- (a) Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.
- (b) The 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.
- (c) Tobacco use is not permitted at any time on Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.
- (d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

50. ORDER OF PRECEDENCE

In the event of any inconsistency between the provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- 1. **Exhibit A Revised-3** – Pricing Schedule
- 2. Exhibit E – Contractual Terms and Conditions
- 3. Exhibit F – Scope of Services
- 4. Exhibit J – Additional Terms & Conditions for the Performance of IT Products & Services – Hosted Solutions
- 5. Exhibit K – Proprietary Rights and Data Security Addendum
- 6. Exhibit B – Representations and Certifications
- 7. Other provisions or attachments to the Contract

51. ANTI-CORRUPTION AND BRIBERY LAWS

The Contractor shall comply with all Applicable Anti-Corruption and Bribery Laws. The Contractor represents and warrants that it has not and shall not violate or cause the Authority to violate any such Anti-Corruption and Bribery Laws. The Contractor further represents and warrants that, in connection with supplies or Services provided to the Authority or with any other business transaction involving the Authority, it shall not pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly to: (a) any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or (b) any other person or entity if such payments or transfers would violate applicable laws, including Applicable Anti-Corruption and Bribery Laws. Notwithstanding anything to the contrary herein contained, the Authority may withhold payments under this Contract, and terminate this Contract immediately by way of written notice to the Contractor, if it believes, in good faith, that the Contractor has violated or caused the Authority to violate the Applicable Anti-Corruption and Bribery Laws. The Authority shall not be liable to the Contractor for any claim, losses, or damages related to its decision to exercise its rights under this provision.

52. 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 paragraph, 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.

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- (c) The Contractor acknowledges the full force and effect of this paragraph. It agrees to be bound by its terms and conditions and understands that violation of this paragraph 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 paragraph.

53. MISCELLANEOUS

- (a) This Contract does not intend to, and nothing contained in this Contract shall create any partnership, joint venture or other equity type agreement between the Authority and the Contractor.
- (b) All notices, statements, demands, requests, consents or approvals required under this Contract or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party; an agent of such party; or by overnight courier service, postage paid and addressed to the party to be notified; or by email with delivery confirmation. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

If to the Contractor: As set forth in Exhibit B to this Contract
If to the Authority: Capital Metropolitan Transportation Authority
Attn: Director of Procurement
2910 E. 5th Street
Austin, Texas 78702

Address for notice can be changed by written notice to the other party.

- (c) In the event the Authority finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants or conditions herein, the Contractor shall pay to the Authority its reasonable attorneys' fees and expenses, regardless of whether suit is filed.
- (d) If any term or provision of this Contract or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be void, invalid or unenforceable, the remainder of this Contract will remain in full force and effect unless removal of such invalid terms or provisions destroys the legitimate purpose of the Contract in which event the Contract will be terminated.
- (e) This Contract represents the entire agreement between the parties concerning the subject matter of this Contract and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations. In executing this Contract, the parties do not rely upon any statement, promise, or representation not expressed herein. This Contract may not be changed except by the mutual written agreement of the parties.
- (f) A facsimile signature shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase "facsimile signature" includes without limitation, an image of an original signature.
- (g) Whenever used herein, the term "including" shall be deemed to be followed by the words "without limitation." Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. All Exhibits attached to this Contract are incorporated herein by reference.
- (h) All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Authority, whether provided by law, equity, statute, or otherwise. The election of any one or more remedies the Authority will not constitute a waiver of the right to pursue other available remedies.
- (i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve the Contractor from any of its

obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.

- (j) The failure of the Authority to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive the Authority thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, the Authority is a governmental entity and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.
- (k) This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the State of Texas, sitting in Travis County, Texas and the Contractor expressly consents to the personal jurisdiction of these courts.
- (l) This Contract is subject to the Texas Public Information Act, Tex. Govt. Code, Chapter 552.
- (m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and authority to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.
- (n) The person signing on behalf of the Contractor represents for himself or herself and the Contractor that he or she is duly authorized to execute this Contract.
- (o) 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.
- (p) Capital Metro is a governmental entity and nothing in this Contract shall be deemed a waiver of any rights or privileges under the law.
- (q) Funding for this Contract after the current fiscal year is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.
- (r) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

54. **FUNDING AVAILABILITY**

Funding after the current fiscal year of any contract resulting from this solicitation is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.

EXHIBIT F

GENERAL TRANSIT FEED SPECIFICATIONS FOR REAL-TIME DATA SYSTEM SCOPE OF SERVICES

1. GENERAL SCOPE

1.1 Introduction. Capital Metropolitan Transportation Authority (“CMTA” or “Capital Metro”) is requesting proposals for services to provide and integrate a commercial off-the-shelf (COTS) General Transit Feed Specification for Real-Time data solution (hereinafter “GTFS-RT”) that will interface with existing software to create a GTFS-RT feed that will be consumed by internal and external applications to provide “real time” data for Vehicle Positions and Trip Updates. The selected Contractor (hereinafter the “Contractor”) shall supply hardware, software and all proper and necessary license requirements and services to fully configure and provide a GTFS-RT solution. The implementation approach must incorporate the agency’s current transit data systems and custom software developed by CMTA as part of the Real-Time feed. At the same time, the approach must maximize the out-of-the-box functionality to minimize development of customizations and complexity for future supportability and upgradability. The selected Contractor must assess, recommend and configure the GTFS-RT solution through the Plan and Design phases, to determine any impacts to the current CMTA environment including any specific technical modifications needed to carry out the intent herein.

1.2 Background. CMTA is the regional public transportation leader for Central Texas headquartered in Austin, Texas with 30 million boardings each year across bus, rail, and paratransit services. See <https://capmetro.org/about/> for additional background including ridership and budgets. CMTA 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 bus, ride-share programs, special event services, and special transit services for the mobility impaired.

1.3 Current GTFS-RT Environment. The current system consists of GTFS data generated by Trapeze which is transformed using CMTA’s FME workbench (an ETL tool) to a more user-readable format and validated by internal tools before being sent to HaCon, CMTA’s traveler tool vendor (for the capmetro.org website and the mobile application), Google and the [Texas Open Data Portal](#). Detours and service alerts are generated using a Service Alert Visualizer (SAV) and manually uploaded to HaCon for inclusion in the [Trip Planner](#). Vehicle trip updates are extracted from CMTA’s Computer Aided Dispatch and Automatic Vehicle Location (CAD/AVL) software, OrbCAD. Vehicle position is also provided by onboard wireless routers (SierraWireless MG90) but not incorporated in the current GTFS-RT feed.

2. GTFS-RT SOLUTION FUNCTIONAL REQUIREMENTS

2.1 Functional requirements. The requirements in this Exhibit F Scope of Services and Exhibit G Compliance Matrix are functional in nature and do not encompass all requirements. The Contractor shall determine, through the Plan and Design phases, the impacts to the rest of the system and specific technical modifications needed to carry out the intent herein. The Contractor shall document and discuss said needs with Capital Metro and implement the agreed-upon final solution accordingly.

2.2 Inclusions. The minimum functional requirements are listed below.

- 2.2.1 Deliver a GTFS-RT system that provides real-time and predictive data that may be consumed by internal and external systems with a frequency of no more than ten (10) seconds
- 2.2.2 Fully integrate with CMTA's existing mobile application and web traveler tools provided by Bytemark/HaCon
- 2.2.3 Utilize historical data to continually improve real-time arrival predictions
- 2.2.4 Integrate live data from third-party sources e.g. Google Traffic to inform real-time data
- 2.2.5 Optional - provide analytics tool for CMTA use to run reports for on-time performance, runtime analysis, (e.g. traffic patterns, dwell times, route/trip drive time, stop relocation analysis, lost time, Transit Signal Priority (TSP) metrics and other performance measures and other performance measures
- 2.2.6 Optional - develop up to five (5) custom reports specific to CMTA's data/requirements

2.3 Hosted Solution. Capital Metro seeks a hosted software solution with data fed from a server in CMTA's DMZ that will be published to the provider. The solution will be subject to the requirements found in Exhibit J - Additional Terms and Conditions for the Performance of Information Technology (IT) Products and Services- Hosted Solutions. CMTA will be responsible for providing any hardware requirements for the solution including, but not limited to, servers, workstations, and other hardware that may be necessary or preferred for full access to and functional operation.

2.4 Integration. Integration will be achieved by ingesting the GTFS data provided by Capital Metro, the GTFS-Detour data generated by Capital Metro internal tools and the vehicle location data from the Sierra MG90 routers as well as the CAD/AVL data from the OrbCAD system. The proposed solution should then generate a hosted GTFS-RT feed (vehicle location & trip updates) consumable by our partners (e.g. Dynamic Messaging Signs, mobile app, website trip planner), and the public.

2.5 Systems Environment. Systems Environment. CMTA uses several systems to create its GTFS and GTFS-RT feeds. CMTA has limited documentation on APIs for 3rd party products. Contractor is responsible for coordinating with the vendors listed below to obtain any information and assistance needed and any cost associated therewith. See System Architecture Diagram, Attachment 1. Systems that generate or utilize the GTFS-RT data include:

- 2.5.1 Conduent - CAD/AVL Intelligent Transportation System (OrbCAD) - **Static schedule data, GPS, Route/Block, Vehicle ID**
- 2.5.2 Verizon Network - Cellular provider for vehicle wireless routers - **GPS, Vehicle ID**
- 2.5.3 Trapeze - Scheduling software – **Generates Static schedule data**
- 2.5.4 Service Alert Visualizer (SAV) – **Generates Static schedule detour data**
- 2.5.5 Texas Open Data Portal - **Consumes Static schedule data and GTFS-RT feed**
- 2.5.6 Bytemark/HaCon - Mobile App and Web Traveler Tools - **Consumes GTFS-RT feed**
- 2.5.7 waySine/CHK - Solar-powered Dynamic Message Signs Pilot - **Consumes GTFS-RT feed via the HaCon API**
- 2.5.8 Daktronics - Dynamic Message Signs - **Consumes GTFS-RT feed - Will continue to use the OrbCAD ITS system feed and not this solution**

2.6 Data Migration - Optional. Integrate CMTA historical on-time performance data into analytics tools and reports.

2.7 Data Archiving/Disaster Recovery/System Availability. The solution shall meet or exceed CMTA's required availability and recovery requirements:

- 2.7.1 System availability 24 x 7 x 365, 99.99% availability.
- 2.7.2 Downtime procedures for scheduled maintenance windows or outages with option for after regular office hours as needed.
- 2.7.3 Disaster recovery plan.
- 2.7.4 Security Plan to include but not limited to: Data breach process, Auditing schedule, Standards used, Data Privacy process

3. PHASE TASKS AND DELIVERABLES

The Contractor shall perform the following phase tasks and provide the associated deliverables required to deploy all hardware, software, updates and configurations resulting in a fully functional and tested system. Contractor shall obtain CMTA review of all deliverables and make changes and updates to deliverables per CMTA review as needed. CMTA acceptance of all deliverables for each phase as evidenced by a signed phase acceptance certificate is required prior to invoicing.

3.1 Plan. Meet with CMTA project manager and business area stakeholders for project planning, including review of proposed schedule, roles and responsibilities, as well as conduct a complete review of functionality to be delivered, and other project activities. Plan Deliverables:

- 3.1.1 Project organization chart
- 3.1.2 Project schedule (draft)
- 3.1.3 Action Items and Issues log (AIL)
- 3.1.4 Infrastructure and Integration Audit
- 3.1.5 Initiate Risk Register/ Risk Management Plan (Draft)
- 3.1.6 System Implementation Plan (Draft)
- 3.1.7 Compliance Matrix Review and Update
- 3.1.8 Kick-off meeting and base product demo with stakeholders to review and clarify requirements including confirmation of any required updates to CMTA's environment regarding licensing, network infrastructure etc., identified in the proposal

3.2 Design. Contractor's technical requirements gathering and detailed design, beginning with an assessment and discussion with affected CMTA departments. This phase will determine system architecture and integration and how it will be managed. The Contractor will work with CMTA to develop materials that will provide a basis to help instruct CMTA stakeholders in the easiest and most efficient way to use the system to their utmost advantage. Design Deliverables:

- 3.2.1 Assessment; Documentation of Findings
- 3.2.2 Configuration Management Document ("CMD" - Draft)
- 3.2.3 System Implementation Plan (Final)
- 3.2.4 Quality Assurance Plan (Draft)
- 3.2.5 Risk Management Plan participation (Final)
- 3.2.6 Installation/Deinstallation (Rollback) Plan (Draft)
- 3.2.7 Review of Design and System Implementation Plan with Stakeholders
- 3.2.8 Update of Design based on review
- 3.2.9 Project Schedule (Baseline) with Resource Loading
- 3.2.10 Compliance Matrix Review and Update

3.3 Develop. Development, configuration and installation of the solution and integration as well as installation within a development and a test environment so configuration and testing of the required functionality can be started. This task will include setting the initial configuration values by the Contractor so they can be tested and changed if needed. During this phase, the rollout of the system must be worked on to include training all IT and Operational staff who will use or have on-going support roles. Develop Deliverables:

- 3.3.1 Quality Assurance Plan Including QA/QC Checklist (Final)
- 3.3.2 Development Environment Installation

- 3.3.3 Test Environment Installation
- 3.3.4 Supporting Infrastructure Implemented
- 3.3.5 Application and Functionality Development
- 3.3.6 Test Procedure/Plan including Test Scripts, Acceptance Test Criteria Demonstrating that Each Component of the Compliance Matrix is Developed and Meets Requirement (Draft)
- 3.3.7 Update Compliance Matrix with Test Number(s)
- 3.3.8 CMD Update
- 3.3.9 Review of CMTA Changes to Business Process Flowcharts
- 3.3.10 High-level Training of CMTA Staff to Prepare for Test Phase
- 3.3.11 Role-based Training Plan for all User Types (Draft)

- 3.3.3.1 Submit a training plan including the training schedule and course outlines for review a minimum of three weeks prior to the scheduled classes
- 3.3.3.2 Training shall be on site.
- 3.3.3.3 Provide all equipment, tools, training aids and other materials necessary to train participants (CMTA will provide space and laptops)
- 3.3.3.4 Schedule the training staff to be on site timely to ensure equipment, materials, student accounts and classroom are set up to be fully ready for when class begins
- 3.3.3.5 Arrange for an instructor(s) with thorough knowledge of the material covered in the course(s) and the ability to effectively lead the knowledge transfer
- 3.3.3.6 Provide customized training manuals specific to CMTA's environment in Microsoft Word and PDF. Contractor shall provide hard copies in the number of agreed-to number of training participants as well as the Instructor versions

- 3.3.12 Warranty and Maintenance Plan Review
- 3.3.13 Review and Feedback of CMTA Support Responsibility Matrix

3.4 Test. Integration and testing by Contractor and CMTA to determine that all functionality required of the installed EPPM solution, software and integrations into the existing environment is in place and working. The testing phase shall not be deemed complete until all functional requirements of the newly implemented system have been fully tested and approved by the project team. The Contractor shall provide a Test Procedure document with test scripts, use cases and acceptance test criteria for review and acceptance by CMTA for all phases. Only CMTA data is to be used for testing. Before CMTA performs any testing, the Contractor shall provide the written test results of the full test procedure/plan demonstrating no Class 1 or Class 2 failures. Test Deliverables:

- 3.4.1 Installation of required Software
- 3.4.2 Training Plan (Final)
- 3.4.3 Document Procedures and Migrate Environment from Development to Test
- 3.4.4 Contractor's Successfully Test Procedure/Plan Results
- 3.4.5 Documentation including User and Training Manuals (Draft)
- 3.4.6 Test Procedure/Plan including Test Scripts, Use Cases and Acceptance Test Criteria (Final)
- 3.4.7 System Acceptance Test (SAT) Plan Developed (Subset to Use to Determine Go, No-Go before Go Live)
- 3.4.8 Security Penetration Test
- 3.4.9 Disaster Recovery Test – End-to-End
- 3.4.10 Test Failure Log & Remediation Plan. Contractor shall lead testing of the solution including integrations and resolve all Significant (Class 1) and Severe (Class 2) Test Failure Results (TFRs). Contractor shall endeavor to resolve Minor (Class 3) TFRs during this phase; however, the requirement for Class 3 resolution is during the Closeout phase. Definition for each class are as follows:
Severe - A Class 1 test failure is a severe defect that prevents, inhibits, or significantly impairs further testing or operation of the system.
Significant - A Class 2 test failure is a significant defect that does not prevent further testing or has a minimal effect on normal operations of the system.
Minor – A Class 3 test failure is a minor or isolated defect that does not impact or invalidate the testing or normal operations of the system.

- 3.4.11 Regression Testing of the Entire Test Plan for Any Class 1 and Class 2 Failures
- 3.4.12 Introduction to Contractor's Support Manager and Team
- 3.4.13 Detailed Processes and Contact Information for Post Go Live Support
- 3.4.14 Compliance Matrix Review and Update

3.5 Deploy/Go Live. Deploy: once all the test failures have been corrected, the Contractor shall install and configure the software and incorporate it into the live environment. Go Live: the system shall go live and be monitored for the first 30 days of operation. If Severe (Class 1) or Significant (Class 2) issues arise, the Go-Live period may be cancelled, extended or restarted at CMTA's discretion. The Contractor shall be required to participate in the monitoring of the system and respond to issues so they are quickly resolved. Deploy/Go Live Deliverables:

- 3.5.1 Conduct Training for all User Types
- 3.5.2 Document Procedures and Migrate Environment from Test to Production
- 3.5.3 QA/QC checklist Sign off
- 3.5.4 Update to Disaster Recovery Plan
- 3.5.5 Delivery of all Documentation including User and Training Manuals (Revise Draft)
- 3.5.6 Deployment, Implementation, Configuration and Integration of the GTFS-RT data feed with all environments
- 3.5.7 System Acceptance Test (SAT)
- 3.5.8 Resolution of SAT TFRs
- 3.5.9 Go Live Schedule and Transition Plan
- 3.5.10 System Go Live
- 3.5.11 Technical Lead On-site During First Week of Go Live, or Longer if System Issues are Experienced
- 3.5.12 Review and coordinate with CMTA to update CMTA Process Flowcharts
- 3.5.13 Revised (final) Copies of all Required Documentation including User and Training Manuals
- 3.5.14 Compliance Matrix Review and Update

3.6 Close. Obtain acceptance by CMTA to formally close the project. Apply appropriate updates to project documents. Provide contract close out documentation as requested and Close Deliverables:

- 3.6.1 Follow-up training on areas identified during Go Live and Training Documentation (Final)
- 3.6.2 Final recommendations for CMTA-updated Process Flowcharts
- 3.6.3 All AIL items closed
- 3.6.4 Resolution of all Minor (Class 3) TFRs
- 3.6.5 Final Documentation for Environment Refresh (Develop-Test-Production)
- 3.6.6 Disaster Recovery Plan (Final)
- 3.6.7 Configuration Management Documents (CMD – Final)
- 3.6.8 APIs and All Documentation Related to All Integrations (Final)
- 3.6.9 Warranty and Maintenance Procedure Review and Forms
- 3.6.10 As-builts: updates to any documentation including design document changes

4. PROJECT MANAGEMENT

The Contractor shall manage the project continuously beginning with the Notice to Proceed through Close, and shall lead the project and is expected to drive and manage all aspects of the project including the management of any subcontractors. CMTA shall manage and coordinate all its resources. A full-time Project manager or technical lead is required to be onsite at least two weeks per month during each phase of the project. A PMP is preferred and shall be approved by CMTA. Project Management Deliverables:

- 4.4.1 Active Partnership with CMTA in assuring Project Success
- 4.4.2 Onsite At Least Once a Month During Each Project Phase (May Be Performed by Technical Lead Depending Upon Scheduled Activities By Agreement with CMTA)
- 4.4.3 Single Point of Contact for All Communication Regarding Work Under This Contract
- 4.4.4 Task Coordination with The Designated CMTA project manager
- 4.4.5 Regular Communication with The Project Manager and any other staff designated to discuss progress, critical risk factors, schedule, or unique issues that may surface.

- 4.4.6 Specification of CMTA's staff resources needed for project success with at least two weeks' notice in advance within the project schedule.
 - 4.4.7 Support Responsibility Matrix Review and Updates as Needed
 - 4.4.8 Semi-monthly Status Meetings with Updated Schedule and AIL
 - 4.4.9 Review and Feedback of Change Requests as Needed
 - 4.4.10 Monthly Risk Registry Updates
 - 4.4.11 Monthly Management Review Meetings
 - 4.4.12 Monthly Project Status Report
 - 4.4.13 Quarterly attendance and Status Presentation at Steering Committee Meetings
 - 4.4.14 Responsible for ensuring all project documentation, including meeting minutes, AIL updates, project schedule and plans are kept updated in the CMTA SharePoint site
5. **Payment Milestones.** Payment for each of the above described project phases shall be paid in the following percentages of total Project Costs:
- 5.4.1 Plan: 10%
 - 5.4.2 Design: 15%
 - 5.4.3 Develop: 15%
 - 5.4.4 Test: 15%
 - 5.4.5 Deploy/Go Live: 30%
 - 5.4.6 Closeout: 15%
6. **Payment Method.** Payment will be governed based on:
- 6.4.1 Notification of Plan Phase Completion with Proof of Deliverables
 - 6.4.2 Sign off on Go Live Phase Acceptance Certificate
 - 6.4.3 Phase Invoice upon Receipt of CMTA Authorization to Invoice which must contain the CMTA signed Acceptance Certificate
7. **Contract Completion/Termination.** Within five (5) days of the expiration or termination of a final agreement for any reason, or upon CMTA's request, Contractor will provide CMTA with a copy of all relevant portions of CMTA data, without limitation, from the solution and associated servers or other storage means and assist with and accommodate transition/transfer of such data to CMTA or another provider. The format of the data transition shall be determined by CMTA.

Exhibit H Compliance Matrix

Instructions:	
A	The comments section shall be used for "A-will comply with an alternative" for explaining the alternative, or where requested in the Compliance Term column. Do not add comments for "C" or "N."
B	The Contractor must deliver a system encompassing all requirements including delivery of third-party products to make the solution fully functional.
C	The first seven sections contain clauses from Exhibit for the Contractor to respond with compliance.
D	The requirements in the Scope and Compliance Matrix are functional in nature and do not encompass all changes required to the system. The Contractor must assess, recommend and configure the TVM solution through the Plan and Design phases, to determine the impacts to the rest of the system and specific technical modifications needed to carry out the intent herein. The Contractor shall document and discuss said needs with CMTA and implement the agreed upon final solution accordingly.
E	Contractor must deliver all Compliance Terms unless it is within a section marked "Optional" that is not exercised or CMTA agrees to an alternative.
F	The final column entitled "Test #" will be used during the Develop Phase when the Contractor will update the Compliance Matrix with the test number that responds with each line.
#	Compliance Term
1.0	Capital Metropolitan Transportation Authority ("CMTA" or "Capital Metro") is requesting proposals for services to provide and integrate a commercial off-the-shelf (COTS) General Transit Feed Specification for Real-Time data solution (hereinafter "GTFS-RT") that will integrate with existing transit software to create a feed that will be consumed by internal and external applications to provide "real time" data for Vehicle Positions and Trip Updates. The selected Contractor (hereinafter the "Contractor") shall supply hardware, software and all proper and necessary license requirements and services to fully configure, install, and integrate the GTFS-RT solution into the existing environment. The implementation approach must incorporate the agency's current transit data systems and custom software developed by CMTA as part of the Real-Time feed. At the same time, the approach must maximize the out-of-the-box functionality to minimize development of customizations and complexity for future supportability and upgradability. The selected Contractor must assess, recommend and configure the GTFS-RT solution through the Plan and Design phases, to determine the impacts to the rest of the system and specific technical modifications needed to carry out the intent herein. The selected Contractor shall supply all services to fully configure, integrate, and rollout to the organization, the GTFS-RT solution within CMTA's existing environment and integration with existing third-party systems.
1.1	CMTA is the regional public transportation leader for Central Texas headquartered in Austin, Texas with 30 million boardings each year across bus, rail, and paratransit services. See https://www.capmetro.org/ for additional background including ridership and budgets. Capital Metro.
1.2	The current system consists of GTFS data generated by Trapeze which is transformed using CMTA's FME workbench (an ETL tool) to a more user readable format and validated by internal tools before being sent to HaCon, CMTA's mobile application vendor, Google and the Texas Open Data Portal. Detours and service alerts are generated using a Service Alert Visualizer (SAV) and manually uploaded to HaCon for inclusion in the Trip Planner. Vehicle trip updates are extracted from CMTA's Computer Aided Dispatch and Automatic Vehicle Location (CAD/AVL) software, OrbCAD which also provides GPS vehicle location. Vehicle position is also provided by onboard wireless routers (SierraWireless MG90) but not incorporated in the current GTFS-RT feed.
2.0	GTFS-RT Data Solution Functional Requirements
2.1	Functional requirements. The requirements in Exhibit F Scope of Services and Exhibit H Compliance Matrix are functional in nature and do not encompass all requirements. The Contractor shall determine, through the Plan and Design phases, the impacts to the rest of the system and specific technical modifications needed to carry out the intent herein. The Contractor shall document and discuss said needs with CMTA and implement the agreed-upon final solution accordingly.
2.2	Inclusions
2.2.1	Deliver a GTFS-RT system that provides real-time and predictive data that may be consumed by internal and external systems with a frequency of 10 (ten) seconds or less
2.2.2	Fully integrate with CMTA's existing mobile application and web traveler tools provided by Bytemark/HaCon
2.2.3	Utilize historical data to continually improve real-time arrival predictions
2.2.4	Integrate live data from third-party sources e.g. Google Traffic to inform real-time data
2.2.5	Optional - provide analytics tool for CMTA use to run reports for on-time performance, runtime analysis (e.g. traffic patterns, dwell times, route/trip drive time, stop relocation analysis, lost time, TSP metrics and other performance measures (please identify in your proposal and/or clarify in Column C)
2.2.6	Optional - develop up to five (5) custom reports specific to CMTA's data
2.3	Hosted Solution. Capital Metro requests information on a hosted software solution with data fed from a server in CMTA's DMZ that will be published to the provider. The solution will be subject to the requirements found in Exhibit J, Additional Terms and Conditions for the Performance of Information Technology (IT) Products and Services - Hosted. CMTA will be responsible for providing any hardware requirements for the solution including, but not limited to, servers, workstations, and other hardware that may be necessary or preferred for full access to and functional operation.
2.4	Integration. Integration will be achieved by ingesting the GTFS data provided by Capital Metro, the GTFS-Detour data generated by Capital Metro internal tools and the vehicle location data from the Sierra MG90 routers as well as the CAD/AVL data from the OrbCAD system. The proposed solution should then generate a hosted GTFS-RT feed (vehicle location & trip updates) consumable by our partners (e.g. Dynamic Messaging Signs, mobile app, website trip planner), and the public.

Exhibit H Compliance Matrix

#	Compliance Term
2.5	Systems Environment. CMTA uses several systems to create its GTFS and GTFS-RT feeds. CMTA has limited documentation on APIs for 3rd party products. Contractor is responsible for coordinating with these vendors to obtain any information and assistance needed. See Attachment 1, GTFS-RT Current Future Diagram. Systems that generate or utilize the GTFS-RT data include:
2.5.1	Conduent - CAD/AVL Intelligent Transportation System (OrbCAD) - Static schedule data, GPS, Route/Block, Vehicle ID
2.5.2	Verizon Network - Cellular provider for vehicle wireless routers - GPS, Vehicle ID
2.5.3	Trapeze - Scheduling software - Static schedule data
2.5.4	Service Alert Visualizer (SAV) - Static schedule detour data
2.5.5	Texas Open Data Portal - Static schedule data and Consumes GTFS-RT feed
2.5.6	Bytemark/HaCon - Mobile App and Web Traveler Tools - Consumes GTFS-RT feed
2.5.7	waySine/CHK - Solar-powered Dynamic Message Signs Pilot - Consumes GTFS-RT feed via the HaCon API
2.5.8	Daktronics - Dynamic Message Signs - Consumes GTFS-RT feed - Will continue to use the OrbCAD ITS system feed and not this solution
2.6	Data Migration - Optional. Integrate CMTA historical on-time performance data into analytics tools and reports
2.7	Data Archiving/Disaster Recovery/System Availability. The solution shall meet or exceed CMTA's required availability and recovery requirements:
2.7.1	System meet uptime requirement of 99.99%
2.7.2	Downtime procedures for scheduled maintenance windows or outages with option for after regular office hours as needed.
2.7.3	Disaster recovery plan
2.7.4	Security Plan to include but not limited to: Data breach process, Auditing schedule, Standards used, Data Privacy process
3.0	Phase Tasks and Deliverables. The Contractor shall perform the following phase tasks and provide the associated deliverables required to deploy all hardware, software, updates and configurations resulting in a fully functional and tested system. Contractor shall obtain CMTA review of all deliverables and make changes and updates to deliverables per CMTA review as needed. CMTA acceptance of all deliverables for each phase as evidenced by a signed phase acceptance certificate is required prior to invoicing.
3.1	Plan. Meet with CMTA project manager and business area stakeholders for project planning, including review of proposed schedule, roles and responsibilities, as well as conduct a complete review of functionality to be delivered, and other project activities. Plan Deliverables:
3.1.1	Project organization chart
3.1.2	Project schedule (draft)
3.1.3	Action Items and Issues log (AIL)
3.1.4	Infrastructure and Integration Audit
3.1.5	Initiate Risk Register/ Risk Management Plan (Draft)
3.1.6	System Implementation Plan (draft)
3.1.7	Compliance Matrix Review and Update
3.1.8	Kick-off meeting and base product demo with stakeholders to review and clarify requirements including confirmation of any required updates to CMTA's environment regarding licensing, network infrastructure etc., identified in the proposal
3.2	Design. Contractor's technical requirements gathering and detailed design, beginning with an assessment and discussion with affected CMTA departments. This phase will determine how the system will be installed, product wireframe presentation to the customer, and how it will be managed in the back end. The Contractor will work with CMTA to develop materials that will provide a basis to help instruct CMTA stakeholders in the easiest and most efficient way to use the system to their utmost advantage. Design Deliverables:
3.2.1	Assessment; Documentation of Findings
3.2.2	Configuration Management Document ("CMD" - Draft)
3.2.3	System Implementation Plan (Draft)
3.2.4	Quality Assurance Plan (Draft)
3.2.5	Risk Management Plan participation (Final)
3.2.6	Installation/Deinstallation (Rollback) Plan (Draft)
3.2.7	Review of Design and System Implementation Plan with Stakeholders
3.2.8	Update of Design based on review
3.2.9	Project Schedule (Baseline) with Resource Loading
3.2.10	Compliance Matrix Review and Update

Exhibit H Compliance Matrix

#	Compliance Term
3.3	Develop. Development, configuration and installation of the solution and integration as well as installation within a development and a test environment so configuration and testing of the required functionality can be started. This task will include setting the initial configuration values by the Contractor so they can be tested and changed if needed. During this phase, the rollout of the system must be worked on to include training all IT and Operational staff who will use or have on-going support roles. Develop Deliverables:
3.3.1	Quality Assurance Plan Including QA/QC Checklist (Final)
3.3.2	Development Environment Installation
3.3.3	Test Environment Installation
3.3.4	Supporting Infrastructure Implemented
3.3.5	Application and Functionality Development
3.3.6	Test Procedure/Plan including Test Scripts, Acceptance Test Criteria Demonstrating that Each Component of the Compliance Matrix is Developed and Meets Requirement (Draft)
3.3.7	Update Compliance Matrix with Test Number(s)
3.3.8	CMD Update
3.3.9	Review of CMTA Changes to Business Process Flowcharts
3.3.10	High-level Training of CMTA Staff to Prepare for Test Phase
3.3.11	Role-based Training Plan for all User Types (Draft)
3.3.11.1	Submit a training plan including the training schedule and course outlines for review a minimum of three weeks prior to the scheduled classes
3.3.11.2	Training shall be on site
3.3.11.3	Provide all equipment, tools, training aids and other materials necessary to train participants (CMTA will provide space and laptops)
3.3.11.4	Schedule the training staff to be on site timely to ensure equipment, materials, student accounts and classroom are set up to be fully ready for when class begins
3.3.11.5	Arrange for an instructor(s) with thorough knowledge of the material covered in the course(s) and the ability to effectively lead the knowledge transfer
3.3.11.6	Provide customized training manuals specific to CMTA's environment in Microsoft Word and PDF. Contractor shall provide hard copies in the number of agreed-to number of training participants as well as the Instructor versions
3.3.12	Warranty and Maintenance Plan Review
3.3.13	Review and Feedback of CMTA Support Responsibility Matrix
3.4	Test. Integration and testing by Contractor and CMTA to determine that all functionality required of the installed TVM solution, software, off board validators and integrations into the existing environment is in place and working. The testing phase shall not be deemed complete until all functional requirements of the newly implemented system have been fully tested and approved by the project team. The Contractor shall provide a Test Procedure document with test scripts, use cases and acceptance test criteria for review and acceptance by CMTA for all phases. Only CMTA data is to be used for testing. Before CMTA performs any testing, the Contractor shall provide the written test results of the full test procedure/plan demonstrating no Class 1 or Class 2 failures. Test Deliverables:
3.4.1	Installation of required Software
3.4.2	Training Plan (Final)
3.4.3	Document Procedures and Migrate Environment from Development to Test
3.4.4	Contractor's Successfully Test Procedure/Plan Results
3.4.5	Documentation including User, System Admin, Maintenance, Installation and Training Manuals, (Draft)
3.4.6	Test Procedure/Plan including Test Scripts, Use Cases and Acceptance Test Criteria (Final)
3.4.7	System Acceptance Test (SAT) Plan Developed (Subset to Use to Determine Go, No-Go before Go Live)
3.4.8	Security Penetration Test
3.4.9	Disaster Recovery Test – End-to-End
3.4.10	Test Failure Log & Remediation Plan. Contractor shall lead testing of the solution including integrations and resolve all Significant (Class 1) and Severe (Class 2) Test Failure Results (TFRs). Contractor shall endeavor to resolve Minor (Class 3) TFRs during this phase; however, the requirement for Class 3 resolution is during the Closeout phase. Definition for each class are as follows:
	Severe - A Class 1 test failure is a severe defect that prevents, inhibits, or significantly impairs further testing or operation of the system.
	Significant - A Class 2 test failure is a significant defect that does not prevent further testing or has a minimal effect on normal operations of the system.
	Minor – A Class 3 test failure is a minor or isolated defect that does not impact or invalidate the testing or normal operations of the system.
3.4.11	Regression Testing of the Entire Test Plan for Any Class 1 and Class 2 Failures
3.4.12	Introduction to Contractor's Support Manager and Team

Exhibit H Compliance Matrix

#	Compliance Term
3.4.13	Detailed Processes and Contact Information for Post Go Live Support
3.4.14	Compliance Matrix Review and Update
3.5	Deploy/Go Live: Deploy: once all the test failures have been corrected, the Contractor shall install and configure the software and incorporate it into the live environment. Go Live: the system shall go live and be monitored for the first 30 days of operation. If Severe (Class 1) or Significant (Class 2) issues arise, the Go-Live period may be cancelled, extended or restarted. The Contractor shall be required to participate in the monitoring of the system and respond to issues so they are quickly resolved. Deploy/Go Live Deliverables:
3.5.1	Conduct Training for all User Types
3.5.2	Document Procedures and Migrate Environment from Test to Production
3.5.3	QA/QC checklist Sign off
3.5.5	Update to Disaster Recovery Plan
3.5.6	Delivery of all Documentation including User, System Admin, Maintenance, Installation and Training Manuals, (Revise Draft)
3.5.7	System Acceptance Test (SAT)
3.5.8	Resolution of SAT TFRs
3.5.9	Go Live Schedule and Transition Plan
3.5.10	System Go Live
3.5.11	Technical Lead On-site During First Week of Go Live, or Longer if System Issues are Experienced
3.5.12	Review and coordinate with CMTA to update CMTA Business Process Flowcharts for TVM Solution Effectiveness
3.5.13	Revised (final) Copies of all Required Documentation including User and Training Manuals
3.5.14	Compliance Matrix Review and Update
3.6	Close. Obtain acceptance by CMTA to formally close the project. Apply appropriate updates to project documents. Close out all procurement activities ensuring termination of all relevant agreements. Close Deliverables:
3.6.1	Follow-up training on areas identified during Go Live and Training Documentation (Final)
3.6.2	Final recommendations for CMTA-updated Process Flowcharts
3.6.3	All AIL items closed
3.6.4	Resolution of all Minor (Class 3) TFRs
3.6.5	Final Documentation for Environment Refresh (Develop-Test-Production)
3.6.6	Disaster Recovery Plan (Final)
3.6.7	Configuration Management Documents (CMD – Final)
3.6.8	APIs and All Documentation Related to All Integrations (Final)
3.6.9	Warranty and Maintenance Procedure Review and Forms
3.6.10	As-builts: updates to any documentation including design document changes
4.0	Project Management. The Contractor shall manage the project continuously beginning with the Notice to Proceed through Close, and shall lead the project and is expected to drive and manage all aspects of the project including the management of any subcontractors. CMTA shall manage and coordinate all its resources. A full-time Project manager or technical lead is required to be onsite at least two weeks per month during each phase of the project. A PMP is preferred and shall be approved by CMTA. Project Management Deliverables:
4.1.1	Active Partnership with CMTA in assuring Project Success
4.1.2	Onsite At Least Once a Month During Each Project Phase (May Be Performed by Technical Lead Depending Upon Scheduled Activities By Agreement with CMTA)
4.1.3	Single Point of Contact for All Communication Regarding Work Under This Contract
4.1.4	Task Coordination with The Designated CMTA project manager
4.1.5	Regular Communication with The Project Manager and any other staff designated to discuss progress, critical risk factors, schedule, or unique issues that may surface.
4.1.6	Specification of CMTA's staff resources needed for project success with at least two weeks notice in advance within the project schedule.
4.1.7	Support Responsibility Matrix Review and Updates as Needed
4.1.8	Semi-monthly Status Meetings with Updated Schedule and AIL
4.1.9	Review and Feedback of Change Requests as Needed
4.1.10	Monthly Risk Registry Updates

EXHIBIT J Revised-1
**ADDITIONAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF INFORMATION
TECHNOLOGY (IT) PRODUCTS AND SERVICES-HOSTED SOLUTIONS**

1. Definitions. Unless otherwise specified in this contract (or an Exhibit or Exhibit hereto), the following definitions shall apply, if applicable:
 - 1.1. "Acceptance" shall have the meaning set forth in Section 4 of this Exhibit.
 - 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.
 - 1.3. "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.
 - 1.4. "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.
 - 1.5. "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.
 - 1.6. "Confidential Information" shall have the meaning set forth in Section 10.2 of this Exhibit.
 - 1.7. "Contractor's Certification" shall have the meaning set forth in Section 4.4 of this Exhibit.
 - 1.8. "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.
 - 1.9. "Customer" means any purchaser of products or services from the Authority.
 - 1.10. "Deliverables" means all information, data, materials, and devices (including equipment and hardware) ~~software (including the Application) and other items to be~~ delivered by the Contractor to the Authority, as ~~specified~~ specifically identified as a Deliverable in the Project Plan. For clarity, the Application is not a Deliverable.
 - 1.11. "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.
 - 1.12. "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, provisionals, 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.

- 1.13. "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.
- 1.14. "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.
- 1.15. "Project" means the project related to the Application and the Authority's information technology systems as described in more detail in this Exhibit.
- 1.16. "Project Plan" means the project 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.
- 1.17. "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.
- 1.18. "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; (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).
- 1.19. "Service Levels" shall have the meaning set forth in Section 11.1 of this Exhibit.
- 1.20. "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, distribution and use, as approved in writing by the Authority.
- 1.21. "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.
- 1.22. "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.
- 1.23. "System" means an application, network, database or system provided or used to perform the Services by the Contractor.

- 1.24. "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.
 - 1.25. "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.
 - 1.26. "Updates" means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of the Application during the Service Term.
2. Contractor Requirements.
- 2.1. Unless specified in the applicable Project Plan, the Contractor will shall 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.
 - 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- Malware 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 the Authority's 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.
 - 2.3. The Contractor shall adopt and implement all facility and network security, disaster recovery plans and back-up plans as to protect against data loss, theft and unauthorized access, disclosure and use of the Application, Authority Data, 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 other contractors who operate or access the Authority's data center and network systems (including Authority Electronic Property) in the performance of the Services.

- 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.
- 2.5. The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority's rules, regulations, and guidelines then in effect when on-site at the Authority and all Applicable Laws.
- 2.6. 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.
- 2.7. 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 authority to notify such Customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

3. Project Plan and Milestone Deadlines.

- 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 Application and any Authority Data to be migrated, interfaced to or used in conjunction with the Application 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, 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.
- 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.

- 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 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 Application module/track delivery or other Services completion under the Project Plan in the form of a proposed change order.
 - 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 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 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).
 - 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.
4. Acceptance.
- 4.1. Unless otherwise defined or specified in an Exhibit to this contract, the provisions set forth in this Section 4 shall determine the Authority's Acceptance of the Application.
 - 4.2. 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; provided, however, that the Authority may upon written request require that the Contractor perform testing with cooperation of the Authority.
 - 4.3. When each component of the Application has been developed and tested by the Contractor as being ready for operational testing, the Contractor shall notify the Authority in writing. The Authority shall provide reasonable assistance to commence operational testing.
 - 4.4. Unless otherwise specified in the Project Plan, within thirty (30) days after operational testing, the Contractor shall certify in writing that the Application component **conforms in all material respects** 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.
 - 4.5. The Application shall be finally accepted by the Authority when (i) each component of the Application is fully operational and 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 production use on the Contractor's hosted environment, each in conformity with the Security Requirements and Technical Specifications outlined in this contract ("Acceptance").
- 4.6. 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.
 - 4.7. 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.
 - 4.8. 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 the Contractor's Certification, the Authority may terminate this Contract with respect to that particular component or the entire Application, at its sole discretion.
 - 4.9. 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.
 - 4.10. 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.
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).
 6. Application Support and Performance.
 - 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 one (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.

- 6.2. The Contractor will periodically release maintenance Updates with minimum impact and downtime to the Authority and after business hours. 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 Contractor covenants that each upgrade and will be backwards compatible with all parts of the Application.
- 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.
- 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.
- 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.
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:
 - 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;
 - 7.2. it is fully able to furnish the Services as contemplated by this contract;
 - 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;
 - 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 stakeholders within which the Project will be performed;

- 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;
- 7.6. Contractor will use commercially reasonable efforts to ensure the Application will not contain any Malware 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~~ Likewise, Contractor will use commercially reasonable efforts to ensure any patches, Updates, upgrades or error corrections to the Application provided by the Contractor likewise will not contain any Malware;
- 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;
- 7.8. the Application will comply with all Applicable Laws at all times from the date of Acceptance to the expiration of through the applicable Warranty Period;
- 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 to its knowledge 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; and
- 7.10. The System 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 used 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.
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:
- 8.1.1. 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.
- 8.1.2. 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.

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

9. Intellectual Property Rights.

- 9.1. 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.
- 9.2. 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, **if any (and** 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.
- 9.3. 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 **Application**, 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.
- 9.4. The Contractor further agrees to perform all obligations set forth in the Authority's Proprietary Rights and Data Security Exhibit attached to this Exhibit.

10. Proprietary Information and Non-Disclosure.

- 10.1. 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.
- 10.2. "Confidential Information" as used herein, shall mean and include, without limitation:
- 10.2.1. 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;

- 10.2.2. All Authority Data; and
 - 10.2.3. The Deliverables (including without limitation all work in progress) other than any Contractor Technology embodied in the Deliverables.
 - 10.3. 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.
 - 10.4. 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.
 - 10.5. 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.
 - 10.6. 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.
 - 10.7. 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.
11. Hosted Services. With respect to the Application and/or any Authority Data hosted or Processed by the Contractor, the following terms will apply:
- 11.1. 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 99.9% as measured over the course of a calendar month, excluding Standard Exceptions (the "Service Levels"). "Standard Exceptions" to the 99.9% 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.
 - 11.2. 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.
 - 11.3. 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.

- 11.4. 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.
- 11.5. 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 Authority Indemnitee as a result of any **third party** 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.
- 11.6. 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.
12. 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.

13. Use of Authority's Name. The Contractor agrees not to make any written use of or reference to the Authority's name for any marketing, public relation, advertising, display or other business purpose or make any use of Authority Data for any activity unrelated to the express business purposes and interests of the Authority under this contract, without the prior written consent of the Authority, which consent will not be unreasonably withheld.
14. 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.
15. Indemnification. In addition to general indemnification set forth elsewhere in the contract, the following indemnification obligations shall apply:
- 15.1. 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 Rights 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.
- 15.2. 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.
- 15.3. If the Application or any use thereof by the Authority or Customers is held to infringe or it is believed by either party to infringe the rights of third parties, the Contractor's will, at its expense and upon the Authority's request: (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). If neither of the foregoing (i) or (ii) is commercially practicable, the Contractor may, upon immediate notice to the Authority, terminate the Agreement and refund to the Authority the pro rata portion of the fees paid to Contractor hereunder. Contractor will have no obligation to defend or indemnify Authority if Authority or any third party has altered the Application or combined the Application with any other products or elements not furnished or previously approved by Contractor, and the alleged infringement would not have occurred but for this alteration or combination.
- 15.4. This Section contains Contractor's entire liability and Contractor's sole obligations with respect to any Claim that the Application infringes the intellectual property of any third party. The indemnity obligations contained in this Section shall survive the termination, suspension, abandonment and/or completion of this contract.

16. 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.

EXHIBIT K Revised-1
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 the Agreement, 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 Procedures” means statements of the step-by-step actions taken to achieve and maintain compliance with 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 **third party** 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 sufficiently and clearly demonstrate that the Authority also contributed to a specific Security Incident, then liability for such specific Security Incident will be mutually determined by the parties and apportioned between the parties based on their relative culpability.** 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.