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**CONTRACT NO. 200784**  
**(SSP 307263)**  
**ONBOARD VALIDATOR EXPANSION**

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**CONTRACTOR:** Bytemark, Inc  
1 Pennsylvania Plaza Suite 1100  
New York, NY 10119  
212-206-8719

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**AWARD DATE:** January 10, 2022

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**CONTRACT TERM:** 18 months from the Notice to Proceed

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**PRICE:** Not to Exceed Amount of \$1,658,920

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**PROJECT MANAGER:** Danny Souraphath  
(512)-852-7217  
[danny-souraphath@capmetro.org](mailto:danny-souraphath@capmetro.org)

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**CONTRACT ADMINISTRATOR:** Jeffery Yeomans  
(512) 369-7727  
[jeffery.yeomans@capmetro.org](mailto:jeffery.yeomans@capmetro.org)

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**AWARD/CONTRACT**

<b>1. SOLICITATION NO:</b> SSP 307263	<b>2. CONTRACT NO.:</b> 200784	<b>3. EFFECTIVE DATE:</b> Upon Execution
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**4. CONTRACT ADMINISTRATOR**

<b>NAME:</b> Jeffery Yeomans	<b>PHONE:</b> (512) 369-7727
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<b>5. SHIP TO ADDRESS:</b> Capital Metro 2910 East 5 <sup>th</sup> Street Austin, Texas 78702	<b>6. DELIVERY TERMS:</b> FOB Destination
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**7. DISCOUNTS FOR PROMPT PAYMENT: N/A**

<b>8. CONTRACTOR NAME &amp; ADDRESS:</b> Bytemark, Inc. 1 Pennsylvania Plaza, Suite 1100 New York, NY 10119	<b>9. REMITTANCE ADDRESS:</b> (If different from Item 8)
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<b>PHONE:</b> 212-206-8719	<b>EMAIL:</b> justin@bytemark.co	
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**10. DBE GOAL:** N/A

**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.

**NEGOTIATED AGREEMENT:** (Contractor is required to sign below and return an original document to the Contracting Officer within five (5) calendar days of receipt.)

Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified below and on any continuation sheets for the consideration stated herein. 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:**

Name/Title: Eric Reese  
President & CEO  
29DEC2021      Signature:       Date: \_\_\_/\_\_\_/\_\_\_

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

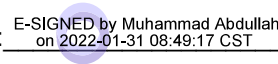
This Award/Contract Form may be executed in multiple originals, and an executed facsimile shall have the same force and effect as an original document.

**ALTERATIONS IN CONTRACT:**

- Refer to Exhibit B. Exhibit B shall be replaced in its entirety with **Exhibit B-Revised-1**, Representations and Certifications, attached hereto and made a part hereof for all pertinent purposes.
- Refer to Exhibit E-Revised-2. Exhibit E-Revised-2 shall be replaced in its entirety with **Exhibit E-Revised-3**, Contractual Terms and Conditions, attached hereto and made a part hereof for all pertinent purposes.
- Refer to Exhibit E-1. Exhibit E-1 shall be replaced in its entirety with **Exhibit E-1-Revised-1**, Addendum to Contractual Terms and Conditions Federally Assisted Contract, attached hereto and made a part hereof for all pertinent purposes.
- Refer to Exhibit G. Exhibit G shall be replaced in its entirety with **Exhibit G-Revised-1**, Host Solutions Additional Terms and Conditions for the Performance of Information Technology (IT) Products and Services, attached hereto and made a part hereof for all pertinent purposes.
- Refer to Exhibit H. Exhibit I shall be replaced in its entirety with **Exhibit H-Revised-1**, Proprietary Rights and Data Security Addendum, attached hereto and made a part hereof for all pertinent purposes.
- Refer to Exhibit I. Exhibit I shall be replaced in its entirety with **Exhibit I-Revised-1**, Access and Use Agreement, attached hereto and made a part hereof for all pertinent purposes.

**ACCEPTED AS TO:** Exhibit A-Revised-3, Section 6, Items 1 through 11, and Section 7, Items 1 through 8 for a Not to Exceed amount of \$1,658,920

**SIGNATURE OF CONTRACTING OFFICER:**

Typed Name: Muhammad Abdullah, CTCM, C.P.M. Chief Contracting Officer	Signature: 	Date: <u>January 31, 2022</u>
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E-SIGNED by Muhammad Abdullah  
on 2022-01-31 08:49:17 CST


**EXHIBIT A-REVISED-3**

**PRICING SCHEDULE**

**SSP 307263**

**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)	Bytemark, Inc.		
Address	One Pennsylvania Plaza, Floor 11, Suite 1100		
City, State, Zip	New York, NY 10119		
Phone, Fax, Email	212-206-8719		sales@bytemark.co
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)	Eric Reese, President and CEO		
Signature and Date			29OCT2021

**2. ACKNOWLEDGEMENT OF AMENDMENTS**

The offeror must acknowledge amendment(s) to this solicitation in accordance with the ACKNOWLEDGMENT OF AMENDMENTS section

**3. PROMPT PAYMENT DISCOUNT**

# of Days	N/A	Percentage	N/A
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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](mailto:PIR@capmetro.org).

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

**EXHIBIT B-REVISED-1**

**REPRESENTATIONS AND CERTIFICATIONS  
(FEDERALLY ASSISTED 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 dominate minority voting rights, use of proxy voting, or otherwise.

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

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

HaCon Ingenieurgesellschaft mbH  
Lister Str. 15  
30163 Hannover  
Germany

**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

(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, the Authority's contractors or consultants) regarding this solicitation, except as described below:

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

**6. CONTINGENT FEE**

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

- has
- has not

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

- has
- has not

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



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

## **7. CODE OF ETHICS**

(a) Statement of Purpose

The brand and reputation of Capital Metro is determined in large part by the actions or ethics of representatives of the agency. Capital Metro is committed to a strong ethical culture and to ethical behavior by all individuals serving Capital Metro as employees, members of the Board of Directors or volunteers. Individuals serving Capital Metro will conduct business with honesty and integrity. We will make decisions and take actions that are in the best interest of the people we serve and that are consistent with our mission, vision and this policy. The Code of Ethics (the "Code") documents Capital Metro's Standards of Ethical Conduct and policies for Ethical Business Transactions. Compliance with the Code will help protect Capital Metro's reputation for honesty and integrity. The Code attempts to provide clear principles for Capital Metro's expectations for behavior in conducting Capital Metro business. We have a duty to read, understand and comply with the letter and spirit of the Code and Capital Metro policies. You are encouraged to inquire if any aspect of the Code needs clarification.

(b) Applicability

The Code applies to Capital Metro employees, contractors, potential contractors, Board Members and citizen advisory committee members. Violation of the Code of Ethics may result in discipline up to and including termination or removal from the Board of Directors.

(c) Standards of Ethical Conduct

The public must have confidence in our integrity as a public agency and we will act at all times to preserve the trust of the community and protect Capital Metro's reputation. To demonstrate our integrity and commitment to ethical conduct we will:

- (1) Continuously exhibit a desire to serve the public and display a helpful, respectful manner.
- (2) Exhibit and embody a culture of safety in our operations.
- (3) Understand, respect and obey all applicable laws, regulations and Capital Metro policies and procedures both in letter and spirit.
- (4) Exercise sound judgment to determine when to seek advice from legal counsel, the Ethics Officer or others.
- (5) Treat each other with honesty, dignity and respect and will not discriminate in our actions toward others.
- (6) Continuously strive for improvement in our work and be accountable for our actions.
- (7) Transact Capital Metro business effectively and efficiently and act in good faith to protect the Authority's assets from waste, abuse, theft or damage.
- (8) Be good stewards of Capital Metro's reputation and will not make any representation in public or private, orally or in writing, that states, or appears to state, an official position of Capital Metro unless authorized to do so.
- (9) Report all material facts known when reporting on work projects, which if not revealed, could either conceal unlawful or improper practices or prevent informed decisions from being made.
- (10) Be fair, impartial and ethical in our business dealings and will not use our authority to unfairly or illegally influence the decisions of other employees or Board members.

(11) Ensure that our personal or business activities, relationships and other interests do not conflict or appear to conflict with the interests of Capital Metro and disclose any potential conflicts.

(12) Encourage ethical behavior and report all known unethical or wrongful conduct to the Capital Metro Ethics Officer or the Board Ethics Officer.

(d) Roles and Responsibilities

It is everyone's responsibility to understand and comply with the Code of Ethics and the law. Lack of knowledge or understanding of the Code will not be considered. If you have a question about the Code of Ethics, ask.

It is the responsibility of Capital Metro management to model appropriate conduct at all times and promote an ethical culture. Seek guidance if you are uncertain what to do.

It is Capital Metro's responsibility to provide a system of reporting and access to guidance when an employee wishes to report a suspected violation and to seek counseling, and the normal chain of command cannot, for whatever reason, be utilized. If you need to report something or seek guidance outside the normal chain of command, Capital Metro provides the following resources:

(1) Anonymous Fraud Hotline – Internal Audit

(2) Anonymous Online Ethics Reporting System

(3) Contact the Capital Metro Ethics Officer, Vice-President of Internal Audit, the EEO Officer or Director of Human Resources

(4) Safety Hotline

The Capital Metro Ethics Officer is the Chief Counsel. The Ethics Officer is responsible for the interpretation and implementation of the Code and any questions about the interpretation of the Code should be directed to the Ethics Officer.

(e) Ethical Business Transactions

Section 1. Impartiality and Official Position

(1) A Substantial Interest is defined by Tex. Loc. Govt. Code, § 171.002. An official or a person related to the official in the first degree by consanguinity or affinity has a Substantial Interest in:

(i) A business entity if the person owns ten percent (10%) or more of the voting stock or shares of the business entity or owns either 10% or more or \$15,000 or more of the fair market value of the business entity OR funds received by the person from the business entity exceed 10% of the person's gross income for the previous year; or

(ii) Real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

Capital Metro will not enter into a contract with a business in which a Board Member or employee or a Family Member of a Board Member or employee as defined in Section 8 has a Substantial Interest except in case of emergency as defined in the Acquisition Policy PRC-100 or the business is the only available source for essential goods and services or property.

(2) No Board Member or employee shall:

(i) Act as a surety for a business that has work, business or a contract with Capital Metro or act as a surety on any official bond required of an officer of Capital Metro.

(ii) Represent for compensation, advise or appear on behalf of any person or firm concerning any contract or transaction or in any proceeding involving Capital Metro's interests.

(iii) Use his or her official position or employment, or Capital Metro's facilities, equipment or supplies to obtain or attempt to obtain private gain or advantage.

(iv) Use his or her official position or employment to unfairly influence other Board members or employees to perform illegal, immoral, or discreditable acts or do anything that would violate Capital Metro policies.

(v) Use Capital Metro's resources, including employees, facilities, equipment, and supplies in political campaign activities.

(vi) Participate in a contract for a contractor or first-tier subcontractor with Capital Metro for a period of one (1) year after leaving employment on any contract with Capital Metro.

(vii) Participate for a period of two (2) years in a contract for a contractor or first-tier subcontractor with Capital Metro if the Board Member or employee participated in the recommendation, bid, proposal or solicitation of the Capital Metro contract or procurement.

## Section 2. Employment and Representation

A Board Member or employee must disclose to his or her supervisor, appropriate Capital Metro staff or the Board Chair any discussions of future employment with any business which has, or the Board Member or employee should reasonably foresee is likely to have, any interest in a transaction upon which the Board Member or employee may or must act or make a recommendation subsequent to such discussion. The Board Member or employee shall take no further action on matters regarding the potential future employer.

A Board Member or employee shall not solicit or accept other employment to be performed or compensation to be received while still a Board Member or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of their duties.

A Board Member or employee with authority to appoint or hire employees shall not exercise such authority in favor of an individual who is related within the first degree, within the second degree by affinity or within the third degree by consanguinity as defined by the Capital Metro Nepotism Policy in accordance with Tex. Govt. Code, Ch. 573.

## Section 3. Gifts

It is critical to keep an arms-length relationship with the entities and vendors Capital Metro does business with in order to prevent the appearance of impropriety, undue influence or favoritism.

No Board Member or employee shall:

(1) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for the Board Member's or employee's decision, vote, opinion, recommendation or other exercise of discretion as a public servant. [Tex. Penal Code §36.02(c)]

(2) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for a violation of any law or duty. [Tex. Penal Code §36.02(a)(1)]

(3) Solicit, accept or agree to accept any benefit or item of monetary value from a person the Board Member or employee knows is interested in or likely to become interested in any Capital Metro contract or transaction if the benefit or item of monetary value could reasonably be inferred as intended to influence the Board Member or employee. [Tex. Penal Code §36.08(d)]

(4) Receive or accept any gift, favor or item of monetary value from a contractor or potential contractor of Capital Metro or from any individual or entity that could reasonably be inferred as intended to influence the Board Member or employee.

Exception: Consistent with state law governing public servants, a gift does not include a benefit or item of monetary value with a value of less than \$50, excluding cash or negotiable instruments, unless it can reasonably be inferred that the item was intended to influence the Board Member or employee. A department may adopt more restrictive provisions if there is a demonstrated and documented business need. [Tex. Penal Code § 36.10(a)(6)]

Exception: 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 is not a violation of this policy. The Capital Metro Ethics Officer or Board Ethics Officer must be consulted for a determination as to whether a potential gift falls within this exception.

Exception: Food, lodging, or transportation that is provided as consideration for legitimate services rendered by the Board Member or employee related to his or her official duties is not a violation of this policy.

If you are uncertain about a gift, seek guidance from the Ethics Officer.

#### Section 4. Business Meals and Functions

Board Members and employees may accept invitations for free, reasonable meals in the course of conducting Capital Metro's business or while attending a seminar or conference in connection with Capital Metro business as long as there is not an active or impending solicitation in which the inviting contractor or party may participate and attendance at the event or meal does not create an appearance that the invitation was intended to influence the Board Member or employee.

When attending such events, it is important to remember that you are representing Capital Metro and if you chose to drink alcohol, you must do so responsibly. Drinking irresponsibly may lead to poor judgment and actions that may violate the Code or other Capital Metro policies and may damage the reputation of Capital Metro in the community and the industry.

#### Section 5. Confidential Information

It is everyone's responsibility to safeguard Capital Metro's nonpublic and confidential information.

No Board Member or employee shall:

(1) Disclose, use or allow others to use nonpublic or confidential information that Capital Metro has not made public unless it is necessary and part of their job duties and then only pursuant to a nondisclosure agreement approved by legal counsel or with consultation and permission of legal counsel.

(2) Communicate details of any active Capital Metro procurement or solicitation or other contract opportunity to any contractor, potential contractor or individual not authorized to receive information regarding the active procurement or contract opportunity.

#### Section 6. Financial Accountability and Record Keeping

Capital Metro's financial records and reports should be accurate, timely, and in accordance with applicable laws and accounting rules and principles. Our records must reflect all components of a transaction in an honest and forthright manner. These records reflect the results of Capital Metro's operations and our stewardship of public funds.

A Board Member or employee shall:

(1) Not falsify a document or distort the true nature of a transaction.

- (2) Properly disclose risks and potential liabilities to appropriate Capital Metro staff.
- (3) Cooperate with audits of financial records.
- (4) Ensure that all transactions are supported by accurate documentation.
- (5) Ensure that all reports made to government authorities are full, fair, accurate and timely.
- (6) Ensure all accruals and estimates are based on documentation and good faith judgment.

#### Section 7. Conflict of Interest

Employees and Board Members are expected to deal at arms-length in any transaction on behalf of Capital Metro and avoid and disclose actual conflicts of interest under the law and the Code and any circumstance which could impart the appearance of a conflict of interest. A conflict of interest exists when a Board Member or employee is in a position in which any official act or action taken by them is, may be, or appears to be influenced by considerations of personal gain rather than the general public trust.

Conflict of Interest [Tex. Loc. Govt. Code, Ch. 171 & 176, § 2252.908]

No Board Member or employee shall participate in a matter involving a business, contract or real property transaction in which the Board Member or employee has a Substantial Interest if it is reasonably foreseeable that an action on the matter would confer a special economic benefit on the business, contract or real property that is distinguishable from its effect on the public. [Tex. Loc. Govt. Code, § 171.004]

#### Disclosure

A Board Member or employee must disclose a Substantial Interest in a business, contract, or real property that would confer a benefit by their vote or decision. The Board Member or employee may not participate in the consideration of the matter subject to the vote or decision. Prior to the vote or decision, a Board Member shall file an affidavit citing the nature and extent of his or her interest with the Board Vice Chair or Ethics Officer. [Tex. Loc. Govt. Code, § 171.004]

A Board Member or employee may choose not to participate in a vote or decision based on an appearance of a conflict of interest and may file an affidavit documenting their recusal.

#### Section 8. Disclosure of Certain Relationships [Tex. Loc. Govt. Code, Ch. 176]

#### Definitions

- (1) A Local Government Officer is defined by Tex. Loc. Govt. Code § 176.001(4). A Local Government Officer is:
  - (i) A member of the Board of Directors;
  - (ii) The President/CEO; or
  - (iii) A third party agent of Capital Metro, including an employee, who exercises discretion in the planning, recommending, selecting or contracting of a vendor.
- (2) A Family Member is a person related within the first degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.
- (3) A Family Relationship is a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.
- (4) A Local Government Officer must file a Conflicts Disclosure Statement (FORM CIS) if:

(i) The person or certain Family Members received at least \$2,500 in taxable income (other than investment income) from a vendor or potential vendor in the last twelve (12) months through an employment or other business relationship;

(ii) The person or certain Family Members received gifts from a vendor or potential vendor with an aggregate value greater than \$100 in the last 12 months; or

(iii) The vendor (or an employee of the vendor) has a Family Relationship with the Local Government Officer.

(5) A vendor doing business with Capital Metro or seeking to do business with Capital Metro is required to file a completed questionnaire (FORM CIQ) disclosing the vendor's affiliations or business relationship with any Board Member or local government officer or his or her Family Member.

#### Section 9. Duty to Report and Prohibition on Retaliation

Board Members and employees have a duty to promptly report any violation or possible violation of this Code of Ethics, as well as any actual or potential violation of laws, regulations, or policies and procedures to the hotline, the Capital Metro Ethics Officer or the Board Ethics Officer.

Any employee who reports a violation will be treated with dignity and respect and will not be subjected to any form of retaliation for reporting truthfully and in good faith. Any retaliation is a violation of the Code of Ethics and may also be a violation of the law, and as such, could subject both the individual offender and Capital Metro to legal liability.

#### Section 10. Penalties for Violation of the Code of Ethics

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

(1) If a Board Member does not comply with the requirements of this policy, the Board member may be subject to censure or removal from the Board in accordance with Section 451.511 of the Texas Transportation Code.

(2) If an employee does not comply with the requirements of this policy, the employee shall be subject to appropriate disciplinary action up to and including termination.

(3) Any individual or business entity contracting or attempting to contract with Capital Metro which offers, confers or agrees to confer any benefit as consideration for a Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant in exchange for the Board Member's or employee's having exercised his official powers or performed his official duties, or which attempts to communicate with a Board Member or Capital Metro employee regarding details of a procurement or other contract opportunity in violation of Section 5, or which participates in the violation of any provision of this Policy may have its existing Capital Metro contracts terminated and may be excluded from future business with Capital Metro for a period of time as determined appropriate by the President/CEO.

(4) Any individual who makes a false statement in a complaint or during an investigation of a complaint with regard to a matter that is a subject of this policy is in violation of this Code of Ethics and is subject to its penalties. In addition, Capital Metro may pursue any and all available legal and equitable remedies against the person making the false statement or complaint.

#### Section 11. Miscellaneous Provisions

(1) This Policy shall be construed liberally to effectuate its purposes and policies and to supplement such existing laws as they may relate to the conduct of Board Members and employees.

(2) Within sixty (60) days of the effective date for the adoption of this Code each Board Member and employee of Capital Metro will receive a copy of the Code and sign a statement acknowledging that they have read, understand and will comply with Capital Metro's Code of Ethics. New Board Members and employees will receive a copy of the Code and are required to sign this statement when they begin office or at the time of initial employment.

(3) Board Members and employees shall participate in regular training related to ethical conduct, this Code of Ethics and related laws and policies.

**8. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS**

(a) The offeror represents as part of its offer that it (mark one):

- has
- has not

participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 301, Part 2 of Executive Order Number 11114;

and it (mark one):

- has
- has not

filed all required compliance reports.

**9. AFFIRMATIVE ACTION COMPLIANCE**

(a) The offeror represents as part of its offer that it has a workforce of (indicate below the number of employees including temporary, full-time, or part-time employees):

(b) The offeror:

**has** developed an Affirmative Action Plan at each establish as required by the rules and regulations of the Secretary of Labor (41 C.F.R. parts 60-1 and 60-2) and **has on file**. The offeror will submit the Affirmative Action Plan to the Authority within ten (10) days of the date of the Notice of Award (NOA).

**has not** developed an Affirmative Action Plan at each establish as required by the rules and regulations of the Secretary of Labor (41 C.F.R. parts 60-1 and 60-2) and **does not have on file**. The offeror will submit the Affirmative Action Plan to the Authority within one hundred and twenty (120) days of the date of the Notice to Proceed (NTP).

(c) The offeror:

- has
- has not

previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.



**10. DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS**

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

**11. CLEAN AIR AND WATER CERTIFICATION**

Applicable if the offer exceeds \$150,000, or the Authority believes that orders under an indefinite contract in any year will exceed \$150,000 or a facility to be used has been the subject of a conviction under the Air Act [42 U.S.C. § 7413(c)(1)] or the Water Act [33 U.S.C. § 1319(c)] and is listed by the Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt.

By submission of this offer, the offeror certifies that:

(a) any facility to be used in the performance of this proposed contract (mark one):

is

is not

listed on the EPA List of Violating Facilities;

(b) it will immediately notify the Authority, before award, of the receipt of any communication from the EPA Administrator, or a designee of the EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) it will include a certification substantially the same as this certification, including this paragraph (c), in every subcontract not otherwise exempt by law.

**12. CERTIFICATION OF NON-SEGREGATED FACILITIES**

(a) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

(b) The offeror agrees that a breach of this certification is a violation of the Equal Opportunity Clause in Exhibit E of the contract.

(c) Definitions: For the purpose of this Certification of Non-Segregated Facilities, the following definitions shall apply:



(1) "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin, because of written or oral policies or employee custom. The term does not include separate or single-user restrooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(2) "gender identity" refers to one's internal sense of one's own gender; it may or may not correspond to the sex assigned to a person at birth, and may or may not be made visible to others.

(3) "sexual orientation" refers to an individual's physical, romantic, and/or emotional attraction to people of the same and/or opposite gender; examples of sexual orientations include "straight" (or heterosexual), lesbian, gay, and bisexual.

(d) It further certifies that (except where it has obtained identical certifications from proposed subcontracts for specific time periods) it will:

(1) obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity provision in Exhibit E of the contract; and

(2) retain such certifications in its files.

### **13. CERTIFICATION OF RESTRICTIONS ON LOBBYING**

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

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

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

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

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

### **14. TEXAS ETHICS COMMISSION CERTIFICATION**

In accordance with Section 2252.908, Texas Government Code, upon request of the Authority, the selected contractor may be required to electronically submit a "Certificate of Interested Parties" with the Texas Ethics Commission in the form required by the Texas Ethics Commission, and furnish the Authority with the original signed and notarized

document prior to the time the Authority signs the contract. The form can be found at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Questions regarding the form should be directed to the Texas Ethics Commission.

**15. CERTIFICATION REGARDING ISRAEL**

As applicable and 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.

**16. CERTIFICATION REGARDING FOREIGN TERRORIST ORGANIZATIONS**

Contractor certifies and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**17. VERIFICATION REGARDING FIREARM ENTITIES AND FIREARM TRADE ASSOCIATIONS**

As applicable and in accordance with Section 2274.002 of the Texas Government Code, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the Contract against a firearm entity or firearm trade association.

**18. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION**

(a) The Prime Contractor shall perform no less than thirty percent (**30%**) of the work with his or her 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, and articles, and the arrangement and titles of project drawings shall not control the Prime Contractor in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.

(c) The offeror hereby certifies that the **Schedule C of Subcontractor Participation** form submitted with the Exhibit D, Disadvantaged Business Enterprise (DBE) portion of this offer represents no more than seventy percent (**70%**) of the work will be done by subcontractors.

**19. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

(a) *Prohibition.* This Contract is subject to the Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471 related to the prohibition of certain "covered telecommunications equipment and services", which includes:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(3) Telecommunications or video surveillance services provided by such entities or using such equipment.

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c) *Representation.* The Offeror represents that—

(1)  It

will  
 will not

provide covered telecommunications equipment or services to the Authority in the performance of any contract, sub-contract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

does  
 does not

use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(d) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

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

(e) 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. In addition, under 18 U.S.C. §. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to five (5) years, or both.

Name of Offeror:

Bytemark, Inc.

Type/Print Name of Signatory:

Eric Reese

Signature:



Date:

29DEC21

**EXHIBIT B-1  
BUY AMERICA**

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The Buy America regulations require that all manufactured products used in FTA-funded projects be produced in the United States. A manufactured product is considered domestic if all of the manufacturing processes for the product take place in the United States and all of the components of the product are of U.S. origin as set forth in 49 C.F.R. § 661.5(d)(1). A component of a manufactured product "is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents." 49 C.F.R. § 661.5(d)(2).

The contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The offeror must submit the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification may be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below:

**CHOOSE ONE CERTIFICATION FORM**

[THIS SPACE INTENTIONALLY LEFT BLANK]

**BUY AMERICA CERTIFICATION – PRODUCTS/CONSTRUCTION**

**REQUIRED PRICING PROPOSAL SUBMITTAL**

FAILURE OF OFFEROR / BIDDER TO FURNISH THIS EXECUTED DOCUMENT WITH ITS PROPOSAL/ BID MAY BE CONSTRUED BY CAPITAL METRO AS A NEGATIVE RESPONSE AND THE OFFER WILL NOT BE CONSIDERED.


**BUY AMERICA CERTIFICATE FOR PROCUREMENTS OF  
STEEL AND MANUFACTURED PRODUCTS OVER \$150,000.00**

This procurement is subject to the Federal Transit Administration (FTA) Buy America Requirements in 49 C.F.R. § 661.5.

Section 165(a) of the Surface Transportation Act of 1982 permits FTA participation on this contract only if all iron, steel, cement, and manufactured products used in the contract are produced in the United States.

A waiver from the Buy America Provision may be sought by Capital Metro if grounds for the waiver exist.

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: October 6, 2021  
Signature:   
Title: President and CEO  
Company: Bytemark, Inc.

**OR**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_

**EXHIBIT D**  
**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

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**1. DEFINITIONS**

(a) Disadvantaged business enterprise or DBE means a for-profit small business concern (1) that is at least fifty-one (51%) percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act P.L. 112-239 and Small Business Administration regulations implementing it (13 C.F.R. part 121) that also does not exceed the cap on average annual gross receipts specified in 13 C.F.R. Section 121.402.

(c) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is: (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; (2) any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

6) Women;

7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**2. OFFEROR'S OBLIGATION**

Each subcontract the Contractor signs with a subcontractor must include the following assurance:

"The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."



## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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### **3. SUBMISSION OF DBE FORMS**

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

### **4. CREDIT TOWARDS GOALS**

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

(b) Only expenditures to DBEs that perform a Commercially Useful Function may be counted towards goals. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. If a DBE does not perform or exercise responsibility for at least thirty (30%) percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a commercially useful function.

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

(d) When a DBE performs as a participant in a joint venture, the Contractor may count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(e) The Contractor may credit towards the DBE goal the full expenditures for materials and supplies provided that the DBE is a manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

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general character described by the specifications. (also, produces materials from raw materials, or substantially alters materials before resale)

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

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

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

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

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

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

**5. DEMONSTRATION OF GOOD FAITH EFFORT**

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

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

<b>Industry</b>	<b>NAIC Code</b>
Service Establishment Equipment and Supplies Merchant Wholesalers	423850

(2) Due to the specialization of this solicitation a race conscious goal was not established at this time, but any DBEs utilized will be captured as Race Neutral.

(b) In the event that a firm submitted by an Offeror is not able to become certified by one of the certifying agencies under the Texas Unified Certification Program, the Offeror will be notified and given an opportunity to substitute that firm with another DBE firm. The Offeror will be given a deadline to accomplish the substitution. In the event the Offeror is unable to contract with another substitute DBE firm, the good faith efforts that the Offeror made in attempting to contract with the substitute DBE firm must be documented to the DBE Department. Documentation submitted in accordance with this subparagraph is the only exception to the requirements in subparagraph A above pertaining to the good faith efforts that the Authority will consider in determining whether the Offeror shall be otherwise eligible for award of the contract.

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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

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

2) Whether the Offeror selected portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

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

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

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

6) Whether the Offeror made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

7) Whether the Offeror made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

8) Whether the Offeror effectively used the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

(d) In determining whether an Offeror has demonstrated good faith, the Authority will look not only at the different kinds of efforts that the Offeror has made, but also the quantity and intensity of those efforts. Efforts that are mere pro forma are not good faith efforts to meet the goals (even if they are sincerely motivated) if, given all relevant cir-

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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cumstances, the Offeror's efforts could not reasonably be expected to produce a level of DBE participation sufficient to meet the goals.

### 6. CERTIFICATION OF DBEs

(a) Capital Metro is a participating entity under the Texas Unified Certification Program (TUCP). This means that Capital Metro will accept certifications from any of the certifying agencies that have agreed to perform the certification of DBEs within the state of Texas under the Texas Unified Certification Program (TUCP). The participating agencies are:

- **Texas Department of Transportation**
- **North Central Texas Regional Certification Agency**
- **South Central Texas Regional Certification Agency**
- **City of Houston**
- **City of Austin and**
- **Corpus Christi Regional Transportation Authority.**

(b) The City of Austin will serve as the certifying agency for the Austin region, which includes the counties of Bastrop, Caldwell, Hays, Travis and Williamson County. All prospective DBEs must submit appropriate forms, available through the City of Austin Certification Department, to prove actual ownership and control by DBEs. All such firms shall cooperate in supplying additional information as requested by the City of Austin DBE Certification Department, which will determine the certification of eligible DBEs. Blank forms may be obtained by contacting the City of Austin Certification Department, 4201 Ed Bluestein Blvd., Austin, TX 78721, (512) 974-7645, fax: (512) 974-7609. Vendors may also contact Capital Metro at (512) 389-7441 or [officeofdiversity@capmetro.org](mailto:officeofdiversity@capmetro.org) to obtain information.

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

(d) Information concerning DBEs currently certified can be obtained by contacting the DBE Department at the address in subparagraph (b). Offerors may access the DBE directory at <http://www.txdot.txdotcms.com>. Offerors are reminded that only certified DBEs may participate in Authority contracts in such capacities. **If Offerors propose using a DBE not currently certified with any of the other recipients in the Texas Unified Certification Program (TUCP), the DBE Application must be approved by the City of Austin Certification Department no later than the date and time established for the receipt of proposals.** Any extensions to the due date by amendment to the solicitation shall automatically extend the due date of the application. If an offeror proposes using a DBE from another state, the firm must produce evidence that it is DBE certified in the state in which the business is headquartered.

### 7. TERMINATION OF DBE SUBCONTRACTORS

In accordance with the requirements of 49 C.F.R. 26.53, Prime Contractor may not terminate a DBE Contractor for convenience and perform the work with its own workforce, that of its affiliates, non-DBE contractor or another DBE contractor without prior written approval from the Authority. In the event that an Offeror wishes to modify its Schedule C of Subcontractor Participation after its offer is submitted and/or a contract awarded, the Offeror/Contractor must notify the Authority in writing and request approval of the modification. This will include any changes to items of work, material, services or DBE firms which differ from those identified on the Schedule C of Subcontractor Participation on file. The Offeror/Contractor must cooperate in supplying the Authority with additional information with respect to the requested modification. If the modification involves a substitution and if it is approved by the Authority, the Offeror/Contractor must make every good faith effort to replace the DBE with another DBE. In the event that the Offeror/Contractor is unable to contract with another DBE firm, such good faith efforts must be documented to the DBE Department. The substitute DBE firm must be certified by the Authority in order for the Offeror/Contractor to receive credit towards fulfilling its DBE participation goals for the contract. Furthermore, any DBE subcontractor approved by the Authority to be replaced at the request of Prime Contractor has the right to appeal this decision

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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directly to Capital Metro's Office of Diversity if they disagree with the decision. Appeals must be submitted in writing within five (5) business days of being notified. Appeals should be sent to:

DBE Officer  
Capital Metro Office of Diversity  
2910 E 5<sup>th</sup> Street  
Austin, TX 78702

Email appeals may be sent to [officeofdiversity@capmetro.org](mailto:officeofdiversity@capmetro.org).

### **8. PAYMENT DOCUMENTATION**

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

### **9. BANKS AND FINANCIAL INSTITUTIONS**

The Contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions.

### **10. SUBCONTRACT REQUIREMENTS**

(a) Non Discrimination. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT assisted contracts. The contractor shall require each subcontractor under this contract to include this clause in its subcontracts.

(b) Prompt Payment of Subcontractors. The contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Authority. Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Authority. The contractor shall require each subcontractor under this contract to include this clause in its subcontracts.

### **11. SANCTIONS FOR NONCOMPLIANCE WITH THE AUTHORITY'S DBE PROGRAM PROVISIONS**

Failure of the Contractor to carry out the Authority's DBE Program requirements shall constitute a breach of contract and may result in termination of the contract for default or such remedy as the Authority may deem appropriate. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.

**CAPITAL METRO**  
**Schedule C of Subcontractor Participation**

Instructions: The Offeror shall complete this form by listing 1) Names of all proposed subcontractors. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Status as a DBE, SBE, or non-DBE, 5) Ethnic Code of firm 6) Age of the firm, 7) Annual gross receipts of the firm, 8) % or \$ amount of Total Contract. Those subcontractors which are listed on this form as DBEs or SBEs must have current certification as a DBE or SBE with a Capital Metro accepted certifying agency (see Exhibit D paragraph 6). The DBE or SBE certification must be complete by the time the proposals are submitted. Additionally, those subcontractors which are listed on this form as DBEs or SBEs must complete an Intent to Perform as a DBE or SBE Subcontractor agreeing to the information listed here.

**Name of Prime Contractor (Offeror):** Bytemark, Inc  
**Project Name:** On Board Validator Expansion  
**SS Number:** 307263

Ethnic Code: **A)** African-American Male **B)** African American Female **C)** Asian- Indian Male  
**D)**Asian- Indian Female **E)** Asian –Pacific Male **G)** Asian-Pacific Female **H)** Hispanic Male  
**I)** Hispanic Female **J)** Native American Male **K)** Native American Female **L)** White Female **M)** Other

1) Name of Subcontractor	2) Address, Telephone # of Subcontracting Firm (Including name of contact person)	3) Description of Work, Services Provided. Where applicable, specify "supply" or "Install" or both.	4) DBE, SBE or non-DBE	5) Ethnic Code	6) Age of Firm	7) Annual Gross Receipts	8) DBE or SBE % or \$ amount of Total Contract
INIT Inc., USA	424 Network Station Chesapeake, VA. 23320 Jordan Medlin 757-413-9100, ext. 329	Supplier of validators	Non-DBE	M	22 years	\$77,434,795.00	N/A
ESP Enterprises, Inc.	13161 Misty Willow Dr Houston, TX 77070 Richard Torres 832-691-1055	Installation of transit equipment	DBE	H	19 years (2002)	\$5 million to \$15 million	\$187,675

**This schedule must be completed as instructed above and include every subcontractor proposed on this project.**

The undersigned will enter into a formal agreement with DBE or SBE contractors for work listed in this schedule upon execution of a contract with Capital Metro. The contractor agrees to the terms of this schedule by signing below and submitting the Intent to Perform as completed by the DBE or SBE subcontractors. The contractor also certifies that no more than 70% of the work for this project will be subcontracted.



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Signature of Authorized Representative of Offeror

10/7/2021

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Date Signed

**CAPITAL METRO**  
**Intent to Perform as a DBE/SBE Contractor or DBE/SBE Subcontractor**  
**SS-307263**

(Note: In accordance with 49 CFR (Code of Federal Regulations) Part 26 and Board policy, DBE firms participating in Capital Metro's DBE Program must have "current" certification status with a TUCP Certifying Agency (see Exhibit D Paragraph 6) by the due date established for this IFB/RFP/SOQ.

1. TO: (name of Offeror/Prime Contractor) Bytemark, Inc.
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due.
3. The undersigned is either currently certified by a Capital Metro approved certifying entity as a SBE or will be at the time this solicitation is due.

The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) Installation of transit equipment

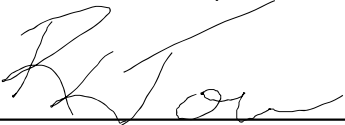
\_\_\_\_\_

\_\_\_\_\_

and at the following price \$ 187,675 and/or \_\_\_\_\_% of the total contract amount (should be the same \$ or % found on Schedule C).

With respect to the proposed subcontract described above, the undersigned DBE or SBE anticipates that \_\_\_\_\_<sup>0</sup>% of the dollar value of this subcontract will be sublet and/or awarded to other contractors. Any and all subcontractors that a DBE or SBE subcontractor uses must be listed in Schedule C-1 and must also be DBE or SBE certified. (The DBE or SBE subcontractor should complete this section only if the DBE or SBE is subcontracting any portion of its subcontract.)

ESP Enterprises, Inc.  
(Name of DBE/SBE Firm)

  
(Signature of Authorized Representative)

281-444-2377  
(Phone Number)

11/30/2021  
(Date Signed)



Bytemark, Inc.  
(Name of Offeror/Prime Contractor)

  
(Signature of Authorized Representative)

212-206-8719  
(Phone Number)

30NOV2021  
(Date Signed)

**EXHIBIT E-REVISED-3**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**(SERVICES CONTRACT)**

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**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) "Authority Data" means all data, content and information (i) submitted by or on behalf of the Authority or its 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 the Contract, or (iii) to which the Contractor has access in connection with the Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
- (d) "Authority Electronic Property" means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any application programming interfaces (API) 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 obtaining products or services from the Authority.
- (e) "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.
- (f) "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.
- (g) "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.
- (h) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (i) "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.
- (j) "Contract Term" means period of performance set forth in the paragraph entitled "Term" contained in **Exhibit E-Revised-3**.
- (k) "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.
- (l) "Contractor" means the entity that has assumed the legal obligation to perform the Services as identified in the Contract.

- (m) "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.
- (n) "Deliverables" means ~~has (i) any deliverables or other work product that will be generated, prepared, created, or developed 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 for the use by the Authority under the Contract or (ii) the~~ meaning set forth Exhibit G to the extent such exhibit is incorporated by reference in the Contract, as applicable.
- (o) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (p) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (q) "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.
- (r) "FTA" means the Federal Transit Administration.
- (s) "Fully Burdened Hourly Labor Rate" means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- (t) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any software, design, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, 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.
- (u) "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.
- (v) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.
- (w) "Notice to Proceed" means written authorization for the Contractor to start the Services.
- (x) "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.
- (y) "Proposal" means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.
- (z) "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.
- (aa) "Subcontract" means the Contract between the Contractor and its Subcontractors.
- (bb) "Subcontractor" means subcontractors of any tier.

(cc) "Works" means any tangible or intangible items or things that have been or will be specifically, generated, prepared, created, or developed 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, for the exclusive use of, and ownership by, 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, and (vi) all documentation and materials related to any of the foregoing.

## **2. TYPE OF CONTRACT**

(a) This is a hybrid fixed-price contract, portions of which are definite-quantity/definite-delivery and other portions are indefinite-quantity/indefinite-delivery. In particular:

(1) Definite-Quantity/Definite-Delivery. The following line items in Exhibit A-Revised-2 Pricing Schedule are definite-delivery/definite quantity as follows:

a. All Items in Section 6, Pricing

(2) Indefinite-Quantity/Indefinite-Delivery. The quantities provided by the Authority on the Schedule are estimates used as a basis for Contract Award and are, therefore, not hereby purchased under the Contract. The following line items in Exhibit A-Revised-2 Schedule are Indefinite-Quantity/Indefinite-Delivery:

a. All Items in Exhibit A-Revised-2 of Sections 7, 8, 9, 10, and 11

b. This Contract is subject to the following minimum/maximum paragraph:

- i. Minimum order. The Authority will order a minimum of \$1,000 in services under this Contract.
- ii. Maximum order. The Authority will order a maximum not to exceed the total dollar amount of this Contract.

c. There is no limit to the number of orders that may be placed under this Contract.

## **3. TERM**

The term of the Contract shall be one (1) year from the Contract 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-2- Pricing Schedule upon written notice to the 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](mailto: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:

- (3) the Contract and order number (if any);
- (4) a complete itemization of all costs including quantities ordered and delivery order numbers (if any);
- (5) any discounts offered to the Authority under the terms of the Contract;
- (6) evidence of the acceptance of the supplies or Services by the Authority; and
- (7) any other information necessary to demonstrate entitlement to payment under the terms of the Contract.

(b) Subject to the withholding regarding retainage as provided herein, 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 ~~under this Contract~~. 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, ~~including reasonable documentation to support such overpayment determination, or~~ 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. PERFORMANCE BOND**

(a) The Contractor shall provide a Performance Bond in an amount equal to one-hundred (100%) of the contract amount. The Contractor shall be required to submit the required bond to the Contracting Officer within ten (10) days from the date of Contract Award Date. The surety company providing the bond must be listed in the latest United States Treasury Department Circular 570, be authorized to do business in Texas and have an underwriting limitation equal to or greater than the penal sum of the bond. If any surety upon any bond furnished in connection with the Contract becomes insolvent, or otherwise not authorized to do business in the State, the Contractor shall promptly furnish equivalent security to protect the interest of the Authority and of persons supplying labor, materials and/or equipment in the prosecution of the Work.

(b) The bond shall be accompanied by a valid Power-of-Attorney, issued by the surety company and attached, signed and sealed, with the corporate embossed seal, to the bond, authorizing the agent who signs the bond to

commit the surety company to the terms of the bond, and stating on the face of the Power-of-Attorney the limit, if any, in the total amount for which he/she is empowered to issue a single bond.

(c) A surety bond rider increasing the dollar amount of any payment and performance bond will be required for any Change that increases the contract amount.

(d) In addition, the Authority may request a surety bond increasing the dollar amount if:

- (1) any surety upon any bond furnished with this Contract becomes unacceptable to the Authority;
- or
- (2) any surety fails to furnish reports on its financial condition as required by the Authority.

**8. 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 except Professional Liability and Tech E&O 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

Comprehensive General Liability Insurance:

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

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

Workers' Compensation Insurance

- (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)

Other Insurance:

(4) **Technology Error's & Omissions Insurance:** Combined Technology & Omissions Policy ("Tech E&O") 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) — All policies shall include Terrorism Coverage.~~

(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, **except on the Tech E&O policy** 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, **except on the Tech E&O policy** 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 (**excluding Tech E&O policy**).

~~(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.~~

(g) 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.

(h) The Contractor and its lower tier Subcontractors are required to cooperate with the Authority and report all potential claims **that have incurred as a direct result of the Services** (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.

**9. 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.

**10. REMOVAL OF ASSIGNED PERSONNEL**

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

**11. REPRESENTATIONS AND WARRANTIES**

The Contractor represents and warrants to the Authority, that the Services shall be performed in **substantial** 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.

**12. 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.

**13. 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.

**14. 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.

**15. 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.

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

**16. PERSONNEL ASSIGNMENTS**

(a) The Contractor shall perform the Services in an orderly and workmanlike manner, and shall utilize persons skilled and qualified for the performance of the Services. The Authority will have the right to review the experience of each person assigned to perform the Services and approve personnel assignments, including those to be performed by Subcontractors,

(b) The Contractor certifies that the Contractor, and each Subcontractor, have established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that the Contractor and each Subcontractor 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 Services being performed, considering the risk and liability to the Contractor and the Authority. The Authority reserves the right to require the Contractor and any Subcontractor to disclose any criminal or military criminal convictions of assigned personnel and the right to disapprove the use of assigned personnel with criminal or military convictions.

(c) At the commencement of the Contract, the Contractor shall provide a list of candidates to be used to provide the Services and shall certify that a criminal history background check has been completed on each candidate within the preceding 6-month period. Thereafter during the Term, the Contractor shall submit quarterly report containing a list of all persons (including Subcontractors) assigned to perform Services under the Contract and a certification that each named person has undergone a criminal background check as required by this Contract. The Authority shall have the right to audit the Contractor's records for compliance with the provisions of this Section. Criminal background checks shall include the following:

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

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

(3) **National Sex Offender Registry**

(4) **Military Discharge:** For any candidates that have served in the military, the Contractor shall review the DD Form 214 "Certificate of Release or Discharge from Active Duty" (Long Form).

\*Matters identified on the Long Form as military discipline will be considered in accordance with the corresponding crime listed below with respect to classification, severity and time elapsed.

The Contractor shall disclose to the Authority the type of arrests with pending dispositions and convictions for crimes according to the classification of offense and the timetable below:

<b>Offense Type</b>	<b>Action Required</b>
<b>Crimes Against the Person (other than sex crimes)</b>	
Felony	Submit to Capital Metro for review if less than 10 years from date of <b>release from confinement</b>
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of <b>conviction</b>

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

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

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

- (1) The nature and gravity of the offense or conduct;
- (2) The degree of harm caused by the offense or conduct;
- (3) The time that has elapsed since the conviction or completion of probation or jail time;
- (4) The nature of the job sought, including the job duties, environment and level of supervision;
- (5) Any incorrect criminal history;
- (6) Wrongful identification of the person;
- (7) The facts and circumstances surrounding the offense or conduct;
- (8) The number of offenses for which the candidate was convicted;
- (9) The subsequent conviction for another relevant offense;
- (10) The age of the person at the time of conviction or completion of probation or jail time;

(11) Evidence that the person performed the same type of work, post-conviction, with the same or different employer, with no known incidents of criminal conduct;

(12) The length and consistency of employment history before and after the conviction in a similar field as the current position sought;

(13) Rehabilitation efforts, e.g., education, treatment, training;

(14) Employment or character references and any other information regarding fitness for the particular position;

(15) Whether the person is bonded or licensed under any federal, state or local program or any licensing authority;

(16) The person's statement of the circumstances surrounding the offense and conviction and relevant factors is consistent with publicly available record related to the crime and conviction; and

(17) Any other factors deemed relevant in the consideration of a particular assessment.

At the time a request is made for an individual assessment, the Contractor must include the following documentation:

- the candidate's application/resume;
- a copy of the criminal conviction history, including those tried in a military tribunal;
- available court information related to the conviction;
- any publicly available information related to the offense and conviction;
- a statement from the candidate addressing any/all factors set forth above and explaining why the person is qualified for the assignment notwithstanding the conviction; and
- a statement from the candidate explaining why the person is an acceptable risk for the work to be performed by the candidate.

The Authority will provide a written decision to the Contractor within five (5) working days of receipt of all required documentation from the Contractor.

(e) The Contractor will conduct new criminal history background checks on all assigned personnel every two (2) years during the Contract to ensure the preceding criterion are still met by the assigned personnel and notify the Authority if an employee has a subsequent arrest with pending disposition or conviction (or change in driving record, as applicable) that requires further review by the Authority using the criterion set forth above. The Authority reserves the right to request that the assigned individual be removed from performing work under this Contract.

**17. 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.

## 18. 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-Revised-2. Contractor shall have no obligation to proceed with requested work until the Parties have agreed on the amount and/or duration of the Equitable Adjustment.**

## 19. 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 **substantially** perform the Services within the time specified herein or any extension thereof; or

(2) if the Contractor fails to perform any of the other **material** provisions of this Contract and does not cure such failure within a period of ten (10) days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

(b) In the event the Authority terminates this Contract in whole or in part as provided in 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 **reasonable** 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 subparagraph.

(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 perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor and if such default arises out of causes beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or Services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this subparagraph, 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-Revised-2**.

(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.

## **20. TERMINATION FOR CONVENIENCE**

(a) The Authority may, whenever the interests of the Authority so require, terminate this Contract, in whole or in part, **upon thirty (30) days written notice** 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;

(2) costs incurred in preparing to perform and performing the terminated portion of the Services 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.

(5) 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.

## **21. CONTRACTOR CERTIFICATION**

The Contractor certifies that the fees in this Contract 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.

## **22. INTELLECTUAL PROPERTY; DATA PRIVACY PROVISIONS**

(a) Unless otherwise specified in **Exhibit A-Revised-2** to the Contract, the Deliverables and Intellectual Property Rights therein shall be owned by the Contractor. The Contractor may use its own previously developed data, documentation, software, concepts, materials, or information, in whatever form, or develop the Deliverables in performing its services for the Authority.

(b) Unless otherwise specified in **Exhibit A-Revised-2** to the Contract, the Contractor hereby grants to the Authority the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, distribute copies of, ~~and prepare derivative works of~~ the Deliverables 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 to authorize its employees, contractors, personnel and service providers to do any or all of the foregoing on behalf of or for the Authority. The Contractor hereby irrevocably and forever waives, and agrees never to assert, any moral rights or other rights of restraint or attribution in or to the Deliverables that 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.

(c) To the extent that any Intellectual Property Rights owned by a third-party are embodied, contained, reserved or reflected in the Deliverables, the Contractor shall either:



(1) grant to the Authority the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to 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 authorize others to do any or all of the foregoing, on behalf of or for the Authority; or

(2) where the obtaining of such 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 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 DELIVERABLES 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 Deliverables.

(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 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 and its subcontractors and their respective employees and personnel may have access to the Authority Data (including without limitation, personally identifiable information ("PII")) in connection with the performance of the Contract. PII shall be any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, ridership and travel pattern data. Customer Personally Identifiable Information, or Customer PII, means any PII relating to the Authority's customers. To the extent any Authority Data (including PII) is made available to the Contractor under the Contract, the Contractor shall take reasonable steps maintain the confidentiality, security, safety, and integrity of all PII and other Authority Data in accordance with the Authority's Proprietary Rights and Data Security Addendum, which will be attached as an addendum to the Contract, as applicable.

(f) The Contractor and its subcontractors, employees and consultants may have require access to the Authority Electronic Property and related Authority Data in connection with the performance of services under the Contract. In such event, the Contractor agrees that it will, and it will cause its subcontractors and any of their respective employees

and personnel to execute the Authority's Access and Use Agreement, which will be attached as an addendum to the Contract, as applicable.

This Section 22 will survive termination or expiration of this Agreement for any reason.

**23. 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.

**24. 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.

**25. 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, for an unreasonable period of time, suspended or delayed by an act of the Authority in the administration of this Contract, or by the Authority's failure to act within the time specified in this Contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the Contract modified in writing accordingly. However, no adjustment shall be made under this 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 subparagraph 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.

**26. 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.

**27. 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.

**28. 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.

**29. CONFLICT OF INTEREST**

- (a) Reference is made to Exhibit B, Representations and Certifications, Code of Ethics, 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 Ethics.
- (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 Ethics) in a business entity or real property.
- (c) The Contractor agrees to ensure that the Code of Ethics 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 Ethics 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](http://www.ethics.state.tx.us). The questionnaire shall be sent to the Authority's Contract Administrator.

### 30. 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.

### 31. 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.

### 32. 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.

(d) The requirements of Subchapter J, Chapter 552, Government Code, may apply to this **contract** and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

(1) The requirement of Subchapter J, Chapter 552, Government Code as amended currently applies to expenditures of at least \$1 million in public funds for the purchase of goods or services.

### 33. 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.

### 34. LIMITATION OF LIABILITY

In no event shall the **Authority Parties** or ~~its their~~ 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 their~~ obligations under this Contract, or the Authority's termination of the Contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. **Contractor's gross negligence or willful misconduct, Contractor's breach of personal or financial information or security, or Contractor's indemnification obligations.** The Contractor shall include similar liability provisions in all its Subcontracts.

**35. 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 **and applicable** during the term of this Contract.

**36. 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 E. 5th Street, Austin, Texas 78702.

**37. 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.

**38. 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.

**39. 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.

**40. 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.

**41. 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 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 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.
- (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.**

**42. 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.

**43. 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, ~~and/or any other reasonably foreseeable cause or event beyond the control of the Contractor or its Subcontractors, and without the fault or negligence of the Contractor, including but not limited to a delay caused by the Authority or any third party.~~~~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 **reasonably** 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.

#### **44. 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 **proven and documented** 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.

#### **45. 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.

#### **46. 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.

#### **47. 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.

#### **48. 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.

**49. 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-2 – Pricing Schedule
- 2. Exhibit E-Revised-3 – Contractual Terms and Conditions
- 3. Exhibit E-1-Revised-1 – Addendum to Contractual Terms and Conditions, Federally Assisted
- 4. Exhibit F-Revised-2 – Scope of Services and Compliance Matrix
- 5. Exhibit B-Revised-1 – Representations and Certifications
- 6. Exhibit B-1 – Buy America
- 7. Exhibit D – Disadvantaged Business Enterprise Program
- 8. Exhibit G-Revised-1 – Additional Terms and Conditions for the Performance of Information Technology (IT) Products and Services
- 9. Exhibit H-Revised-1 – Proprietary Rights and Data Security Addendum
- 10. Exhibit I-Revised-1 – Access and Use Agreement
- 11. Other provisions or attachments to the Contract

**50. 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.

**51. VARIATION IN ESTIMATED QUANTITY**

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than ten percent (10%) above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred ten percent (110%) or below ninety percent (90%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request (in writing) an extension of time to be received by the Contracting Officer within ten (10) days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the Contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

**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.

(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 e-mail 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:** Sr. Director/Chief Contracting Officer  
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. Gov’t 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.

**55. COOPERATIVE CONTRACT**

(a) The Authority has entered into a master cooperative purchasing agreement with other governmental entities (with the Authority, the “Cooperative Members”) to form the Texas Interlocal Purchase Cooperative, under which the Cooperative Members grant access and make available to one another certain contracts of the Cooperative Members, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271 of the Local Government Code. The Contractor agrees to offer to other eligible Cooperative Members the goods and services provided under this Contract with the same prices, and under terms and conditions, of this Contract.’

(b) The Authority does not accept any responsibility or liability arising from or related to a separate contract between another Cooperative Member and Contractor based on this Contract or for any purchases made thereunder.

**56. AUSTIN TRANSIT PARTNERSHIP**

At the direction of Capital Metro, the services provided under the Contract may be performed on behalf of or in connection with Austin Transit Partnership (ATP), and ATP's projects, initiatives, and proposals.

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**EXHIBIT E-1 – REVISED-1**  
**ADDENDUM TO CONTRACTUAL TERMS AND CONDITIONS**  
**FEDERALLY ASSISTED SUPPLY OR SERVICE CONTRACT**

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The Contractor clauses and provisions of this Exhibit apply to all Federally assisted supply and service contracts. These provisions supersede and take precedence over any other clause or provision contained within this contract which may be in conflict therewith.

**1. EQUAL EMPLOYMENT OPPORTUNITY**

This clause applies to all contracts, except contracts for standard commercial supplies or raw materials and construction. During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. This shall include, but not be limited to: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (c) The Contractor shall include the provisions of paragraphs (a) and (b) of this clause in every Subcontract or purchase order except for standard commercial supplies or raw materials and construction.

**2. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

- (a) It is the policy of the Authority and the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the DBE requirements of 49 C.F.R Part 26 applies to this Contract.
- (b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The requirements of 49 C.F.R. Part 26, and the Authority's DOT approved Disadvantaged Business Enterprise (DBE) program are incorporated in this Contract by reference. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of this Contract or such other remedy, as the Authority deems appropriate.

**3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION**

- (a) Overtime Requirements. No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess for forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (b) Violation, Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) above, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under the Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) above.

(c) Withholding for Unpaid and Liquidated Damages. The Authority shall upon the Authority's own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payroll and Basic Records.

(1) The Contractor or Subcontractor shall maintain payroll records during the course of Contract work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 209 C.F.R. 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Authority or the Department of Labor. The Contractor or Subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the provisions set forth in paragraphs (a) through (d) above, and also a provision requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the provisions set forth in paragraphs (a) through (d) above.

#### **4. TITLE VI CIVIL RIGHTS ACT OF 1964**

During the performance of this Contract, the Contractor for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

(a) Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter referred to as "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations)), which are herein incorporated by reference and made a part of this Contract.

(b) Nondiscrimination. The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

(d) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor

shall so certify to the Authority, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Authority shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
- (2) cancellation, termination or suspension of the Contract, in whole or in part.

(f) Incorporation of Provisions. The Contractor shall include the provisions of paragraph (1) through (f) above in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any Subcontract or procurement as the Authority or FTA may direct as a means of enforcing such revisions including sanctions for non-compliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the Authority, and, in addition, the United States to enter into such litigation to protect the interests of the Authority and the United States.

## **5. CLEAN AIR AND WATER ACT**

(a) Definitions:

(1) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. § 7401 et seq.).

(2) "Clean air standards," as used in this clause means:

(i) any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738.

(ii) an applicable implementation plan as described in Section 110(d) of the Air Act [42 U.S.C. § 7410(d)]; or

(iii) an approved implementation procedure under Section 112(d) of the Air Act [42 U.S.C. § 7412(d)].

(3) "Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. § 1342), or by local government to ensure compliance with pre-treatment regulations as required by Section 307 of the Water Act (33 U.S.C. § 1317).

(4) "Compliance," as used in this clause, means compliance with:

(i) clean air or water standards; or

(ii) a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(5) "Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised, by a Contractor or Subcontractor, sued in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(6) "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. § 1251 et seq.).

(b) The Contractor agrees:

(1) to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 7414) and Section 308 of the Clean Water Act (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this Contract.

(2) that no portion of the work required by the prime Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) to use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and

(4) to insert the substance of this clause into any nonexempt Subcontract, including this paragraph (b)(4).

**6. ENERGY POLICY AND CONSERVATION ACT**

The Contractor shall recognize mandatory standards and policies relating to energy efficiency contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 et seq.).

**7. OFFICIALS NOT TO BENEFIT**

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract or to any benefit arising from it. However, this clause does not apply to this Contract to the extent that this Contract is made with a corporation for the corporation's general benefit.

**8. BUY AMERICA PROVISION**

This Contract is subject to the Buy America provisions of the Surface Transportation Assistance Act of 1982, as amended, and the Federal Transit Administration's implementing regulations found at 49 C.F.R. Part 661. The provisions of that Act and its implementing regulations are hereby incorporated by reference into this Contract.

**9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

This clause only applies to contracts in which materials, equipment, or commodities may be transported by ocean vessel in carrying out the terms of the contract. As required by 46 C.F.R. Part 381, the Contractor agrees:

(a) to utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates of United States flag commercial vessels; and

(b) to furnish within thirty (30) days following the date of loading for shipments originating with the United States, or within thirty (30) working days following the date of loading for shipments originating outside of the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to the Authority, (through the prime Contractor in the case of a Subcontractor's bills-of-lading) and to Inter-Agency Liaison, Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project; and

(c) to insert the substance of the provisions of this clause in all Subcontracts issued pursuant to this Contract.

**10. FLY AMERICA**

The Contractor agrees that international air transportation of any persons involved in or property acquired for the Contract must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

**11. AUDIT AND INSPECTION OF RECORDS**

(a) This clause is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.

(b) The Contractor shall maintain records, and the Authority, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such Contractor, involving transactions related to the Contract, for the purpose of making audit, examination, excerpts and transcriptions.

(c) The Contractor further agrees to include in all Subcontracts hereunder a provision to the effect that the Subcontractor agrees that the Authority, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor, involving transactions related to the Subcontract, for the purpose of making audit, examination, excerpts and transactions.

**12. RESTRICTIONS ON LOBBYING**

(a) The Contractor shall timely comply with the requirements of the lobbying restrictions set forth in Section 319 of Public Law 101-121, as implemented by the Department of Transportation in 49 C.F.R. Part 20, and as those authorities may be hereafter amended.

(b) If a Standard Form LLL, "Disclosure Form to Report Lobbying," is required to be completed by the Contractor or Subcontractor at any tier, such disclosure form shall be furnished to the Authority.

**13. ACCESS REQUIREMENTS TO INDIVIDUALS WITH DISABILITIES**

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(c) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 39;

(d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 36;

(e) DOJ Regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;



- (f) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Parts 101-10;
- (g) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609.

**14. CHARTER SERVICE OPERATIONS**

If this is an operational service contract:

- (a) The Contractor agrees to comply with 49 U.S.C. § 5323(d) and 49 C.F.R. Part 604. The Contractor is prohibited from providing charter service using federally funded equipment or facilities if there is at least one (1) private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. § 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation; and

School Bus Operators

- (b) Pursuant to 49 U.S.C. § 5323(f) and 49 C.F.R. Part 605, the Contractor may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.

**15. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

- (a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- (b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

- (c) The Contractor agrees to include the above two clauses in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

**16. PRIVACY ACT**

- (a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restriction and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees



operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the Contract.

(b) The Contractor agrees to include the above clause in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

**17. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

(a) Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

The Contractor agrees to include the above clause in each Subcontract associated with this Contract. The clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

**18. NOTICE OF FEDERAL REQUIREMENTS**

(a) The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in Capital Metro's Master Agreement with the FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply shall constitute a material breach of this Contract.

(b) The Contractor is advised that Federal requirements applicable to this Contract as set forth in federal law, regulations, policies, and related administrative practices may change during the performance of this Contract. Any such changes shall also apply to this Contract.

**19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS – FTA CIRCULAR 4220.1F**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Capital Metropolitan Transportation Authority (Capital Metro) requests, which would cause Capital Metro to be in violation of the FTA terms and conditions.

**20. SEISMIC SAFETY REGULATIONS**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**21. DRUG-FREE WORKPLACE PROGRAM**

(a) As used in this clause:

(1) "Alcohol" means ethyl alcohol and any beverage containing ethyl alcohol.

(2) "Controlled substance(s)" means a substance, including a drug and an immediate precursor listed in Schedules I through V of Subchapter A of the Texas Controlled Substances Act, Tex. Rev. Civ. Stat. Ann. Articles

481.032 - 481.036. These substances include, but are not limited to, marijuana, heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, morphine or its derivatives, mescaline, peyote, phencyclidine (PCP, Angel Dust), opium, opiates, methadone, cocaine, Quaaludes, amphetamines, "exotic/designer" drugs, benzodiazepines, Seconal, codeine, barbiturates, Phenobarbital, or Valium.

(3) "Safety sensitive task" means each category of work performed at a construction workplace which, if performed by a person impaired by the effects of alcohol or a controlled substance:

- (i) would pose a serious risk of death or personal injury to the employee or others in the vicinity; or
- (ii) could compromise the quality of the construction in such manner as would impose a significant public safety risk in the operation of the Authority's public transportation system.

(4) "Drug-free workplace" means a site for the performance of work done in connection with the Authority's construction contract at which employees are prohibited from using alcohol or from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(5) "Employee" means an employee of a Contractor or Subcontractor who may be directly engaged in the performance of work under the Authority's construction contract.

(6) "Reasonable suspicion" means the presence or absence of specific criteria identified in the Contractor's drug-free workplace program (indicating the possibility that a person is under the influence of alcohol or a controlled substance) as observed by the Contractor's supervisory personnel with reasonable training in the identification of such criteria.

(b) The program shall provide for mandatory drug testing of employees who are to perform safety sensitive tasks under the following circumstances:

(1) All employees will be tested prior to assignment to the Authority's construction project to ascertain the use of controlled substances if the employee will be performing safety sensitive tasks; and

(2) When there is a reasonable suspicion that an employee is under the influence of alcohol or a controlled substance at the workplace; and

(3) When an employee has been involved in an accident or unsafe practice (as defined in the Contractor's safety program) at the workplace.

(c) The program may, at the Contractor's discretion, include mandatory employee drug testing under the following circumstances:

(1) As part of or as a follow-up to counseling or rehabilitation for controlled substance use; or

(2) As part of a voluntary employee drug testing program.

(d) A random testing procedure to detect the use of alcohol or a controlled substance by employees performing safety sensitive tasks is required as part of the Contractor's program for the purpose of preventing or deterring hazardous performance. The procedure shall require that, at a minimum, five percent (5%) of the Contractor's employees will be randomly tested within the Contract period or within each year of the Contract period, whichever period is shorter.

(e) All testing by or on behalf of the Contractor because of a requirement in the Authority's Contract shall be conducted only for employees engaged (or to be engaged) in safety sensitive tasks and only for use of alcohol or a controlled substance and shall be conducted in a manner and under written policies that minimize the intrusion on the employee's privacy and personal dignity. This provision shall not preclude the Contractor from adding its own additional testing requirements.

(f) The Contractor shall publish a statement notifying employees that the use of alcohol at the workplace or the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance by employees at any time is prohibited and specifying the actions that will be taken against employees for violations of such prohibition.

(g) The program must require each employee who will perform a safety sensitive task, prior to working under the Authority's Contract to:

- (1) Acknowledge in writing the Contractor's drug-free workplace program; and

(2) Give advance written consent to any drug testing that may be conducted under the Contractor's program and the use of test results for decisions related to employment, disciplinary action, or continued employment. The Contractor will agree, in connection with the employee's consent that the results of testing for alcohol and controlled substances will not be voluntarily referred to any law enforcement agency. If the Contractor is subject to a collective bargaining agreement:

(i) the procedure for obtaining the individual employee's acknowledgment and consent must be consistent with the Contractor's obligations under the collective bargaining agreement; and

(ii) employees shall have the right to be accompanied by a union representative when any specimen is obtained for testing.

(h) The Contractor will establish a drug-free awareness program to inform its employees about:

(1) The dangers of drug abuse in the workplace;

(2) The Contractor's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees who refuse to submit to required testing and for other violations of the drug-free workplace program including, but not limited to, being unable to remain employed at the workplace until approval to return is obtained from the Authority.

(i) The Contractor's drug-free workplace program shall, at a minimum, include:

(1) Policies and procedures for specimen collection, chain of custody for specimens, laboratory qualification standards, laboratory analysis procedures, quality control requirements, and test result reporting procedures which substantially conform to the material requirements of the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the U.S. Department of Health and Human Services in effect on the date of award of the Authority's construction contract.

(2) Procedures for the Contractor's employees to report their use of prescription drugs used in the course of medical treatment or which have been prescribed and authorized for use by a licensed medical practitioner.

(3) The criteria the Contractor will use for "reasonable suspicion" testing.

(4) The levels of alcohol or controlled substances which will be used in conjunction with a determination that an employee is "under the influence" or is "impaired by the effects of" alcohol or controlled substance(s).

(j) The Contractor shall display a notice, prominently placed near each entrance to the workplace, stating that, by entering the premises, persons are consenting to an inspection of themselves and their property including, but not limited to, their clothing, vehicles, briefcases, lunch boxes, tool boxes, purses, and packages.

(k) The Contractor agrees to use its best efforts to establish and maintain a work environment free of use by employees of alcohol or controlled substances through implementation of paragraph (b) through (j) of this clause. The Contractor shall prepare and maintain records in sufficient detail to demonstrate compliance with the requirements of this clause including, but not limited to, certifications from Subcontractors and records of drug or alcohol tests conducted during performance of the Contract. Such records shall be subject to inspection and audit by the Authority, and the Contractor's noncompliance may authorize the Authority to withhold all or any portion of any payments due the Contractor until the Contractor demonstrates compliance.

(l) A Drug-Free Workplace Program clause identical to this clause (except for changes appropriate for designation of the parties), including this subparagraph (l) will be included in every Subcontract entered into in connection with this Contract.

**22. RECYCLED PRODUCTS; 42 U.S.C. § 6962, 40 C.F.R. Part 247, Executive Order 12873**

(a) Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or Contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more

of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

(b) Flow Down

These requirements flow down to all contractor and Subcontractor tiers.

(c) Recovered Materials

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

**23. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS; 49 U.S.C. § 5310, § 5311, and § 5333, 29 C.F.R. Part 215**

(a) Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

(b) Flow Down

These provisions are applicable to all contracts and Subcontracts at every tier.

(c) Transit Employee Protective Provisions

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(i) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying Contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(ii) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying Contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. DOL letter.

(iii) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each Subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

(d) The Authority encourages the Contractor, to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official Authority business or when performing any work for or on behalf of the Authority. See Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm> ) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, February 2, 2010, available at [https://www.transportation.gov/sites/dot.dev/files/docs/FAPL\\_2010-01.pdf](https://www.transportation.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf)). This includes, but is not limited to:

(1) Considering new rules and programs (1) re-evaluating existing programs to prohibit text messaging while driving;

(2) Conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and

(3) Encouraging voluntary compliance with the agency’s text messaging policy while off duty.

(e) The Contractor is encouraged to insert the substance of this clause in all tier Subcontract awards.

**24. DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING**

(a) The Contractor agrees to comply with:

(1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);

(2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and:

(i) Adopt and enforce policies that ban text messaging while driving in Contractor-owned or rented vehicles or, if applicable, Authority-owned vehicles; or while driving privately-owned vehicles when performing any Work for or on behalf of the Authority.

(ii) Conduct initiatives in a manner commensurate with the size of the business, such as,

(A) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(B) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(i) *Safety*. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or

a privately-owned vehicle when on official business in connection with the Contract, or when performing any work for or on behalf of the Contract;

(ii) *Contractor Size.* The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and

(iii) *Extension of Provision.* The Contractor agrees to include these Special Provisions of this Contract in its sub-contract agreements, and encourage its sub-contractors to comply with this Special Provision.

(b) For purposes of this paragraph, the phrase “text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise; it does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

**25. VETERANS EMPLOYMENT**

Capital Metro is a recipient of Federal financial assistance on this Contract. The Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5 C.F.R.) who have the requisite skills and abilities to perform the construction work required under the Contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**26. SEAT BELT**

Seat Belt Use. The Contractor agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

(a) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and

(b) Including a “Seat Belt Use” provision in each of its sub-contractor agreements related to the Contract.\

**27. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

(a) Pursuant to Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471, the Authority is prohibited from using federal funds to:

(1) Procure or obtain,

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use “Covered Telecommunications Equipment or Services” as a substantial or essential component of any system, or as critical technology as part of any system.

(b) As described in Public Law 115-232, section 889, “Covered Telecommunications Equipment or Services” is:



(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(3) Telecommunications or video surveillance services provided by such entities or using such equipment.

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(c) Contractor shall not use or provide to the Authority Covered Telecommunications Equipment or Services in the performance of this Contract.

(d) Contractor shall insert the substance of this Paragraph in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(e) Contractor shall notify the Authority immediately if Contractor cannot comply with the prohibition during the performance of this Contract.

**Instructions for filling out the Compliance Matrix:**

- A. The Contractor is required to indicate the compliance status relative to each individual requirement listed in the Compliance Matrix by marking C-can comply; N-cannot comply, A-will comply with an alternative. Responses of "C" or "N" do not require any further elaboration. A response of "A" requires an explanation.
- B. The Comments section shall be used for "A-will comply with an alternative" for explaining the alternative. Do not add comments for "C" or "N". Questions on the Compliance Matrix should be directed to the Contracts Administrator prior to submitting.
- C. The requirements in the Scope and Compliance Matrix are functional in nature and do not encompass all changes required to the system. 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.
- D. 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 corresponds with each line.

**Capital Metro Background**

Capital Metro connects people, jobs and communities by providing Central Texans with safe, high-quality and sustainable transportation alternatives. The agency provides 30 million rides annually on its buses, trains, paratransit and vanpool vehicles and serves a population of more than 1.2 million in its 543-square-mile service area. The region's transportation leader, Capital Metro has invested in transit services like its High-Frequency Network, which move more people, more reliably, as well as its innovative on-demand service Pickup. Capital Metro is committed to increasing regional mobility and, through Project Connect, will transform how people travel throughout Central Texas. Visit capmetro.org for more information.

**Overview**

Capital Metropolitan Transportation Authority ('CMTA' or 'Capital Metro') requires a proposal from Bytemark, Inc. ('Contractor') for services to expand the onboard validator (ONBV) solution to Capital Metro's Pickup vehicles, Bus fleet expansion, and Capital Metro-branded CARTS vehicles. ~~This ONBV solution shall be comprised of PROXmobil3 onboard ticket validators, Sierra Wireless MG90 routers, stanchions, metal enclosures, and other associated installation materials or components.~~ Bytemark shall supply all hardware, software, licenses, and services to fully integrate and rollout to Capital Metro the ONBV solution within Capital Metro's existing environment. Bytemark shall coordinate with INIT and SierraWireless for the architecture, configuration, testing, and acceptance of the integrated components required to replicate existing functionality including upcoming updates as part of the Customer Payment System's project.

**Objective**

The objective of this project is to implement the ONBV solution on Capital Metro's Pickup vehicles, Bus fleet expansion, and Capital Metro-branded CARTS vehicles such that the following opportunities can be realized:

1. Collection of vehicle, sales, and pass data;
2. Device consistency across services for customer seamless fare payment;
3. Contactless boarding and reduction in dwell time;
4. Usage of vehicles for future fixed route sweeper services;
5. Potential leverage of associated onboard routers for other network functionality such as real-time camera feeds.

#	Scope of Services/Compliance Matrix	Proposal			Develop
		Compliance (C/N/A)	Bytemark Comments	CMTA Response	Test #
1.0	<b>ONBV expansion solution - Device Requirements:</b>				
1.1	Contractor shall implement INIT PROXmobil3 validators.				
1.2	Contractor shall integrate with the Sierra Wireless MG90 routers to be pre-installed by Capital Metro. Contractor is responsible for connecting to the router.				
1.3	Contractor shall implement associated material to stand up the solution on each vehicle including but not limited to: the wiring, stanchions, and metal enclosures to house and protect the MG90 router. Contractor shall stand up the solution on each vehicle, integrating with components to be pre-installed by Capital Metro - MG90 router, stanchion, mount, and router housing - and provide associated software setup/configuration.				
1.4	Contractor shall implement ONBV solutions for an Infinite Delivery and Indefinite Quantity (IDIQ) following limitations in Exhibit A.				
1.5	Contractor shall provide the following number of spares: Thirty three (33) - INIT PROXmobil3 validators Ten (10) - MG90 routers  Note: This shall include associated wiring, connectors, and antennae (with the MG90s), or "kits" for each of these devices.				
1.6	Contractor shall provide ten (10) INIT PROXmobil3 validators to Capital Metro who will have them installed through the OEM vendor on replacement buses.				
1.7	ONBV solution shall be updated with the latest software following the Customer Payment System project.				
1.8	As of Oct. 1, 2021, the ONBV solution shall expand to approximately one hundred ninety three (193) total vehicles (which includes an estimated one hundred (100) Pickup, seventy two (72) Bus expansion, and twenty one (21) CapMetro-branded CARTS				
1.8.1	See Exhibit A-Revised-2 Pricing Schedule for baseline quantities of vehicles for the next 5 years to have the ONBV solution expanded to as well as their onboard validator count makeup.				
1.8.2	Onboard validator count makeup: Pickup and CapMetro-branded CARTS vehicles - one (1) INIT ONBV 40' Bus expansion vehicles - two (2) INIT ONBVs. 60' Bus expansion vehicles - three (3) INIT ONBVs.				



1.9	A total of three hundred twenty one (321) INIT PROXmobil3 validators shall be obtained in the base year. (This includes the thirty three (33) spares, ten (10) for the OEM vendor, one hundred (100) for Pickup, twenty one (21) for CapMetro-branded CARTS, and one hundred fifty seven (157) for Bus expansion.) Contractor shall be responsible for ensuring the safety and storage of these devices.			
2	<b>Implement ONBV solution - Installation Requirements:</b>			
2.1	<b>Pre-installation</b>			
2.1.1	Contractor is required to provide a list of devices and material with specifications sheet of the validator, associated wiring/connectors, and other material that is part of their installation and integration work in the Design phase. <del>including but not limited to the validator, router, stanchion, metal enclosure, and wiring for Capital Metro's review and approval prior to purchase and installation. Note: Samples of stanchion and metal enclosure to be provided for review and approval.</del>			
2.1.2	Contractor and/or subcontractor shall perform an initial inspection of each vehicle type in preparation for the install and for submitting the Installation Design Documentation.			
2.1.3	Submit Installation Design Documentation (IDD) in accordance with the agreed to project schedule and will contain information on: equipment installations/mounting; routing, conductors, color-coding, labeling, and connectors for power, communications, and vehicle ground circuits; connections with, any required modifications to and restoration of existing infrastructure; work area and equipment storage requirements; methods and quality of standards; supervision and quality assurance procedures.			
2.1.4	Installations will be authorized only after Capital Metro's approval of a pre-installation inspection document provided by the vendor. Note: Capital Metro has an existing template/form for this pre-installation inspection document.			
2.1.5	All spare components must be delivered before Capital Metro will allow equipment installations.			
2.1.6	ONBV solution implementation shall be expanded to Capital Metro's Pickup vehicles, Bus fleet expansion, and Capital Metro branded CARTS vehicles. Remaining Pickup vehicles and the bus fleet expansion are being obtained intermittently and will require phased installation as they are brought live.			
2.1.7	Contractor is responsible for working with Capital Metro to develop an installation schedule on all vehicles.			
2.2	<b>Installation</b>			
2.2.1	A pilot installation shall be completed with each vehicle type for inspection and approval prior to proceeding with the remaining fleet.			
2.2.2	Contractor is responsible for providing all material, tools, and labor required to complete the installation and integration of the solution.			
2.2.3	<del>Contractor shall proceed with an approved vendor to perform the installation. Capital Metro's preferred vendor for this installation work is ESP.</del>			
2.2.4	<del>Contractor shall install one (1) ONBV solution on each Pickup and CARTS vehicle located at the front head of the vehicle. Up to three (3) ONBVs shall be installed on each of the bus fleet, actual quantity will be determined as they are procured and phased in. True positioning and locations of equipment/material shall be determined following the onsite inspections of each vehicle type.</del>			
2.2.5	Installations shall be scheduled overnight between the hours of 20:00 and 04:00 unless otherwise agreed to or modified by Capital Metro leading up to the install.			
2.2.6	Capital Metro reserves the right to allow no more than 10% of its vehicle fleet to be out of service for installations within any given 24-hour period to accommodate vehicle installations and also to reduce this amount in order to avoid disruption to revenue service or maintenance requirements.			
2.2.7	Vendor will be responsible for the storage and security of equipment prior to installation. Capital Metro will provide space for their secure storage units.			
2.2.8	Capital Metro will provide space for vehicle installations and light and electrical service at installation locations.			
2.2.9	Capital Metro will provide sufficient staff to move vehicles as required for installations.			

2.2.10	Contractor shall have their own spares available onsite or go through their Return Material Authorization (RMA) process to address any equipment or material that may break during installation. These spares exclude what is being obtained per item #1.5.			
2.2.11	Contractor shall provide tracking information for all deliveries.			
2.2.12	Contractor shall be responsible for inventorying of all devices, equipment, and material.			
2.2.13	Installation will adhere to all Federal, State, and Local laws and regulations in addition to Capital Metro's policies.			
<b>2.3</b>	<b>Post-Installation</b>			
2.3.1	After each completion of installation, vehicles shall be tested, inspected, and verified before going back into service. Note: MTM and CARTS will be onsite to verify and sign off after each completion of installation.			
2.3.2	Contractor shall ensure that all vehicles made available for installation are ready for revenue service by the end of the agreed upon installation period.			
2.3.3	After installations, vendor will be responsible for restoring the condition of any affected systems to their pre-installation condition.			
<b>3</b>	<b>Training Requirements:</b>			
3.1	Contractor shall provide, develop, and implement a role-based, on-site training program for identified user types (including but not limited to maintenance, system administrator, and revenue service provider). See Exhibit F, Appendix A, Section 3 for requirements.			
<b>4</b>	<b>Vendor Coordination Requirements:</b>			
4.1	Contractor will be responsible for all coordination with subcontractors/vendors including but not limited to INIT and SierraWireless for the installation/integration and configuration of the solution.			
<b>5</b>	<b>Warranty &amp; Maintenance Requirements:</b>			
5.1	Equipment included in the ONBV implementation will be incorporated into Capital Metro's current warranty and maintenance contract after the base year term.			
5.2	Contractor shall provide updates to the warranty and maintenance scope of work, RMA process, or any changes to the existing agreement.			
<b>6</b>	<b>Project Management Requirements:</b>			
6.1	Contractor shall adhere to Capital Metro's Enterprise Project and Portfolio Management (EPPM) Phase Tasks Deliverables (see attached Exhibit F - Appendix A).			

Exhibit F-**Revised-2** - Scope of Services and Compliance Matrix  
Appendix A

EPPM Phase Tasks and Deliverables. Bytemark 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. Bytemark 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. Each phase is closed by Bytemark's Phase Completion Notification with Proof of Deliverables, CMTA's Acceptance Certificate Signoff, and Bytemark's Invoice upon Receipt of CMTA Authorization to Invoice.

<p><b>1.0</b></p>	<p><b>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 from Bytemark:</b></p> <table border="0"> <tr> <td style="vertical-align: top;"> <ol style="list-style-type: none"> <li>1. Project organization chart</li> <li>2. Project schedule - draft detailed schedule following Capital Metro's EPPM phased tasks and deliverables (draft)</li> <li>3. Action Items and Issues log (AIL)</li> <li>4. Project Management Plan (PMP-draft)</li> <li>5. Infrastructure and Integration Audit</li> </ol> </td> <td style="vertical-align: top;"> <ol style="list-style-type: none"> <li>6. Initiate Risk Register</li> <li>7. System Implementation Plan (draft)</li> <li>8. Compliance Matrix Review and Update</li> <li>9. Kick-off meeting with stakeholders to review and clarify requirements including confirmation of any required updates to CMTA's environment</li> </ol> </td> </tr> </table>	<ol style="list-style-type: none"> <li>1. Project organization chart</li> <li>2. Project schedule - draft detailed schedule following Capital Metro's EPPM phased tasks and deliverables (draft)</li> <li>3. Action Items and Issues log (AIL)</li> <li>4. Project Management Plan (PMP-draft)</li> <li>5. Infrastructure and Integration Audit</li> </ol>	<ol style="list-style-type: none"> <li>6. Initiate Risk Register</li> <li>7. System Implementation Plan (draft)</li> <li>8. Compliance Matrix Review and Update</li> <li>9. Kick-off meeting with stakeholders to review and clarify requirements including confirmation of any required updates to CMTA's environment</li> </ol>
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<p><b>2.0</b></p>	<p><b>Design. Bytemark's technical requirements gathering and detailed design, beginning with on-site 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. Bytemark 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:</b></p> <table border="0"> <tr> <td style="vertical-align: top;"> <ol style="list-style-type: none"> <li>1. On-Site Assessment &amp; Design Workshop; Documentation of Findings</li> <li>2. Configuration Management Document ("CMD" - Draft)</li> <li>3. Wireframe diagrams (Draft)</li> <li>4. System Implementation Plan (Final)</li> <li>5. Disaster Recovery Plan (Draft)</li> <li>6. Quality Assurance Plan (Draft) CMTA only confirms QA/QC; Plan shall clearly delineate that Bytemark performs QA/QC process</li> <li>7. Risk Management Plan (Final)</li> <li>8. Data dictionary and Entity Relationship Diagram (ERD)</li> </ol> </td> <td style="vertical-align: top;"> <ol style="list-style-type: none"> <li>9. Project Schedule (Baseline) with Resource Loading</li> <li>10. Network architecture diagram (Draft)</li> <li>11. Communication connection designs (Draft)</li> <li>12. Installation Plan (Draft): equipment installation design (if applicable), procedures, schedule, CMTA support required; detailed so CMTA can perform installation</li> <li>13. Perform Preliminary Design Review (PDR) Design and System Implementation Plan with Stakeholders</li> <li>14. Create Final Design based on review and perform Final Design Review (FDR)</li> <li>15. Review and Acceptance of Final Design and Project Management Plan</li> <li>16. Compliance Matrix Review and Update</li> </ol> </td> </tr> </table>	<ol style="list-style-type: none"> <li>1. On-Site Assessment &amp; Design Workshop; Documentation of Findings</li> <li>2. Configuration Management Document ("CMD" - Draft)</li> <li>3. Wireframe diagrams (Draft)</li> <li>4. System Implementation Plan (Final)</li> <li>5. Disaster Recovery Plan (Draft)</li> <li>6. Quality Assurance Plan (Draft) CMTA only confirms QA/QC; Plan shall clearly delineate that Bytemark performs QA/QC process</li> <li>7. Risk Management Plan (Final)</li> <li>8. Data dictionary and Entity Relationship Diagram (ERD)</li> </ol>	<ol style="list-style-type: none"> <li>9. Project Schedule (Baseline) with Resource Loading</li> <li>10. Network architecture diagram (Draft)</li> <li>11. Communication connection designs (Draft)</li> <li>12. Installation Plan (Draft): equipment installation design (if applicable), procedures, schedule, CMTA support required; detailed so CMTA can perform installation</li> <li>13. Perform Preliminary Design Review (PDR) Design and System Implementation Plan with Stakeholders</li> <li>14. Create Final Design based on review and perform Final Design Review (FDR)</li> <li>15. Review and Acceptance of Final Design and Project Management Plan</li> <li>16. Compliance Matrix Review and Update</li> </ol>
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<p><b>3.0</b></p>	<p><b>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 Bytemark 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:</b></p> <table border="0"> <tr> <td style="vertical-align: top;"> <ol style="list-style-type: none"> <li>1. Quality Assurance Plan Including QA/QC Checklist (Final)</li> <li>2. Test Environment Installation that provides CMTA full access throughout the project and the life of the system</li> <li>3. Supporting Infrastructure Implemented</li> <li>4. Application and Functionality Development</li> <li>5. Test Procedure/Plan including test Scripts, use cases, acceptance test criteria demonstrating each Compliance Matrix term is developed and meets requirement (Draft)</li> <li>6. Update Compliance Matrix with Test Number(s)</li> <li>7. CMD Values Test and Update</li> <li>8. High-level Training of CMTA Staff to Prepare for Test Phase</li> <li>9. Bytemark Warranty and Maintenance Plan Review</li> <li>10. Review and Feedback of CMTA Support Responsibility Matrix</li> </ol> </td> <td style="vertical-align: top;"> <ol style="list-style-type: none"> <li>11. Role-based, On-site Training Plan for all User Types (Draft): <ul style="list-style-type: none"> <li>•Training schedule and course outlines for review a minimum of three weeks prior to the scheduled classes</li> <li>•Separate training sessions for revenue, maintenance and system administrator roles</li> <li>•Provide all materials necessary to train participants (CMTA will provide space and laptops)</li> <li>•Schedule the training staff to be on site timely to ensure equipment, materials, student accounts and classroom are fully ready for when class begins</li> <li>•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</li> <li>•Provide customized training manuals specific to CMTA's environment in Microsoft Word and PDF. Bytemark shall provide the agreed-to number of hard copies</li> </ul> </li> </ol> </td> </tr> </table>	<ol style="list-style-type: none"> <li>1. Quality Assurance Plan Including QA/QC Checklist (Final)</li> <li>2. Test Environment Installation that provides CMTA full access throughout the project and the life of the system</li> <li>3. Supporting Infrastructure Implemented</li> <li>4. Application and Functionality Development</li> <li>5. Test Procedure/Plan including test Scripts, use cases, acceptance test criteria demonstrating each Compliance Matrix term is developed and meets requirement (Draft)</li> <li>6. Update Compliance Matrix with Test Number(s)</li> <li>7. CMD Values Test and Update</li> <li>8. High-level Training of CMTA Staff to Prepare for Test Phase</li> <li>9. Bytemark Warranty and Maintenance Plan Review</li> <li>10. Review and Feedback of CMTA Support Responsibility Matrix</li> </ol>	<ol style="list-style-type: none"> <li>11. Role-based, On-site Training Plan for all User Types (Draft): <ul style="list-style-type: none"> <li>•Training schedule and course outlines for review a minimum of three weeks prior to the scheduled classes</li> <li>•Separate training sessions for revenue, maintenance and system administrator roles</li> <li>•Provide all materials necessary to train participants (CMTA will provide space and laptops)</li> <li>•Schedule the training staff to be on site timely to ensure equipment, materials, student accounts and classroom are fully ready for when class begins</li> <li>•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</li> <li>•Provide customized training manuals specific to CMTA's environment in Microsoft Word and PDF. Bytemark shall provide the agreed-to number of hard copies</li> </ul> </li> </ol>
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Exhibit F-**Revised-2** - Scope of Services and Compliance Matrix  
Appendix A

<p><b>4.0</b></p>	<p><b>Test. Bytemark shall develop and implement a comprehensive program to test all components and applications that comprise the integrated Bytemark AFPS solution. Testing is to be performed in five distinct and separate phases:</b></p> <ol style="list-style-type: none"> <li><b>1. Functional Unit Test (FUT)</b></li> <li><b>2. System Integration Test (SIT)</b></li> <li><b>3. Field Integration Test (FIT)</b></li> <li><b>4. Pilot Test</b></li> <li><b>5. System Acceptance Test</b></li> </ol> <p><b>The testing phase shall not be deemed completed until all functional requirements have been fully tested and approved by Capital Metro. Bytemark shall develop an AFPS Test Plan that includes the number and range of tests, detailed schedule indicating the sequence of each test, and when and where each test will take place. Bytemark shall not perform any test until the corresponding test plan and procedures have been approved by Capital Metro. Bytemark shall develop Test Procedure documents with test scripts, all anticipated use cases and acceptance criteria for review and approval by Capital Metro for each phase of testing. Test deliverables:</b></p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> <ol style="list-style-type: none"> <li>1. Test Plan</li> <li>2. Test Procedures</li> <li>3. Pilot Test Plan (subset used to determine public launch)</li> <li>4. System Acceptance Test Plan</li> <li>5. Final System Acceptance (subset used to determine the start of warranty)</li> <li>6. Security Penetration Test (performed as part of SAT)</li> <li>7. Disaster Recovery Test - End-to-End (performed as part of FIT)</li> <li>8. Volume and Stress Tests</li> <li>9. Regression Testing of the entire Test Plan for any Class 1 and Class 2 Failures</li> <li>10 Test Results and Reports (including results for failed tests)</li> <li>11. Agency Test Facility</li> <li>12. 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Definition for each class are as follows: <ul style="list-style-type: none"> <li>•Severe - A Class 1 test failure is a severe defect that prevents, inhibits, or significantly impairs further testing or operation of the system.</li> <li>•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.</li> <li>•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.</li> </ul> </li> <li>15. Compliance Matrix Review and Update</li> <li>16. Training Plan (Final)</li> <li>17. User, Admin, Maint., Installation, and Training Manuals</li> </ol> </td> </tr> </table>	<ol style="list-style-type: none"> <li>1. Test Plan</li> <li>2. Test Procedures</li> <li>3. Pilot Test Plan (subset used to determine public launch)</li> <li>4. System Acceptance Test Plan</li> <li>5. 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| **5.0** | **Deploy/Go Live: Deploy: once all the test failures have been corrected, the Bytemark 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 Bytemark shall be required to participate in the monitoring of the system and respond to issues so they are quickly resolved. Deploy/Go Live Deliverables:**   |   |   | |---|---| | <ol style="list-style-type: none"> <li>1. Conduct Training for all User Types</li> <li>2. Document Procedures and Migrate Environment from Test to Production</li> <li>3. QA/QC checklist Sign off</li> <li>4. Delivery and Inventory of Spares (if applicable)</li> <li>5. Update to Disaster Recovery Plan</li> <li>6. Delivery of all Documentation including User, System Admin, Maintenance, Installation and Training Manuals, (Revise Draft)</li> <li>7. Deployment, Implementation, Configuration and Integration of the Bytemark solution with all environments</li> </ol> | <ol style="list-style-type: none"> <li>8. System Acceptance Test (SAT)</li> <li>9. Resolution of SAT TFRs</li> <li>10. Go Live Schedule and Transition Plan</li> <li>11. System Go Live</li> <li>12. Technical Lead On-site During First Week of Go Live, or Longer if System Issues are Experienced</li> <li>13. Review and coordinate with CMTA to update CMTA Business Process Flowcharts for Fare System Solution Effectiveness</li> <li>14. Revised (final) Copies of all Required Documentation including User and Training Manuals</li> <li>15. Compliance Matrix Review and Update</li> </ol> | |---|---| |
| **6.0** | **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:**   |  |   | |--|---| | <ol style="list-style-type: none"> <li>1. Follow-up training on areas identified during Go Live and Training Documentation (Final)</li> <li>2. Data dictionary and Entity Relationship Diagram (Final)</li> <li>3. Network architecture diagram (Final)</li> <li>4. Communication connection designs (Final)</li> <li>5. All AIL items closed</li> <li>6. Resolution of all Minor (Class 3) TFRs</li> <li>7. Wireframe Diagrams (final)</li> </ol> | <ol style="list-style-type: none"> <li>8. Final Documentation for Environment Refresh (Develop-Test-Stage-Production)</li> <li>9. Disaster Recovery Plan (Final)</li> <li>10. Configuration Management Documents (CMD – Final)</li> <li>11. APIs and all documentation related to all integrations (Final)</li> <li>12. Warranty and Maintenance Procedure Review and Forms</li> <li>13. As-builts: updates to any documentation including design document changes</li> <li>14. Participation in Lessons Learned</li> </ol> | |--|---| |

Exhibit F-**Revised-2** - Scope of Services and Compliance Matrix  
Appendix A

<p><b>Project Management.</b> Bytemark 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 subBytemarks. 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:</p>			
<p><b>7.0</b></p>	<table border="0"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>1. Active Partnership with CMTA in assuring Project Success</li> <li>2. Onsite as needed (May Be Performed by Technical Lead Depending Upon Scheduled Activities By Agreement with CMTA); Technical Lead will be onsite during pilot testing and resolution of any TFRs</li> <li>3. Separate Lead Project Manager and Technical Lead for All Communication Regarding Work Under This Contract</li> <li>4. Task Coordination with The Designated CMTA project manager</li> <li>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.</li> <li>6. Specification of CMTA's staff resources needed for project success with at least two weeks notice in advance within the project schedule.</li> <li>7. Support Responsibility Matrix Review and Updates as Needed</li> </ul> </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>8. Weekly Status Meetings with Updated Schedule and AIL</li> <li>9. Review and Feedback of Change Requests as Needed</li> <li>10. Monthly Risk Registry Updates</li> <li>11. Monthly Management Review Meetings</li> <li>12. Monthly Project Status Report</li> <li>13. Quarterly attendance and Status Presentation at Steering Committee Meetings</li> <li>14. Responsible for ensuring all project documentation, including meeting minutes, AIL updates, project schedule and plans are kept updated in the CMTA SharePoint site</li> </ul> </td> </tr> </table>	<ul style="list-style-type: none"> <li>1. Active Partnership with CMTA in assuring Project Success</li> <li>2. Onsite as needed (May Be Performed by Technical Lead Depending Upon Scheduled Activities By Agreement with CMTA); Technical Lead will be onsite during pilot testing and resolution of any TFRs</li> <li>3. Separate Lead Project Manager and Technical Lead for All Communication Regarding Work Under This Contract</li> <li>4. Task Coordination with The Designated CMTA project manager</li> <li>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.</li> <li>6. Specification of CMTA's staff resources needed for project success with at least two weeks notice in advance within the project schedule.</li> <li>7. Support Responsibility Matrix Review and Updates as Needed</li> </ul>	<ul style="list-style-type: none"> <li>8. Weekly Status Meetings with Updated Schedule and AIL</li> <li>9. Review and Feedback of Change Requests as Needed</li> <li>10. Monthly Risk Registry Updates</li> <li>11. Monthly Management Review Meetings</li> <li>12. Monthly Project Status Report</li> <li>13. Quarterly attendance and Status Presentation at Steering Committee Meetings</li> <li>14. Responsible for ensuring all project documentation, including meeting minutes, AIL updates, project schedule and plans are kept updated in the CMTA SharePoint site</li> </ul>
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<p><b>Payment Milestones.</b> Payment for each of the above described project phases (1.0-6.0) shall be paid in the following percentages of total Contract cost by phase/release.</p>			
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**EXHIBIT G-REVISED-1**  
**HOSTED SOLUTIONS**

**ADDITIONAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF INFORMATION  
TECHNOLOGY (IT) PRODUCTS AND SERVICES**

**1. DEFINITIONS**

Unless otherwise specified in Exhibit E of the Contract, the following definitions shall apply, if applicable:

- (a) "Acceptance" shall have the meaning set forth in Section 4(e) of this Exhibit.
- (b) "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, the Contract, and the parties all as in effect as of the date of the Contract and as amended during the Service Term of the Contract.
- (c) "Application" means the technical system, platform, application and/or subscription services to be provided by the Contractor, **excluding any hardware**, as may be further described in the Technical Specifications.
- (d) "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 the Contract, or
  - (iii) to which the Contractor has access in connection with the Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
- (e) "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 **and**
  - (vi) **excludes any hardware provided under this Contract.**
- (f) "Confidential Information" shall have the meaning set forth in Section 9(b) of this Exhibit.
- (g) "Contractor's Certification" shall have the meaning set forth in Section 4(d) of this Exhibit.
- (h) "Contractor Technology" means:
  - (i) the System,
  - (ii) the Application, and
  - (iii) 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.
- (i) "Customer" means any purchaser of products or services from the Authority.

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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- (j) “Deliverables” means all information, data, materials, devices (including equipment and hardware), software (including the Application) and other items to be delivered by the Contractor to the Authority, as specified in the Project Plan.
- (k) “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.
- (l) “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.
- (m) “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.
- (n) “Project” means the project related to the Application and the Authority’s information technology systems as described in more detail in this Exhibit.
- (o) “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.
- (p) “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.
- (q) “Security Incident” means:
- (i) the loss or misuse of Authority Data and/or the Authority Electronic Property;
  - (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of the Authority Data and/or the Authority Electronic Property;
  - (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).
- (r) “Service Levels” shall have the meaning set forth in Section 11(a) of this Exhibit.
- (s) “Security Requirements” means security measures under Applicable Laws, 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 Electronic Property from unauthorized processing, destruction, modification, distribution and use, as approved in writing by the Authority.
- (t) “Service Term” means:
- (i) the term of the contract as set forth in Exhibits A or E 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 Exhibits A or E of the Contract.
- (u) “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.

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- (v) "System" means an application, network, database or system provided or used to perform the Services by the Contractor.
- (w) "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 the Contract.
- (x) "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.
- (y) "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**

- (a) Unless specified in the applicable Project Plan, the Contractor 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 the 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.
- (b) The Contractor will establish and manage all Security Requirements necessary to protect the integrity of the Authority Data 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 the 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 the 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 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.
- (c) 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 the 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 the Authority Data and the Authority Electronic Property) in the performance of the Services.



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(d) The Contractor and/or its designated third-party auditor(s) will perform all audits requested by the Authority or otherwise necessary or required under the Security Requirements 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.

(e) The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority's rules, regulations, and guidelines pertaining to the Authority Data and the Authority Electronic Property and the Authority's information technology system then in effect when on-site at the Authority's premises and all Applicable Laws.

(f) The Contractor will timely and promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data but in no event shall such notice exceed the time periods for notice required under Applicable Laws. Following any Security Incident, the Contractor will consult in diligent good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. Without limiting the foregoing, the Contractor will:

(i) immediately undertake investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics,

(ii) timely share with the Authority any Security Incident-related information, reports, forensic evidence and due diligence obtained from the investigation into the Security Incident and cooperate with the Authority in response to regulatory, government and/or law enforcement inquiries and other similar actions,

(iii) cooperate with the Authority with respect to any public relations and other crisis management services, and litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each instance of Security Incident, be liable and responsible for payment of legal costs, disbursements, fines, settlements and damages.

To the extent that the Authority is bound to comply with any interlocal agreements pertaining to shared information (including the Authority Data), the Contractor agrees that it will comply with any such agreements shared with and acknowledged by the Contractor, and cooperate with the Authority in its compliance, with all rights and obligations pertaining to the Authority Data under such interlocal agreements.

(g) 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**

(a) 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:

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- (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.

(b) 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 the 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.

(c) 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 the 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 the Application module/track delivery or other Services completion under the Project Plan in the form of a proposed change order.

(d) 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 the 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).

(e) Should the Contractor not progress in its performance of Services at a rate commensurate with the Service Term of the 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.

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### 4. ACCEPTANCE

- (a) Unless otherwise defined or specified in an Exhibit to the Contract, the provisions set forth in this Section shall determine the Authority's Acceptance of the Application.
- (b) 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.
- (c) 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.
- (d) 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 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 the 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.
- (e) 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 the Contract ("Acceptance").
- (f) 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 the Contract within thirty (30) days after the issuance of the Contractor's Certification.
- (g) 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 the Contract. If, in the reasonable professional judgment of the Contractor such discrepancy is not valid, the Contractor shall so notify the Authority in writing.
- (h) 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 the Contract with respect to that particular component or the entire Application, at its sole discretion.
- (i) 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

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- (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.
- (j) 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

- (a) 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.
- (b) 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 ~~except in the case of an emergency~~, 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.
- (c) 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.
- (d) 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

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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.

(e) 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 the Contract, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that:

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

(b) it is fully able to furnish the Services as contemplated by the Contract;

(c) 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 the Contract;

(d) 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;

(e) any software provided or utilized in the Services will not contain any Malware;

(f) the Services and all Deliverables will comply with all Applicable Laws at all times from the date of Acceptance; and

(g) with respect to the Services and all Deliverables there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect such Services or Deliverables, 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.

(h) the Application will comply with all Applicable Laws at all times from the date of Acceptance to the expiration of the applicable warranty period;

(i) With respect to the Application,

(i) all modules and other materials (other than third party software and hardware approved by the Authority) will be original;

(ii) there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect to the Application, or any component thereof, alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country; and

(iii) the Application, and any use thereof, shall not infringe upon any Intellectual Property Right of any third party in any country; and

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~~(j) 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) \_\_\_\_\_~~

~~(ii) \_\_\_\_\_ be disclosed or distributed in source code form, or~~

~~(iii) \_\_\_\_\_ be licensed on terms inconsistent with the terms of the Contract.~~

### 8. ADDITIONAL WARRANTY REMEDIES

The Authority shall not be entitled to rely on any additional warranties implied by law or regulation. For any breach of the warranties contained in this Section, the Authority's remedy shall be:

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

(b) For the Deliverables. The correction of errors or otherwise in the Deliverables that cause breach of the warranty. If the Contractor is unable to provide such error corrections or otherwise make the Deliverables operate as warranted within the periods specified in this Contract, the Authority shall be entitled to terminate this Contract with respect to the affected feature and recover a prorated amount paid to the Contractor based on each feature, which prorated amount will be calculated based on a useful life of five years from the date of final Acceptance. If, however, such errors result in a complete loss of functionality of any Deliverables, then the Authority shall be entitled to terminate this Contract and recover all amounts paid to the Contractor by the Authority in respect of such Deliverable.

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:

(a) 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 the Contract, the Authority shall be entitled to terminate the 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 the 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.

(b) 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.

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

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### 9. **OWNERSHIP OF THE AUTHORITY MARKS, AUTHORITY DATA AND AUTHORITY ELECTRONIC PROPERTY**

- (a) 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.
- (b) 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, together with all improvements, derivative works or enhancements to any of the foregoing and all intellectual property rights related thereto. Except as expressly authorized in this Exhibit or the Contract 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.

### 10. **PROPRIETARY INFORMATION AND NON-DISCLOSURE**

- (a) The Contractor acknowledges and agrees that the Contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the term of the 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.
- (b) "Confidential Information" as used herein, shall mean and include, without limitation:
- (i) 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;
  - (ii) All Authority Data; and
  - (iii) the Authority Electronic Property.
- (c) 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.
- (d) The Contractor acknowledges and agrees that the Authority would not have entered into the 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.
- (e) 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.

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- (f) 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.
- (g) Upon any termination or expiration of the Contract, the Contractor agrees to deliver to the Authority any and all Confidential Information except that the Contractor may keep one file copy of any Confidential Information pertinent to its rights and obligations surviving the expiration or termination of the 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:

- (a) Unless otherwise designated in the contract or agreed upon in writing by the Authority, the Contractor will use commercially reasonable efforts to make the Application available 24 hours per day 7 days a week. The Contractor represents that access to the Application for The Authority and its Customers will be maintained at an availability standard of 99.99% as measured over the course of a calendar month, excluding Standard Exceptions (the "Service Levels"). "Standard Exceptions" to the 99.99% service-availability standard shall mean scheduled maintenance, maintenance downtime to resolve extraordinary technical problems with the Application or the host operating environment, force majeure (including state or federally declared natural disasters in the Contractor's physical locations), or technical difficulties attributable to any non-Contractor computer hardware, or technical difficulties attributable to the Authority's interface with the Application unless such technical difficulties are the direct fault of the Contractor. The Contractor agrees to measure and provide a detailed report to the Authority, on a monthly basis, showing the Contractor's provision of the Application as compared to the Service Levels.
- (b) 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 the 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.
- (c) 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 the Contract and ending on a date designated in advance by the Authority.
- (d) 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.



## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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### 12. THE AUTHORITY'S 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 the 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 the 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 the 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:

The Contractor shall indemnify, defend and hold harmless the Authority and its affiliates and their trustees, directors, officers, employees, customers, and agents from and against any and all damages of any nature or kind to the extent arising out of, caused by, or resulting from: (I) Any bodily injury or death of any person incurred by the Authority or any third party resulting from the negligence or willful misconduct of the Contractor or its employees, contractors or representatives; (II) Any failure of the services or deliverables to conform with the applicable laws or the technical specifications or other requirements set forth in this Contract; (III) Any security incident; and (IV) any actual or alleged violation, infringement or misappropriation of any copyright, patent, trademark, trade secret, product name, right of privacy or persona or other intellectual property right and proprietary right of a third party related to the services and deliverables regardless of whether or not such claim, damage, loss or expense is caused in part by any Indemnitee. In particular, the Contractor acknowledges that the Contractor's obligation to indemnify the Authority extends to any liability arising out of any actual negligence by the contractor in the delivery of any products or services under this Contract. Notwithstanding the foregoing, the Contractor shall not be liable to an Indemnitee for any losses incurred by such Indemnitee to the extent such claim is attributable solely to that Indemnitee's sole negligence.

~~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:~~

~~(a) any failure of the Application or the Services to conform with Applicable Laws or the Technical Specifications or Security Requirements set forth in the Contract;~~

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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(b) ~~any Security Incident; and~~

(c) ~~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 the 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.~~

### 16. APPROVAL

Any approval given by the Authority shall not relieve the Contractor of its obligations and other duties under the Contract or be construed as an assumption or waiver by the Authority.

EXHIBIT H-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.

(a) “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 Contract, but excluding any data or information that is expressly defined as owned by the Contractor in the Contract.

(b) “Authority Electronic Property” means:

- (i) any websites controlled by the Authority,
- (ii) any Authority mobile device apps,
- (iii) any **Authority owned** application programming interfaces (API) 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 obtaining products or services from the Authority.

(c) “Contract” means that certain contract for products and services entered into between the Contractor and Authority to which this Addendum is attached or incorporated by reference.

(d) “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) and any

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financial standards or business requirements applicable to the Authority's business or the Authority Data and/or the Authority Electronic Property.

(e) "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.

(f) "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.

(g) "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.

(h) "Security Incident" means:

- (i) the loss or misuse of Authority Data and/or the Authority Electronic Property;
- (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of the Authority Data and/or the Authority Electronic Property;
- (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).

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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- (i) "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.
- (j) "Security Procedures" means statements of the step-by-step actions taken to achieve and maintain compliance with Security Requirements.
- (k) "Security Requirements" means the security requirements set forth below in Section 7 of this Addendum and any security requirements requested by the Authority from time to time.
- (l) "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. FISMA COMPLIANCE**

Both parties will comply with all federal and state regulations, statues, and laws that govern this Agreement which includes, without limitation, the Federal Information Security Management Act, 2006 (FISMA) to the extent applicable to the Authority's business or the products and services provided by the Contractor. ~~The Contractor accepts ultimate responsibility and liability for the protection and preservation of all Authority Data and the Authority Electronic Property through a security operational plan (the "Security Plan").~~ The Contractor will make available a current copy of ~~the its security operational plan ("Security Plan")~~ for review upon the Authority's request. FISMA requires organizations to meet minimum security requirements by selecting the appropriate security controls as described by NIST Special Publication (SP) 800-53 revision 4, "Security and Privacy Controls for Federal Information Systems and Organizations." Note that organizations must always reference the most current version of NIST SP 800-53 for the security control selection process. ~~The Contractor should meet the minimum security requirements detailed in FIPS Publication 200.~~

### **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 and the Authority Electronic Property. 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 or Authority Electronic Property. The Contractor will not use Authority Data or Authority Electronic Property 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 United States. The Contractor shall take reasonable steps to maintain the confidentiality of and will not reveal or divulge to any person or entity any Personal Identifying Information that becomes known to it during the term of this Contract. The Contractor must maintain policies and programs that prohibit unauthorized disclosure of Personal Identifying Information by its employees and subcontractors and promote training and awareness of information

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security policies and practices. The Contractor must comply, and must cause its employees, representatives, agents, and subcontractors to comply, with such commercially and operationally reasonable directions as the Authority may make to promote the safeguarding or confidentiality of Personal Identifying Information. The Contractor must conduct background checks for employees or sub-Contractors that have access to Personal Identifying Information or systems Processing Personal Identifying Information. The Contractor must limit access to computers and networks that host Personal Identifying Information, including without limitation through user credentials and strong passwords, data encryption both during transmission and at rest, firewall rules, and network-based intrusion detection systems. In addition to the foregoing, to the extent that any Personal Identifying Information qualifies as Protected Health Information that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA," found at Public Law 104-191), and certain privacy and security regulations promulgated by the U.S. Department of Health and Human Services to implement certain provisions of HIPAA and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and its implementing regulations found in the Omnibus Final Rule (collectively the "HIPAA Regulations") found at 45 C.F.R. Parts 160, 162 and 164, the Contractor will execute and abide by the rights and obligations set forth in the Business Associate Agreement of the Authority.

### **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:

- (a) 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
- (b) 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 timely and promptly notify the Authority upon discovering or otherwise learning of a Security Incident involving the Authority Data or the Authority Electronic Property, to the extent within the Contractor's access, possession or control. 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:

- (a) at the Authority's direction, following a good faith consultation between the Authority and Contractor, 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,
- (b) ensure that such Remediation Efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident, and
- (c) reasonably cooperate with any Remediation Efforts undertaken by the Authority.
- (d) Without limiting the foregoing, the Contractor will:
  - (i) immediately undertake investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics,



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(ii) timely share with the Authority any Security Incident-related information, reports, forensic evidence and due diligence obtained from the investigation into the Security Incident and cooperate with the Authority in response to regulatory, government and/or law enforcement inquiries and other similar actions, and (iii) cooperate with the Authority with respect to any public relations and other crisis management services, and litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); ~~and in each instance of Security Incident, be liable and responsible for payment of legal costs, disbursements, fines, settlements and damages.~~ To the extent that the Authority is bound to comply with any interlocal agreements pertaining to shared information (including the Authority Data), the Contractor agrees that it will comply with any such agreement shared with and acknowledged by Contractor, and cooperate with the Authority in its compliance, with all rights and obligations pertaining to the Authority Data and/or the Authority Electronic Property under such interlocal agreements.

### **12. 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:

- (a) 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
- (b) 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.
- (c) 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.

### **13. 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.

**EXHIBIT I-REVISED-1  
ACCESS AND USE AGREEMENT**

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This Access and Use Agreement (this "Agreement") is entered into as of the effective date set forth on the signatory page between the undersigned person identified as the "Contractor" and Capital Metro Transportation Authority ("the Authority") concerning the terms and conditions under which the Authority will provide the Contractor with limited access and use of the Authority Data and/or the Authority Electronic Property in conjunction with the Contractor's performance of the Contract. The parties acknowledge and agree to the following terms and conditions:

**1. DEFINITIONS**

For purposes of this Agreement, capitalized terms shall have the meaning set forth below:

- (a) "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 Authority's or the Contractor's business the Contract, and the parties all as in effect as of the date of the Contract and as amended during the term of the Contract.
- (b) "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 Contract.
- (c) "Authority Electronic Property" means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any Authority owned application programming interfaces (API) 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 obtaining products or services from the Authority.
- (d) "Confidential Information" as used herein, shall mean and include, without limitation: (i) any information concerning the Authority, which is provided by or on behalf of the Authority 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 Authority's business, which are not published; (ii) all Authority Data; and (iii) the Authority Electronic Property.
- (e) "Contract" means that certain contract for products and services entered into between the Contractor and Authority to which this Agreement is attached or incorporated by reference. The applicable reference number for the Contract may be set forth in the signatory page to this Agreement.
- (f) "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.
- (g) "Security Incident" means: (i) the loss or misuse of the Authority Data and/or the Authority Electronic Property; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data and/or the Authority Electronic Property; (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).
- (h) "Security Requirements" means security measures under Applicable Laws, 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 the Authority Data and the Authority Electronic Property from unauthorized processing, destruction, modification, distribution and use, as approved in writing by the Authority, and all confidentiality and non-use or limited use obligations set forth in any license agreements or other third-party contracts (including interlocal agreement) applicable to the Authority Data and/or the Authority Electronic Property.

**2. CONFIDENTIAL INFORMATION**

The Contractor acknowledges and agrees that the Contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the term of the Contract, the Contractor may acquire certain Confidential Information from or regarding the Authority employees, agents and representatives or documents, or otherwise as a result of performing the services of the Contractor. 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 term of the Contract and following any expiration of termination thereof.

**3. STANDARD OF CARE**

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 product and services of the Contractor. The Contractor acknowledges and agrees that the Authority would not have entered into the 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.

**4. EXCEPTIONS**

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.

**5. COMPLIANCE**

The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority's rules, regulations, and guidelines pertaining to the Authority Data and the Authority Electronic Property and all Applicable Laws.

**6. SECURITY REQUIREMENTS**

The Contractor will establish and manage all Security Requirements necessary to protect the Authority Data integrity and permit appropriate access to the Application and the Authority Electronic Property. The Contractor will cooperate with and assist the Authority and its contractors to implement security protocols (e.g., firewalls, SSI, etc.) and take appropriate actions with respect to all Authority Data and the Authority Electronic Property to the extent in the Contractor's access, possession or control, so as to enable the Contractor to prevent the loss, alteration or unauthorized access to the Authority Data or the Authority Electronic Property. The Contractor will, upon the Authority's request, for each year of the term of the Contract, 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 Contractor's access and use thereof. The Contractor will use commercially reasonable efforts in accordance with the Security Requirements to secure all Authority Data and/or Authority Electronic Property stored on the Contractor's devices or network against access by parties external to the Authority or the Contractor 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 Data and/or Authority Electronic Property). The Contractor and/or its designated third party auditor(s) will perform all audits necessary to ensure the Authority Data integrity and adherence to the Security Requirements.

## 7. SECURITY INCIDENT

The Contractor will timely and promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data but in no event shall such notice exceed the time periods for notice required under Applicable Laws. Following any Security Incident, the Contractor will consult in diligent good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. Without limiting the foregoing, the Contractor will (i) immediately undertake investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics, (ii) timely share with the Authority any Security Incident-related information, reports, forensic evidence and due diligence obtained from the investigation into the Security Incident and cooperate with the Authority in response to regulatory, government and/or law enforcement inquiries and other similar actions, (iii) cooperate with the Authority with respect to any public relations and other crisis management services, and litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each instance of Security Incident, be liable and responsible for payment of legal costs, disbursements, fines, settlements and damages. To the extent that the Authority is bound to comply with any interlocal agreements pertaining to shared information (including the Authority Data), the Contractor agrees that it will comply with **any such agreements shared with and acknowledged by the Contractor**, and cooperate with the Authority in its compliance, with all rights and obligations pertaining to the Authority Data under such interlocal agreements. The Contractor will timely and promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data but in no event shall such notice exceed the time periods for notice required under Applicable Laws. Following any Security Incident, the Contractor will consult in diligent good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. Without limiting the foregoing, the Contractor will (i) immediately undertake investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics, (ii) timely share with the Authority any Security Incident-related information, reports, forensic evidence and due diligence obtained from the investigation into the Security Incident and cooperate with the Authority in response to regulatory, government and/or law enforcement inquiries and other similar actions, (iii) cooperate with the Authority with respect to any public relations and other crisis management services, and litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); **and in each instance of Security Incident, be liable and responsible for payment of legal costs, disbursements, fines, settlements and damages.** To the extent that the Authority is bound to comply with any interlocal agreements pertaining to shared information (including the Authority Data), the Contractor agrees that it will comply with, and cooperate with the Authority in its compliance, with all rights and obligations pertaining to the Authority Data under such interlocal agreements.

## 8. LIMITED ACCESS AND USE

The Authority authorizes the Contractor to access and use and to the extent necessary to perform the Services to install and use the Authority Data and/or Authority Electronic Property provided or made available by the Authority in its sole discretion and solely for the purposes of providing products and services for the benefit of or on behalf of the Authority under and during the term of the Contract. 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, together with all improvements, derivative works or enhancements to any of the foregoing and all intellectual property rights related thereto. Except as expressly authorized in this Agreement in the performance of the services solely for the benefit of the Authority or its 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. All access and use shall be subject to the Authority's platform and network security policies and procedures and other Security Requirements. Access and use shall be limited to the Contractor and the number of users or devices authorized in writing by the Authority.

## 9. NO OWNERSHIP

Nothing set forth in this Agreement shall give the Contractor any ownership or other license, conveyance or right, title or interest in and to any and all Confidential Information (or any intellectual property, derivatives, improvements, enhancements, feedback or suggestions related to any of the foregoing, whether conceived, reduced to practice or

developed alone or jointly with others by the Authority or the Contractor), which rights shall be owned exclusively by the Authority, and the Contractor will not knowingly take any action to challenge, contest or other action inconsistent with the Authority's rights.

**10. RESERVED RIGHTS**

The Authority reserves the right to suspend or terminate the Contractor's access and use of the Authority Data and/or the Authority Electronic Property at any time without liability or prior notice to the Contractor. Within five (5) business days of the Authority's written request, the Contractor will return or destroy all written or recorded materials comprising any Confidential Information of the Authority, together with all copies, summaries, compilations or analyses incorporating such information (whether held in computer, electronic or similar format), and certify the same in writing to the Authority; provided that all confidentiality obligations and ownership rights shall survive the return of such materials and the termination of this Agreement indefinitely or for as long as such information qualifies as a trade secret or confidential information under applicable law.

**11. SPECIFIC PERFORMANCE**

The Contractor recognizes that the restrictions and covenants contained in this Agreement are reasonable and necessary for the protection of the Authority's legitimate business interests, goodwill and trade secrets and confidential information. The Contractor acknowledges that the breach or threatened breach of this Agreement can cause irreparable damages to the Authority, and that in addition to and not in lieu of all other rights available at law or in equity, the Authority will have the right to temporary and permanent injunctive relief to prevent the breach of this Agreement by the Contractor, without posting of bond and proving actual damages. ~~the Authority will be entitled to recover its costs and expenses, including reasonable attorneys' fees, in enforcing its rights under this Agreement.~~

**12. MISCELLANEOUS**

This Agreement is made under and shall be construed in accordance with the laws of the State of Texas, and any dispute arising under this Agreement shall be settled in a court of competent jurisdiction lying in Travis County, Texas. If any of the provision of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole. This Agreement may be signed in multiple counterparts by hard or electronic signature (each of which shall have the same force and effect and deemed an original but all of which will together constitute but one and the same instrument).

**13. SIGNATURE BLOCK**

	<b>CONTRACTOR - Bytemark</b>		<b>Capital Metro Transportation Authority</b>
By:		By:	
Print Name:		Print Name:	
Title:		Title:	
Date:		Date:	
Address:		Address:	
Notice:		Notice:	
Effective Date		Contract No.	