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**CONTRACT 500116**  
(SSP 308372)

**TRAPEZE V21 UPGRADE AND CLOUD MIGRATION**

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**CONTRACTOR:**

Trapeze Software Group, Inc.  
5262 Rockwell Drive NE  
Cedar Rapids, Iowa 52402  
Phone: 319-743-1000  
Eric Humes  
Mobile: 416-704-0062  
[eric.humes@trapezegroup.com](mailto:eric.humes@trapezegroup.com)

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**AWARD DATE:**

February 29, 2024

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**CONTRACT TERM:**

One (1) Year from Notice to Proceed  
(March 8, 2024, THRU March 7, 2025)

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**PRICE:**

\$1,402,940.80

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**PROJECT MANAGER:**

Telephone #  
Email Address

Gabriel Hasser  
(512) 369-6519  
[gabriel.hasser@capmetro.org](mailto:gabriel.hasser@capmetro.org)

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**CONTRACT ADMINISTRATOR:**

Telephone #  
Email Address

Danny Solano  
(512) 389-7446  
[danny.solano@capmetro.org](mailto:danny.solano@capmetro.org)

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

**CONTRACT 500116**  
**(SSP 308372)**

**TRAPEZE V21 UPGRADE AND CLOUD MIGRATION**

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**TAB 1**

**AWARD/  
CONTRACT FORM**

**AWARD/CONTRACT**

<b>1. SOLICITATION NO:</b>		<b>2. CONTRACT NO.:</b>		<b>3. EFFECTIVE DATE:</b>	
SSP 803236		500116		Date of the Authority's Execution	
<b>4. BUYER</b>					
<b>NAME:</b> Danny Solano		<b>PHONE:</b> (512) 389-7446			
<b>5. SHIP TO ADDRESS:</b>			<b>6. DELIVERY TERMS:</b>		
Capital Metro 2910 East 5 <sup>th</sup> Street Austin, Texas 78702			FOB Destination		
			<b>7. DISCOUNTS FOR PROMPT PAYMENT:</b> N/A		
<b>8. CONTRACTOR NAME &amp; ADDRESS:</b>			<b>9. REMITTANCE ADDRESS:</b>		<b>(If different from Item 8)</b>
Trapeze Software Group, Inc. 5265 Rockwell Drive NE Cedar Rapids, IA 52402					
<b>PHONE:</b>		(319) 743-1000			
<b>FAX:</b>		(319) 366-7406			
<b>10. DBE GOAL:</b> 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.

<b>X</b>	<b>NEGOTIATED AGREEMENT:</b>	(Contractor is required to sign below and return an original document to the Contracting Officer within five (5) calendar days of receipt.)
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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: Mark Miller - Director      Signature:       Date: 06 / 02 / 2024

<b>X</b>	<b>AWARD:</b>	Items listed below are changes from the original offer and solicitation as submitted.
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This Award/Contract Form may be executed in multiple originals, and an executed facsimile shall have the same force and effect as an original document.

**ALTERATIONS IN CONTRACT:**

1. Refer to Exhibit A-Revised-1, Pricing Schedule; Exhibit A-Revised-1 is being replaced in its entirety with Exhibit A-Revised-2, attached hereto and made a part hereof for all pertinent purposes.
2. Refer to Exhibit E, Contractual Terms and Conditions; Exhibit E is being replaced in its entirety with Exhibit E-Revised-1, attached hereto and made a part hereof for all pertinent purposes.
3. Refer to Exhibit IT-1, Additional Terms and Conditions for the Performance of Information Technology (IT) Products and Services; Exhibit IT-1 is being replaced in its entirety with Exhibit IT-1-Revised-1, attached hereto and made a part hereof for all pertinent purposes.
4. Refer to Exhibit IT-2, Access and Use Agreement; Exhibit IT-2 is being replaced in its entirety with Exhibit IT-2-Revised-1, attached hereto and made a part hereof for all pertinent purposes.
5. Exhibit G, Trapeze Software Licensing and Maintenance Agreement is added to the contract, attached hereto and made a part hereof for all pertinent purposes.
6. Exhibit G-1, Cloud Managed Services Addendum is added to the contract, attached hereto and made a part hereof for all pertinent purposes.
7. Exhibit G-2, SaaS Agreement is added to the contract, attached hereto and made a part hereof for all pertinent purposes.

**ACCEPTED AS TO:** Exhibit A-Revised-2, Pricing Schedule, Dated January 11, 2024, Section 7 Base Pricing, Item 5 and Section 8, Option Pricing, Item 1, for a Total Not to Exceed Amount of \$1,402,940.80

**SIGNATURE OF CONTRACTING OFFICER:**

Typed Name:  Muhammad Abdullah, C.P.M. VP of Procurement & Chief Contracting Officer	E-SIGNED by Muhammad Abdullah on 2024-03-08 20:39:09 GMT Signature: _____ Date: <u>March 08, 2024</u>
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# TAB 2

EXHIBIT A-REVISED-2


PRICING SCHEDULE

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

**EXHIBIT A-REVISED-2  
PRICING SCHEDULE  
SSP 803236**

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

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

<b>Company Name (Printed)</b>	Trapeze Software Group, Inc.		
<b>Address</b>	5265 Rockwell Drive NE		
<b>City, State, Zip</b>	Cedar Rapids, IA 52402		
<b>Phone, Fax, Email</b>	(416) 704-0062	(319) 366-7406	eric.humes@trapezegroup.com
The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein.			
<b>Authorized Agent Name and Title (Printed)</b>	Tim Bigwood, General Manager WM		
<b>Signature and Date</b>			January 11, 2024

**2. ACKNOWLEDGEMENT OF AMENDMENTS**

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

Amendment #	Date	Amendment #	Date
N/A			

**3. PROMPT PAYMENT DISCOUNT**

# of Days	Percentage	N/A %

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

**4. SBE OR DBE (choose one) GOAL (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)**

The SBE OR DBE (choose one) participation commitment for this contract is the following percentage of the total contract:

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

The Authority hereby accepts this offer.

<b>Authorized Agent Name and Title (Printed)</b>	
<b>Signature and Date</b>	
<b>Accepted as to:</b>	

# **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/>

**TAB 3**

**EXHIBIT B**

**REPRESENTATIONS  
CERTIFICATIONS**

**EXHIBIT B**

**REPRESENTATIONS AND CERTIFICATIONS**

**(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)**

**MUST BE RETURNED WITH THE OFFER**

**1. TYPE OF BUSINESS**

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

- An individual
- A partnership
- A sole proprietor
- A corporation
- Another entity \_\_\_\_\_

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

Delaware

**2. PARENT COMPANY AND IDENTIFYING DATA**

(a) The offeror (mark one):

- is
- is not

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

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

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

\_\_\_\_\_

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

CSI USA, Inc  
20 Adelaide Street East Suite 1200, Toronto,  
ON M5C 2T6 Canada  
[REDACTED]

**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, Capital Metro contractors or consultants), except as described below:

Individual's Name	Date/Subject of Communication
(Attach continuation form, if necessary.)	

**6. CONTINGENT FEE**

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

- has
- has not

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

- has
- has not

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

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

**7. CODE OF 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. RESERVED**

**9. TEXAS ETHICS COMMISSION CERTIFICATION**

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

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

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

**11. CERTIFICATION REGARDING ISRAEL**

As applicable and in accordance with Section 2271.002 of the Texas Government Code, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

**12. CERTIFICATION 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.

**13. 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.

**14. BOYCOTT OF ENERGY COMPANIES PROHIBITED**

Pursuant to Chapter 2274 of Texas Government Code, Contractor verifies that:

(a) it does not, and will not for the duration of the Contract, boycott energy companies, as defined in Section 2274.002 of the Texas Government Code, or

(b) the verification required by Section 2274.002 of the Texas Government Code does not apply to Contractor and this Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify the Authority.

**15. CRITICAL INFRASTRUCTURE PROHIBITION**

Pursuant to Chapter 2274 of Texas Government Code, Contractor certifies that, if this Contract or any contract between Contractor and Capital Metro relates to critical infrastructure, as defined in Chapter 2274 of the Texas Government Code, Contractor is not owned by or the majority of stock or other ownership interest of its firm is not held or controlled by:

- (a) individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
- (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
- (c) headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.

**16. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION**

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

**17. 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 (d)(1) of this section if the Offeror responds "will" in paragraph (c)(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 (d)(2) of this section if the Offeror responds "does" in paragraph (c)(2) of this section.

(d) *Disclosures.*

(1) Disclosure for the representation in paragraph (c)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (c)(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 (a)(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 (a)(1) of this provision.

(2) Disclosure for the representation in paragraph (c)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (c)(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 (a)(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 (a)(2) of this provision.

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

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

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

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

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

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


Name of Offeror:

Trapeze Software Group, Inc.

Type/Print Name of Signatory:

Tim Bigwood, General Manager Trapeze  
WM

Signature:



Date:

26 - Oct - 2023

**TAB 4**

**EXHIBIT E-REVISED-1**

**CONTRACTUAL TERMS AND  
CONDITIONS**

**EXHIBIT E-REVISED-1  
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", "CapMetro", "CMTA" means Capital Metropolitan Transportation Authority.
- (c) "Authority Data" means the raw data inputted into Trapeze databases.
- (d) "Authority Electronic Property" means any Authority owned (i) websites controlled by the Authority, (ii) Authority mobile device apps, (iii) application programming interfaces (API) to the Authority's information technology systems, (iv) 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. Within the meaning of this definition and Exhibit E, the Authority specifically acknowledges, agrees and affirms (i) the Authority owns only the licenses to use Contractor's intellectual property, Software, API's and materials per the terms of the Trapeze Software License and Maintenance Agreement between the Authority and Contractor, (ii) the Authority is not the owner of Contractor's intellectual property, Software, API, or materials, and (iii) the Authority is not given or claiming any right, title or interest in said Contractor intellectual property, Software, API and materials.
- (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-Revvised-1.
- (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 the term as defined in Scope of Services, Exhibit F-Revised-1.
- (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 an unforeseeable cause beyond its control, including but not limited to: strikes, lockouts, or other industrial disputes; explosions, epidemics, pandemics, civil disturbances, acts of domestic or foreign terrorism, acts of war (declared and undeclared), 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 idea, software, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, 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. See also, (a) Trapeze Software License and Maintenance Agreement, Section 2 (Software License) and (b) SaaS Agreement, Appendix 1 (Trapeze SaaS Terms and Conditions), Section 13 (Ownership).
- (u) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.
- (v) "Notice to Proceed" means written authorization for the Contractor to start the Services.
- (w) "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.
- (x) "Proposal" means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.
- (y) "Services" means collectively all services to be performed by the Contract as described in the Scope of Services, Exhibit F-Revised-1.
- (z) "Subcontract" means the Contract between the Contractor and its Subcontractors.
- (aa) "Subcontractor" means subcontractors of any tier.

## **2. FIXED PRICE CONTRACT**

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

**3. TERM**

The term of the Contract shall be one (1) year from the 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 two (2) option periods for a one (1) year duration each at the option prices set forth in Exhibit A-Revised-2 - Pricing Schedule upon written notice to the Contractor.

**5. RESERVED**

**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:

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

(b) All undisputed invoices shall be paid within the time period allowed by law through the Texas Prompt Payment Act, Tex. Gov't Code § 2251.021(b).

(c) The Contractor shall be responsible for all costs/expenses not otherwise specified in this Contract, including by way of example, all costs of equipment provided by the Contractor or Subcontractor(s), all fees, fines, licenses, bonds, or taxes required or imposed against the Contractor and Subcontractor(s), travel related expenses, and all other Contractor's costs of doing business.

(d) In the event an overpayment is made to the Contractor under this Contract or the Authority discovers that the Authority has paid any invoices or charges not authorized under this Contract, the Authority shall provide written notice of same to Contractor and Contractor shall have 30-days to dispute said overpayment. Absent Contractor disputing the Authority's assertion of overpayment pursuant to this paragraph, the Authority may offset the amount of such overpayment or unauthorized charges against any indebtedness owed by the Authority to the Contractor under this Contract, including withholding payment of an invoice, in whole or in part, or the Authority may deduct such amounts from future invoices. If an overpayment is made to the Contractor under this Contract which cannot be offset under this Contract, the Contractor shall remit the full overpayment amount to the Authority within thirty (30) calendar days of the date of the written notice of such overpayment or such other period as the Authority may agree.

The Authority reserves the right to withhold payment of an invoice, in whole or in part, or deduct the overpayment from future invoices to recoup the overpayment. If Contractor disputes the Authority's assertion of overpayment, or Contractor provides the Authority with written notice of an underpayment and the parties cannot resolve this issue, said issue(s) shall be resolved pursuant to Section 47, Interpretation of Contract – Disputes.

**7. RESERVED**

**8. ACCEPTANCE CRITERIA**

Acceptance shall be in accordance with the acceptance criteria in the Scope of Services, Exhibit F-Revised-1.

**9. INSURANCE**

(a) The Contractor shall furnish proof of CapMetro-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 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.

**CAPMETRO MINIMUM COVERAGE REQUIREMENTS**

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

- (i) Products and Completed Operations Liability
- (ii) Independent Contractors
- (iii) Personal Injury Liability extended to claims arising from employees of the Contractor and the Authority.
- (iv) Contractual Liability pertaining to the liabilities assumed in the agreement.

(2) **Business Automobile Liability Insurance** with minimum coverage limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) with combined single limit of Two Million Dollars (\$2,000,000), covering all owned, hired and non-owned automobiles used in connection with the Services for Bodily Injury and Property Damage.

(3) **Workers' Compensation Insurance** providing statutory limits in accordance with the Texas Workers' Compensation Act and/or other State or Federal law as may be applicable to the Services being performed under this Contract.

(4) **Employer Liability Insurance** with minimum limits of One Million Dollars and No/100 Dollars (\$1,000,000).

(5) **Technology Errors & Omissions Insurance:** Combined Technology & Omissions Policy with a minimum One Million and No/100 Dollars (\$1,000,000) claim limit, including:

(i) **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

(ii) **Privacy and Security Liability Insurance** providing liability for unauthorized access or disclosure, security breaches or system attacks, that might result from this Contract with a third-party extension endorsement in favor of the Authority.

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

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

(d) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTRIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement. All required endorsements shall be evidenced on the Certificate of Insurance, which shall be evidenced on the Certificate of Insurance. Proof that insurance coverage exists shall be furnished to the Authority by way of a Certificate of Insurance before any part of the Contract work is started.

(e) If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority shall immediately notify Contractor. The Contractor shall have thirty (30) days to provide a substitute Certificate of Insurance.

(f) If any part of the Contract is sublet, the Contractor shall be liable for its Subcontractor's insurance coverages of the types and in the amounts stated above, and shall furnish the Authority with copies of such Certificates of Insurance. No delay in the Services caused by the Contractor's enforcement of its Subcontractor's insurance requirements shall be excusable delay in the Contract. In the event a Subcontractor is unable to furnish insurance in the limits required under the Contract, the Contractor shall endorse the Subcontractor as an ADDITIONAL INSURED on the Contractor's policies.

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

(h) The Contractor must furnish proof of the required insurance within five (5) days of the award of the Contract. Certificate of Insurance must indicate the Contract number and description. The insurance certificate should be furnished to the attention of the Contracting Officer.

(i) The Contractor and its lower tier Subcontractors are required to cooperate with the Authority and report all potential claims (workers' compensation, general liability and automobile liability) pertaining to this Contract to the Authority's Risk Management Department at (512) 389-7549 within ten (10) days of the incident.

**10. PERFORMANCE OF SERVICES BY THE CONTRACTOR**

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

**11. REMOVAL OF ASSIGNED PERSONNEL**

The Authority may require, in writing, that the Contractor remove from the Services any employee or Subcontractor of the Contractor that the Authority deems inappropriate for the assignment. Such requests shall be reasonable in motivation and expectation of a timely compliance. Contractor anticipates that all proposed resource changes will be discussed and confirmed jointly between Contractor and the Authority.

**12. REPRESENTATIONS AND WARRANTIES**

The Contractor represents and warrants to the Authority, that the Services shall be performed in conformity with the descriptions and other data set forth in this Contract and with sound professional principles and practices in accordance with accepted industry standards, and that work performed by the Contractor's personnel shall reflect sound professional knowledge, skill and judgment. If any breach of the representations and warranties is discovered by the Authority during the process of the work or within one (1) year after acceptance of the work by the Authority, the Contractor shall again cause the nonconforming or inadequate work to be properly performed at the Contractor's sole expense and shall reimburse for costs directly incurred by the Authority as a result of reliance by the Authority on services failing to comply with the representations and warranties.

**13. INDEPENDENT CONTRACTOR**

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

**14. COMPOSITION OF CONTRACTOR**

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

**15. SUBCONTRACTORS AND OUTSIDE CONSULTANTS**

Any Subcontractors and outside associates or consultants required by the Contractor in connection with the Services covered by the Contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this Contract. Any substitution in such Subcontractors, associates, or consultants will be subject to the prior approval of the Authority, which shall not be unreasonably withheld.

**16. EQUITABLE ADJUSTMENTS**

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

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this paragraph, for Services involving contemplated changes covered by the request. The



proposal shall be submitted within the time limit indicated in the request for any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

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

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

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

**17. CONTRACTOR AND SUBCONTRACTOR ANNUAL AUDITED FINANCIAL STATEMENTS AND ABILITY TO PERFORM**

The Contractor must provide evidence of financial resources and its ability to perform the services for which Contractor is submitting a response. This includes information CapMetro believes is pertinent that demonstrates its financial capability, financial solvency, and capability to fulfill the requirements of this contract.

The Contractor is part of Constellation Software Inc., a Canada-based company, publicly traded on the Toronto Stock Exchange (TSX) under the symbol CSU. Any public financial information disclosed by Contractor's parent company are available at <https://money.tmx.com/en/quote/CSU>. If any non-public financial information is requested, the Contractor and Authority agree to enter into a mutually agreeable confidential agreement for the purpose of releasing such financial information regarding the Contractor's ability to perform under the Contract.

**18. 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, as set forth in Section 10 above.

(b) The Contractor represents that the Contractor's Subcontract with each Subcontractor, that will perform under this Contract, includes a provision that the Subcontractor has an established criminal history background policy that complies with Subcontractor's law of its state or with guidance issued by the U.S. Equal Employment Opportunity Commission. The Authority reserves the right to require the Contractor and any of Contractor's 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 to the extent permitted by law.

(c) To the extent allowed by applicable law, the Authority shall have the right to audit the Contractor's Subcontractor's records for compliance with the provisions of this Section. Criminal background checks shall include the following:

(1) State Criminal History, including driving records (where applicable), covering all jurisdictions within the state, including local counties and municipalities.

(2) Out of State 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's Subcontractor may be subject to review of 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.

To the extent allowed by applicable law, the Contractor's Subcontract 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 CapMetro for review if less than 10 years from date of <b>release from confinement</b>
Class A or B Misdemeanor	Submit to CapMetro for review if less than 7 years from date of <b>conviction</b>
Class C Misdemeanor	Submit to CapMetro 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 CapMetro for review
<b>Crimes Against Property</b>	
Felony	Submit to CapMetro 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 CapMetro for review if less than 10 years from date of <b>release from confinement</b>
Class A or B Misdemeanor	Submit to CapMetro for review if less than 7 years from date of <b>conviction</b>
Class C Misdemeanor	Submit to CapMetro 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 CapMetro 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 Authority reserves the right to request that any assigned individual for Subcontractor be removed from performing work under this Contract.

**19. 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 CapMetro Contractor Photo Identification Badge ("badge") at all times while on the Authority's premises. The badge will be provided by CapMetro. 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.

(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 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.

## **20. 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-1.

## **21. TERMINATION FOR DEFAULT**

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

(1) if the Contractor fails to perform the Services within the time specified herein or any extension thereof;  
or

(2) if the Contractor fails to perform any of the other provisions, or fails to perform to make progress as to endanger performance of this Contract in accordance with its terms, and such failure is not cured within a period of fifteen (15) 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, 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 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) Contractor may terminate this Contract or any part hereof for cause in the event of a Default by the Authority. "Default by the Authority" is defined as any of the following: (i) Authority's failure to comply with any of the material terms and conditions of this contract; (ii) insolvency, bankruptcy, liquidation or dissolution of the Authority; or (iii) any other event which causes reasonable doubt as to the Authority's ability to meet its obligations set forth hereunder. The Contractor shall, in the case of a termination for Default by the Authority, allow the Authority an appropriate period of time, in no event less than thirty (30) calendar days, in which to cure its default, or, if a default is not such that it can be cured within thirty (30) calendar days, then the Authority shall diligently commence to correct such defect within thirty (30) calendar days.

(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-1. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the Interpretation of Contract – Disputes contained in this Contract.

(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.

## **22. TERMINATION FOR CONVENIENCE**

(a) The Authority may, whenever the interests of the Authority so require, terminate this Contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor of no less than thirty (30) days specifying the part of the Contract terminated and when termination becomes effective. Notwithstanding the foregoing, termination for software and maintenance shall be in accordance with Section 14 of Exhibit G (Trapeze Software Licensing and Maintenance Agreement), and termination for Subscriptions Services (as such term defined in Exhibit G-2, SAAS Agreement) shall be in accordance with Section 21 (Term and Termination) of Exhibit G-2 (SAAS Agreement).

(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 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 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.

**23. 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.

**24. RESERVED**

**25. 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.

**26. INSPECTIONS AND APPROVALS**

If any of the Services do not conform with relevant Contract documents, 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.

**27. 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.

**28. PAYMENT TO SUBCONTRACTORS**

(a) If Contractor uses subcontractors at any time during the term and performance of this Contract, any 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.

**29. 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.

**30. 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.

**31. 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.

### **32. 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.

### **33. RESERVED**

### **34. 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) To the extent applicable to the services hereunder, 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. The Authority shall promptly notify Contractor of any request pursuant to any Freedom of Information Act, or similar legislations, for Trapeze data and information to allow Contractor the opportunity to submit information. To the extent known, the Authority will direct Trapeze if further or additional parties need to be included in the response.

(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.

### **35. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

(a) The Proposal, including the contents of the Proposal, responses, inquiries, correspondence, and all other material submitted with the Proposal shall become a government record and is subject to Section 34.. Notwithstanding

anything to the contrary in this Contract, all rights, title and interest to any Contractor documentation (including but not limited to user manuals, training materials) and/or software remain the exclusive property of Contractor.

**36. LIMITATION OF LIABILITY**

Notwithstanding any other provision of this Contract or exhibits to the contrary, in no event shall either party or its officers, directors, agents or employees be liable in contract or tort, to the other party or any third party for special, indirect, incidental or consequential damages, resulting from a party's performance, nonperformance, or delay in performance of its obligations under this Contract, or either party's termination of the Contract with or without cause, or the suspension of the Services. This limitation of liability shall not apply to willful misconduct or fraud. Contractor's aggregate liability and responsibility for any and all claims, damages, costs or losses whatsoever arising either jointly or solely from or in connection with this Contract or the use of the Services (whether or not in the manner permitted by this Contract), including claims for breach of contract, tort, misrepresentation, or otherwise, shall in no event exceed no more than one (1) time the annual software maintenance support fee paid by the Authority for the 12-month period preceding the date of the alleged damage and/or the year in which the Authority seeks to rely upon this paragraph, whichever is higher.

**37. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS**

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

**38. 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.

**39. 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.

**40. 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.



**41. 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 a Party 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 other Party prior to release.

**42. 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.

**43. 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 NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT 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.**

**44. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS**

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) The Contractor agrees to permit the Authority and its contractors' access to the sites of performance under this Contract as reasonably may be required.

(f) 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, pursuant to Section 5(d) of the Contract.

(g) This paragraph will survive any termination or expiration of this Contract.

**45. EXCUSABLE DELAYS**

(a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from Force Majeure Events. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the performance of the Services.

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

- (1) the subcontracted supplies or services were obtainable from other sources;
- (2) the Authority ordered the Contractor in writing to obtain these services from the other source; and
- (3) the Contractor failed to comply reasonably with this order.

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

(d) Both Parties shall keep in contact with each other as to the status of the Force Majeure Event and shall agree in writing to a restart date when the facts or matters giving rise to such Force Majeure Event have concluded and further delays are not foreseen. Upon reengagement of the Services to be provided hereunder, Contractor and the Authority will formulate and agree upon an updated project schedule, taking into account the timeframe that has passed since the work stoppage, necessary time to resume or recreate any previously completed tasks due to damaged or missing equipment and any associated time periods for shipment and/or manufacture of equipment, if any.

**46. LOSS OR DAMAGE TO PROPERTY**

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

**47. 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.

**48. 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.

**49. 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 submitted in a timely manner 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 CapMetro 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.

**50. 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 CapMetro 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 CapMetro owned or leased property, including personal vehicles parked in CapMetro parking lots.
- (d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

**51. ORDER OF PRECEDENCE**

In the event of 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-1 – Contractual Terms and Conditions (Services Contract).
3. Exhibit B – Representations and Certifications.
4. Exhibit IT-1-Revised-1 – Additional Terms and Conditions for the Performance of IT Products and Services.
5. Exhibit IT-2-Revised-1 - Access and Use Agreement.
6. Exhibit F-Revised-1 – Scope of Services and Compliance Matrix.
7. Exhibit G - Trapeze Software Licensing and Maintenance Agreement (For any and all matters specifically related to the software and maintenance component as described in the Scope of Services in Exhibit F-Revised-1, this Exhibit G (Trapeze Software Licensing and Maintenance Agreement) shall be given precedence above all others).
8. Exhibit G-1 - Cloud Services Addendum (For any and all matters specially related to the cloud managed services component as described in the Scope of Services in Exhibit F-Revised-1, this Exhibit G-1 (Cloud Services Addendum) shall be given precedence above all others).
9. Exhibit G-2 - SaaS Agreement (For any and all matters specially related to the SaaS component as described in the Scope of Services in Exhibit F-Revised-1, this Exhibit G-2 (SAAS Agreement) shall be given precedence above all others).

**52. ANTI-CORRUPTION AND BRIBERY LAWS**

Each party shall comply with all Applicable Anti-Corruption and Bribery Laws. Each party represents and warrants that it has not and shall not violate or cause the other party to violate any such Anti-Corruption and Bribery Laws. Each party further represents and warrants that, in connection with this Contract or with any other business transaction involving the other party, 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.

**53. RESERVED**

**54. 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 Contractor's Software License and Maintenance Agreement.

**If to the Authority:** Capital Metropolitan Transportation Authority  
**Attn:** 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, as determined by a court of competent jurisdiction.

(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) 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.
- (h) Neither party may assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided however, Contractor may assign this Contract without consent by way of a merger, acquisition or corporate reorganization. In such event, Contractor shall use commercially reasonable efforts to promptly notify the Authority of any assignment of this Contract by way of a merger, acquisition, or corporate reorganization. No assignment shall relieve a party from any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.
- (i) The failure of either party to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive either party 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.
- (j) 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. The provisions of the UN Convention on Contracts for the International Sale of Goods is expressly excluded.
- (k) 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. For clarity, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (p) CapMetro 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.
- (s) The Software, Subscription Services and derivatives thereof may be subject to export laws and regulations. Each party represents that it is not named on any U.S. government denied party list. CapMetro will not permit access or use of the Software or Subscription Services in a Canada embargoed country or nation, a US. embargoed country or nation, an EU-embargoed country or nation, or a United Nations embargoed country or nation, or in violation of any applicable embargo, export law, or regulation.

## **55. 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.

# TAB 5

EXHIBIT F-REVISED-1

SCOPE OF SERVICES AND  
COMPLIANCE MATRIX

This matrix contains the following Appendices. Some Appendices require a response, while others are for reference purposes to help proposers prepare a response.

1. General Requirements - For each Compliance Term, select "C-Comply," "N-Cannot Comply," or "A-Will Comply with Alternative." If "N" or "A" are selected, comments are required; however, Capital Metro strongly recommends that comments be added for each item.
2. Appendix A: Core Requirements RTM - Please provide a response to each item. Additional instructions are provided within the Appendix.
3. Appendix B: Project Phase Requirements - For reference/informational purposes
4. Appendix C: Definitions - For reference/informational purposes

**Additional Instructions:**

1. The vendor must deliver a system encompassing all hardware (if needed), software, license, and service requirements, including the delivery of third-party products to make the solution fully functional.
2. The requirements in the Scope of Services and Compliance Matrix are functional in nature and do not encompass all requirements. The vendor shall determine the technical modifications needed to carry out the intent herein. Vendor shall document and discuss said needs with Capital Metro and implement the agreed-upon solution accordingly.
3. The vendor must deliver all Compliance Terms unless it is within a section marked "Optional" that is not exercised by Capital Metro or Capital Metro agrees to an alternative.



### Capital Metro ITS2201 - Requirement Traceability Matrix (RTM) Definitions

**PURPOSE:** To define each of the columns in the Requirements Traceability Matrix (Master Requirements Listing tab)

RTM Column Name	Column Description / Definition
<b>Process Columns</b>	
Requirements (Req.) ID	The unique identification number for the business requirement. The number ties to the number scheme of the process classification framework levels (Classification framework level descriptions provided in the subsequent columns.)
Count	The individual requirement identifier that provides a total requirement count for all process areas.
Process Level 0 Name	Identification of the Level 1 process name that represents the highest primary process level for Capital Metro (e.g., Level 0 can be defined as System Security, or System Navigation, Approval Functionality, etc.).
<b>Business / Technical Requirements</b>	
Requirement Details	Detailed text description of the requirement.
Source	The source or artifact from which the requirement originates (e.g., leading practice requirements, Capital Metro requirement workshop, Capital Metro policy / procedure). If known, the specific reference for the regulation or policy that creates the need for this specific requirement will be listed.
Requirement (Req.) Priority	The priority level that has been assigned through the analysis of input by the source, KPMG, and Capital Metro Team. The priority level will assist in requirements planning, reporting, and tracking. The prioritization rating definitions that will be assigned are: a. <b>Required</b> – required functionality. b. <b>Key</b> – provides significant benefit to the business. c. <b>Desired</b> – provides important benefit to the business. d. <b>Optional</b> – would enhance the product and provide benefit.
Notes / Comments	Any comments regarding the requirement and/or its traceability with the other checkpoints.
Vendor Response	Response from vendor selected from the pick list
Vendor Notes	Any explanation from the vendor to support the response
<b>Implementation / Testing Traceability</b>	
System Component(s)	A description of the application system component(s) linked to the functional requirement.
Software Module(s)	A description of the application system software module(s) linked to the functional requirement.
Test Case Number	The test case number that is linked to the functional requirement.
Tested In	The application system module that the functional requirement has been tested in.
Implemented In	The application system module that the functional requirement has been implemented in.
Verification	A description of the verification document linked to the functional requirement.
Additional Notes / Comments	This column should be populated with any additional comments

Overview						
1.0						
1.1	ITS2201 - Trapeze V21 Upgrade and Migration to Cloud					
1.2	CapMetro is looking to upgrade our Trapeze system to V21. CapMetro is also seeking a move to a cloud based delivery system for our suite of Trapeze Applications.					
#	Compliance Term	Comply	Release	Vendor Comments	Capital Metro Response	Test #
<b>2.0</b>	<b>Project Approach - Project Management</b>					
2.1	The vendor shall provide a robust project management team and project management plan to support the implementation of the Identity Access Management Project. The vendor's plan for managing the project shall clearly demonstrate an appropriate allocation of project management resources with the ability and experience to ensure that system design and implementation will be coordinated appropriately and managed and completed on schedule and within budget. The vendor shall provide tools to manage tasks, schedule, risk, change, and the other items listed in this section that are required to manage the project.					
2.2	The vendor's proposed Project Manager (PM) must be approved by Capital Metro, possess a PMP certification with good standing, and have prior experience in the public transportation sector.					
2.3	The Contractor shall comply with all requirements of "Appendix B Project Phase Requirements" which define project management requirements					
<b>3.0</b>	<b>Project Approach - Project Management Plan</b>					
3.1	The vendor shall submit a comprehensive Project Management Plan (PMP) following Notice to Proceed (NTP) that details at a minimum project organization; master schedule; and how the vendor will manage project scope, cost, risk, quality, project changes, safety, and other key aspects of the project.					
3.2	The Project Management Plan (PMP) will include but is not limited to the following elements: <ul style="list-style-type: none"> <li>• Organization chart identifying key project personnel and contact information.</li> <li>• Master schedule, identifying key project milestones and activities in Microsoft Projects format.</li> <li>• Schedule for all project design and development elements that require Capital Metro approval.</li> <li>• Project meetings and schedule for recurring meetings.</li> <li>• Methodology to control project schedule, scope, cost, and risk.</li> <li>• Risk management plan and risk register, including identified project risks and actions required to mitigate them.</li> <li>• Transition and change management processes and procedures.</li> <li>• Quality assurance processes and procedures to confirm that the requirements of the contract are being met.</li> <li>• Subcontractor management and communications.</li> <li>• Document naming conventions and Action Items and Issues List (AIL) control processes and procedures, including version and traceability controls.</li> <li>• Change management plan and procedures for all deliverables and subsequent revisions.</li> <li>• Cost management.</li> <li>• Communication Plan.</li> </ul>					
<b>4.0</b>	<b>Project Approach - Project Management: Design Review</b>					
4.1	The vendor shall provide a robust project management team and project management plan to support the implementation of the Access Request System. The vendor's plan for managing the project shall clearly demonstrate an appropriate allocation of project management resources with the ability and experience to ensure that system design and implementation will be coordinated appropriately and managed and completed on schedule and within budget. The vendor shall provide tools to manage tasks, schedule, risk, change, and the other items listed in this section that are required to manage the project.					
<b>5.0</b>	<b>Project Approach - Design and Development</b>					
5.1	The Installation and Transition Plan will describe detailed installation and configuration of all software systems, including the Access Request, interfaces, and web applications, and their respective schedules.					
5.2	The vendor shall follow a defined quality change control and testing process (e.g. ITIL Service Management) with established baselines, testing and release standards which focus on system availability, confidentiality and integrity of systems and services.					
5.3	The vendor shall provide a defined change control process and workflow for making configuration or other related changes after Go Live. This includes a process of promotion from Development, to Test, to Production environments.					
<b>6.0</b>	<b>Project Approach - Testing: General Requirements</b>					
6.1	The vendor shall provide all labor and materials required for system testing, including but not limited to unit testing, performance testing, security testing, system integration and end to end testing.					
6.2	Before starting all formal testing activities that are to be witnessed and approved by Capital Metro, the vendor shall conduct "dry-run" testing to identify and resolve any issues and avoid unexpected results during the formal testing.					
6.3	The vendor shall provide Capital Metro with scripts to test.					
6.4	The vendor shall provide a methodology for uploading mass amounts of historical and transactional data for the purposes of testing.					
6.5	The vendor shall provide a testing tool, or set of testing tools, to support automated testing of test scripts as applicable, including documentation and resolution of defects. The contractor shall also create required test scripts for testing with the automated test tool. Automated test tool should be able to test complex test cases, dependencies, integration and link results to feed between test scenarios.					
<b>7.0</b>	<b>Project Approach - Testing: Test Documentation</b>					
7.1	The vendor shall submit a draft Test Plan for Capital Metro review and approval during design review and shall submit a final inspection and test plan to be used in connection with all tests described in this specification before the start of any testing.					
7.2	The Test Plan will include a testing timeline, objectives, entrance and exit criteria, and success criteria for functional, system integration, and end to end testing. The Test Plan will also include resource assignments (Vendor and CMTA) and defect resolution processes.					
7.3	Detailed test procedures will include mapping to the design documents and the requirements in the SOW that are related to the test.					
<b>8.0</b>	<b>Project Approach - Testing: Final System Acceptance</b>					
8.1	The vendor shall submit a request for Final System Acceptance upon successful completion of SAT and the determination that all work has been completed per this Scope of Work and final design.					

#	Compliance Term	Comply	Release	Vendor Comments	Capital Metro Response	Test #
8.2	<p>Capital Metro may grant Final System Acceptance only when:</p> <ul style="list-style-type: none"> <li>The SAT has been successfully completed and approved by Capital Metro.</li> <li>All system modules, interfaces, and integrations are delivered, installed, and operational.</li> <li>All back-office applications and software, including all required reports, are installed and fully functional.</li> <li>All requisite contract deliverables have been delivered to Capital Metro and accepted.</li> <li>The Disaster Recovery Plan has been successfully demonstrated and approved by Capital Metro.</li> <li>All required training has been provided and accepted by Capital Metro.</li> <li>All required intellectual property has been delivered to Capital Metro or the escrow agent.</li> <li>Final resolutions to all identified critical issues (as classified by the Test Failure Log Review Board) are fully implemented and accepted by Capital Metro.</li> </ul> <p>Capital Metro will issue written certification upon approval of Vendor's request for Final System Acceptance.</p>					
<b>9</b>	<b>Project Approach - Data Migration</b>					
9.1	The vendor shall provide a holistic Data Migration Plan. The plan shall include The vendor's proposed staffing plan for data migration, migration timelines and processes, data validation approach and timeline, and proposed tools to support the data migration process.					
9.2	Data migration scope shall include historical data, data warehouse integration, data mapping (legacy to future), and data validation (technical and functional).					
<b>10.0</b>	<b>System Design &amp; Architecture - Common Design Requirements and Guidelines</b>					
10.1	The vendor shall provide a cloud based Software as a Service (SaaS) system that is scalable to meet the growing needs of Capital Metro. The Access Request system should be designed such that it can handle future increases in transactional volume and increased service.					
10.2	The vendor shall provide a cloud based system meeting Capital Metro's requirement to accommodate future system upgrades, patches, and fixes that are rolled out centrally by the Access Request software provider.					
10.3	The vendor shall present solution design documents for all discreet components of the Access Request system for review and approval by Capital Metro					
10.4	The Vendor shall develop an application landscape and Access Request system architecture diagrams for review and approval by Capital Metro					
10.5	Users should have the ability to have multiple sessions open simultaneously. This includes sessions within the same environment and sessions across environments (Test and Production).					
10.6	In the event that users have multiple sessions open in different environments, the vendor shall provide a solution (cosmetic) that allows the user to differentiate between sessions and environments.					
<b>11.0</b>	<b>System Design and Architecture - Master Data</b>					
11.1	<p>The vendor shall provide Capital Metro with its approach for the creation and maintenance of master data elements in the Access Request system. This includes, but is not limited to:</p> <ol style="list-style-type: none"> <li>System Name</li> <li>System roles</li> <li>User information</li> </ol>					
11.2	The vendor's approach shall include a process for the creation of master data and the review of the master data and organizational hierarchy of applicable data with Capital Metro personnel, this will include a Master Data Life Cycle Management Process.					
<b>12.0</b>	<b>System Design &amp; Architecture - Accessibility and ADA Compliance</b>					
12.1	<p>Vendor shall design the System to be compliant with current accessibility standards, laws, and regulations to ensure that the System meets or exceeds the Americans with Disabilities Act (ADA) and accessibility requirements of federal, Texas State and Austin regional governments.</p> <p>Vendor shall ensure compliance of all equipment and system interfaces and create an Accessibility Compliance Plan to document compliance. This plan will be used throughout design and implementation to ascertain that all accessibility and ADA requirements will be met and to track compliance.</p>					
12.2	<p>COMPLIES WITH WCAG 2.0 AA ACCESSIBILITY STANDARDS AND MEETS ALL FOUR SUCCESS CRITERIA.:</p> <ul style="list-style-type: none"> <li>All screens are compatible with assistive technologies including screen readers and screen magnification</li> <li>Screens make proper use of forms mode, include alt tags on all data collection boxes and image fields, and metadata read back is strictly limited.</li> <li>Properly labelled images and proper use of alt tags is required.</li> <li>The ability to navigate pages, utilize functionality and traverse layouts without a mouse is required.</li> <li>Users of assistive technology shall have ways to skip redundant navigation.</li> <li>Correct headings and labelling structures for pages, forms and data tables.</li> <li>Readable content with sufficient contrast ratios and font sizing.</li> <li>Contractor shall provide information about user testing with people with disabilities and the results of such testing.</li> <li>Software solution shall be compatible will all applicable standards and/regulations regarding accessible information technology resources and (IRIT). In cases where there is conflict between standards the most stringent standard shall be applicable.</li> </ul>					
<b>13.0</b>	<b>System Design &amp; Architecture - Code and Regulation Compliance</b>					

SSP 803236  
Exhibit F  
Scope of Services and Compliance Matrix  
Trapeze v21 Upgarde Cloud Migration

#	Compliance Term	Comply	Release	Vendor Comments	Capital Metro Response	Test #
13.1	<p>Vendor shall design the System to be compliant with relevant standards, laws, and regulations to ensure that the System:</p> <ul style="list-style-type: none"> <li>• Presents no safety hazards for customers and Capital Metro employees.</li> <li>• Will withstand the rigors of the environments in which the equipment will be installed, and the public use to which it will be subjected.</li> <li>• Provides for the secure storage and transmittal of data.</li> <li>• Is designed using state-of-the-art methods to maximize quality.</li> <li>• Satisfies federal, state, and other requirements for ergonomics and usability.</li> </ul> <p>Applicable codes, laws, ordinances, statutes, standards, rules, and regulations include, but are not be limited to the list below (in 3.1.4-2). The latest revisions in effect at the time of Final System Acceptance will apply.</p>					
13.2	<ul style="list-style-type: none"> <li>• Americans with Disabilities Act (ADA)</li> <li>• Americans with Disabilities Act Accessibility Guidelines (ADAAG)</li> <li>• Advanced Encryption Standard</li> <li>• ANSI X9.24, Financial Services Retail Key Management</li> <li>• European Norm EN55022, Emissions standards for CE marking</li> <li>• European Norm EN55024, Immunity standards for CE marking</li> <li>• FCC Part 15 Class B – Radio Frequency Devices</li> <li>• FIPS 140-2</li> <li>• IEEE 802.11 a/b/g/n standard for wireless data communications</li> <li>• IEEE 802.11i standard for wireless data network security</li> <li>• IEEE 802.11-2016</li> <li>• International Electrotechnical Commission Standard 529 (IEC529)</li> <li>• ISO/IEC 7810, Identification Cards – Physical Characteristics</li> <li>• ISO 9001</li> <li>• ISO/IEC-8583 – Financial transaction card originated messages</li> <li>• ISO/IEC 14443 Parts 1 through 4 – Contactless Smart Card Standard</li> <li>• ISO/IEC 18092 / ECMA-340, Near Field Communication Interface and Protocol-1</li> <li>• ISO/IEC 21481 / ECMA-352, Near Field Communication Interface and Protocol-2</li> <li>• National Electrical Code (NFPA 70)</li> <li>• National Electrical Manufacturers Association Publication 250-2003</li> <li>• National Electrical Safety Code (ANSI C2)</li> <li>• National Fire Protection Association (NFPA) 130</li> <li>• NCITS 322-2002, American National Standard for Information Technology – Card Durability Test Methods</li> <li>• Occupational Safety and Health Administration (OSHA)</li> <li>• Payment Card Industry Data Security Standards (PCI-DSS)</li> <li>• Payment Card Industry Payment Application Data Security Standards (PA-DSS)</li> <li>• Society of Automotive Engineers SAE J1113-13 Electrostatic Discharge</li> <li>• Society of Automotive Engineers SAE J1455 Vibration and Shock</li> </ul>					
13.3	In the case of conflict between the provisions of codes, laws, ordinances, statutes, standards, rules, and regulations, the more stringent requirement will apply.					
<b>14.0</b>	<b>System Design &amp; Architecture - Information Security</b>					
14.1	Vendor develop a plan for the processes that will be used to resume operations in the event of a data loss due to a natural disaster or other emergency situation that puts operations at risk. The plan must describe how mission-critical functions will be resumed and how longer-term challenges created by an unexpected loss will be addressed. The Disaster Recovery (DR) plan will conform to the required service level agreement and be consistent with the Business Continuity Plan and recovery time capabilities that will be provided by Capital Metro.					
14.2	Vendor shall propose a physical and logical architecture (e.g. virtualized servers, spare load balancers, etc.) that meets all redundancy capabilities for Capital Metro review and approval at design review.					
14.3	The System will be designed to include the appropriate elements and processes to manage, monitor, and quickly address security issues, consistent with the expectations outlined above, to support the operation of Capital Metro's Information Security Management System (ISMS).					
14.4	Vendor shall prioritize identified application vulnerability/bug fixes. Security fixes must have higher priority than product enhancements.					
14.5	Key Management - Policies and procedures shall be established, and supporting business processes and technical measures implemented, for the use of encryption protocols for protection of sensitive data in storage and data in transmission as per applicable legal, statutory, and regulatory compliance obligations.					
14.6	Vendor shall provide secure coding training for developers. Provide CapMetro with a description of the Vendor training program for developers, specifically around secure code development practices					
14.7	Code review - Vendor shall provide an overview of their software development lifecycle showing how security is a part of the lifecycle. Specify security tests, how you determine if your code is vulnerable to the common threats facing applications today, such as cross-site scripting or SQL injection, in your quality assurance testing phase. Describe how you track security flaws and flaw resolution.					
14.8	Application security testing – Vendor shall provide an overview of their application testing including annual pen testing, testing by 3rd party, testing by security professional services, and testing that covers the common vulnerabilities as described by OWASP Top 10. Describe the process for vulnerabilities identified and remediations.					
<b>15</b>	<b>Operations and Maintenance Services - Performance Measurement</b>					

#	Compliance Term	Comply	Release	Vendor Comments	Capital Metro Response	Test #
15.1	<p>Update the Warranty and Maintenance Agreement with the following:            Application availability will be calculated based on the total out of service time for the associated system:</p> <p>Application availability = 1 - (out of service time / total operating time)</p> <p>Total Operating Time is defined as the number of minutes in a day (1440) multiplied by the number of days in the month of measurement, while Out of Service Time is defined as all time during which the System is not in a fully operational state, and includes all time necessary to respond and repair to issues. Scheduled maintenance time is excluded from the calculation.</p> <p>The availability requirement for each System back-office application is as follows: Application availability must meet or exceed 99.95% each calendar month for the production system.</p>					

Sn.#	Title/Requirement	Vendor Response	Vendor Notes	CapMetro Response
<b>1</b>	<b>V21 Upgrade and Cloud Migration Overview</b>			
1	The Contractor shall upgrade the existing Trapeze system to the latest version (v21). This includes FX, BlockBuster, FX-MON, Google Export, OPS, OPS-WEB, OPS-MON, OPS-SIT.			
2	The Contractor shall migrate the existing system, upgrade to v21 and host the products in a Cloud environment.			
3	The Contractor shall migrate the existing Oracle Database to SQL prior to hosting in the new Cloud environment.			
4	The new Trapeze system shall continue to integrate with the Trapeze ATIS and WM-SIT Terminals that will remain on premise.			
5	The Contractor shall provide secure connections to integrate the new cloud-based Trapeze products with 3rd Party software.			
6	CapMetro shall sign off on all security solutions related to the cloud system and its integrations.			
<b>2</b>	<b>Trapeze Cloud Environment and V21 Upgrade</b>			
<b>2.1</b>	<b>Cloud Environment Setup</b>			
1	The Contractor shall provide the cloud environment, including the hardware, equipment and systems software configuration on which the Contractor will install, maintain, and support use of the software and services.			
2	The Contractor shall install and configure the entire system, including any integration with on premise systems.			
2	The Contractor shall create a pre-production environment to stage the cloud system.			
3	est			
4	The Contractor shall provide test procedures to verify the Oracle to SQL Migration for CapMetro approval.			
5	CapMetro shall provide a copy of the database backup to the Contractor for testing and database dry run.			
6	The Contractor shall document the process of uploading, converting, verifying, installing and any other necessary processes to stand the database up in the Trapeze database in the cloud environment. The Contractor shall provide CapMetro this document.			
7	The Contractor shall conduct a dry run and verification using the newly converted database prior to performing any Trapeze software upgrade and migration of Trapeze products to V21.			
8	The Contractor shall provide secure connections to integrate the new cloud-based Trapeze products with 3rd Party software.			
9	The Contractor shall create and maintain at second, test environment in the cloud environment.			
10	The test environment shall be created by cloning the production cloud system and shall replicate all functionality, with reduced usage.			
11	The test and production environments shall operate independently of one another.			
<b>2.2</b>	<b>V21 Upgrade</b>			
1	All existing Trapeze modules shall be upgraded to the latest version (V21) and migrated to the Cloud Solution, except where noted. These modules include Annual Map Update, ATIS-MON, FX, FX-MON, Maltese-FX, Maltese-OPS, OPS, OPS-MON, GTFS.			
2	The Contractor shall install and configure all software modules, including any integration with on premise systems.			
2	OPS WEB (or V21 equivalent) shall be installed, configured and implemented in parallel with this solution.			
3	ATIS and the Sign In Terminal implementation shall remain on premise as part of this solution.			
4	The on premise installations of ATIS and the Sign In Terminals shall be integrated with the V21 solution.			
5	All reports that currently exist in CapMetro's existing V18 Trapeze system shall be imported to or recreated in the V21 solution.			
6	All reports will continue to provide the same functionality as present in the existing Trapeze V18 system.			
7	All reports shall be available for export in plaintext or Excel formats, at a minimum.			
8	All Trapeze modules and all reports shall be maintained by Trapeze support.			
9	The V21 system shall allow for CapMetro to import raw data from the read-only database.			
<b>2.3</b>	<b>Additional Custom Reports</b>			
1	In addition to importing or recreating all reports that currently exist in CapMetro's V18 Trapeze system, the Contractor shall develop and implement three new custom reports. These reports are the Daily Pullout Report, Headway Report and ODS (Transit Operational Data Standard) Export.			
2	The Contractor shall maintain and support the new custom reports in the same manner as the existing reports.			
3	All reports shall be available for export in plaintext or Excel formats, at a minimum.			
4	All custom reports shall be approved by CapMetro after development as part of implementation.			
<b>2.3.1</b>	<b>Daily Pullout Report</b>			
1	The Daily Pullout Report shall have the following report parameters: -Service Date -Garage (multi-select drop down) -Display (Open/Done/All) i.e., based on current system date/time			

2	The Daily Pullout Report shall have the following report display fields: -Vehicle ID -Pullout Time -Pullin Time -Block Number			
3	CapMetro shall work with the Contractor to provide guidance, expertise and example reports to assist with the development of the Daily Pullout Report.			
<b>2.3.2 Headway Report</b>				
1	The Headway Report shall have the following report parameters: -Service Type Drop Down (weekday, weekend, etc.) -Block Number Drop Down (option to select one block, multiple blocks or all blocks) -Follow Timepoint Option			
2	The Headway Report shall have the following report display fields: -Time -Direction -Timepoint -Block Number			
3	Time shall be shown in HH:MM format.			
4	Timepoints shall be shown in chronological order.			
5	Headway Report shall show the current service schedule, not by date.			
6	Headway Report shall display the scheduled timepoints for a service type for the current service schedule.			
7	When selecting multiple blocks, the Headway Report shall show the block number, and be sorted by time.			
8	When Follow Timepoint is selected, the closest timepoint to the system time will be distinguished in the report.			
9	CapMetro shall work with the Contractor to provide guidance, expertise and example reports to assist with the development of the Headway Report.			
<b>2.3.3 ODS (Transit Operational Data Standard) Report</b>				
1	The ODS Report shall allow for export of schedule data from a selectable service schedule in accordance with the ODS data standard.			
2	CapMetro shall work with the Contractor to provide guidance, and expertise to assist with the development of the Daily Pullout Report.			
<b>3 Project Implementation</b>				
1	The Contractor shall provide project implementation support to enable a complete and fully-functional Trapeze V21 system for CapMetro's use in the cloud environment.			
2	The Contractor shall procure, configure, integrate, and test the cloud environment, wherever applicable.			
3	The Contractor shall configure, install, integrate, and test the upgraded V21 system, wherever applicable.			
<b>3.1 Project Management</b>				
1	The contractor shall include a summary of the directly related and relevant experience and qualifications of the proposed Project Manager and all proposed requested personnel of the Contractor (including subcontractor personnel), which shall be limited to a maximum of three pages per position.			
2	The Contractor shall provide written notice to CapMetro at least two weeks in advance of any change in key personnel indicating the specific reason, and the qualifications of the new personnel. The change in key personnel must be approved by CapMetro before the change can occur.			
3	Contractor shall notify and request approval for all other onsite meetings and onsite presence of Contractor staff.			
<b>3.2 System Implementation Plan</b>				
1	The Contractor shall prepare a System Implementation Plan (SIP), including the detailed implementation activities, a project schedule, roles, and responsibility of parties in the proposed project team, progress milestones/status and assigned staff.			
2	The SIP shall include details on transitioning from the current system to the new system provided by the Contractor. The Transition Plan shall be developed such that CapMetro operations are not impacted in any way due to project implementation activities.			
3	The initial draft of the SIP shall be provided to CapMetro within two weeks from notice to proceed (NTP).			
4	The revised SIP, addressing comments from the first meeting, shall be provided to CapMetro within two weeks after this meeting.			
5	The SIP must be approved and accepted by CapMetro before it can become effective.			
6	The SIP shall be updated by the Contractor on a monthly basis to reflect the progress attained in the previous month and the anticipated changes in the future. The updated SIP shall be submitted to CapMetro at the beginning of each month.			
7	Any updates to the SIP including the project schedule shall be detailed and clearly expressed to CapMetro. The updated Project Schedule shall clearly identify all affected tasks new start and end dates, and updated task duration.			
8	The SIP shall include a rollout plan.			
9	The SIP shall identify planned delivery of documentation.			
10	The Contractor shall include in the SIP, the necessary time and resources to modify documentation to incorporate comments from CapMetro. The contractor should assume a minimum of two weeks for CapMetro to provide comments on submission.			

11	The Contractor shall include in the SIP the time for CapMetro to review the revised documentation.			
12	The Contractor shall convene regular progress review meetings, such as: <ul style="list-style-type: none"> <li>• Weekly or bi-weekly design/contract review meetings with CapMetro; and</li> <li>• Technical and contractual interface meetings with Sub-contractors, if any.</li> </ul>			
13	The agenda for these meetings shall be to discuss the most current status of and plans related to all issues identified in the recent releases of the SIP and action item list (AIL).			
14	CapMetro reserves the right to identify for discussion any additional issues beyond those in the SIP and AIL.			
15	The Contractor shall maintain an AIL, indicating for each item the following: (1) item number; (2) date generated; (3) item priority; (4) brief item descriptive title; (5) assigned person with lead resolution responsibility; (6) date resolved; and (7) ongoing dated notes on resolution status.			
16	The Contractor shall sort AIL primarily by unresolved vs. resolved items, priority, and by the date the item was generated. The Contractor shall provide AIL a day before the meeting.			
17	The Contractor shall only submit an invoice once a fully-signed Acceptance Certificate is generated by CapMetro indicating that a progress payment milestone has been achieved.			
<b>3.3</b>	<b>Requirements and System Design</b>			
1	The Contractor shall participate in the requirements review (RR) to discuss the contractually agreed requirements for design. The RR will initialize the Requirements Matrix. The Contractor shall use this Matrix to produce the draft Design Document for conducting the preliminary design review (PDR). The RR meeting shall review the following for each contract requirement: (1) CapMetro's design intent; (2) the intended Contractor design approach; and (3) the Contractor's approach to demonstration through the acceptance testing process.			
2	The Contractor shall prepare a traceability matrix with finalized contract requirements after the RR meeting. This matrix will be referred to as the requirements matrix (RM) hereafter.			
3	The preliminary design document (PDD) shall include the following materials: (1) a conceptual diagram illustrating all elements in the system and data flow; (2) an overview of the equipment, system, and configuration proposed for implementation; (3) detailed technical documentation for each equipment item; (4) detailed technical documentation on all software, addressing each module's functions, the format of all user interface screens, the format of all reports, the data fields to be included in all data exchange interfaces, and any other software aspects warranting advance agreement with CapMetro before system customization/configuration; and (5) a table providing cross-references for each section of the PDD to the appropriate element of the RM.			
4	The Contractor shall update the PDD based on CapMetro feedback and submit the updated documentation as the final design document (FDD).			
5	The FDD shall include the following materials: (1) updated PDD incorporating CapMetro feedback and comments; (2) final list of equipment to be procured; (3) final design and configurations of the system to be built including all customizations to be made to the system; and (4) an updated table providing cross-references between sections in the FDD and elements of the RM.			
6	The Contractor shall conduct the critical design review (CDR) four weeks after submitting the FDD.			
7	The PDD and FDD are intended only to reduce the chance of any misunderstandings on the design intent or interpretation of the contract requirements. The PDR and CDR shall not alter the need for each requirement's successful formal demonstration through Acceptance Testing process.			
8	Once the CDR is complete, the Contractor shall provide a detailed equipment list for the system.			
<b>3.4</b>	<b>System Documentation</b>			
1	All documentation shall be in English and utilize US customary units.			
2	All documentation shall be submitted directly to CapMetro electronically in one of the following formats, as relevant: <ul style="list-style-type: none"> <li>• MS Office formats (DOC, XLS, PPT, VSD)</li> <li>• Adobe PDF (searchable)</li> <li>• Scanned documents consisting of signatures, etc. may be approved for submittal.</li> </ul>			
3	Any and all communications or submissions to the CapMetro Project Manager shall be via email or via an online repository used for sharing files, such as SharePoint, along with an email follow, as approved by CapMetro.			
4	All revisions necessary to the documentation shall be done by the contractor at no additional cost to CapMetro.			
5	Manuals shall be complete, accurate, up-to-date, and shall contain only information that pertains to the system installed.			
6	All pages of the documentation shall carry a title, version number and issue date, and they shall contain a complete subject index. The Contractor shall be responsible for fully coordinating and cross-referencing all interfaces and areas associated with interconnecting equipment and systems.			
7	Documentation shall require re-issues if any change or modification is made to the software or cloud solution proposed to be supplied. The Contractor may re-issue individual sheets or portions of the documentation that are affected by the change or modification. Each re-issue or revision shall carry the same title as the original with a change in version number and issue date.			
8	All submissions shall be accompanied by a letter of transmittal listing drawing and document titles, numbers, and revisions.			
9	Submission of revisions shall be accompanied with a comment-by-comment response to CapMetro prior comments.			
	The System Documentation shall include at least the following: <ul style="list-style-type: none"> <li>• System Implementation Plan (SIP);</li> <li>• Preliminary and Final Design Documents (PDD) (FDD);</li> </ul>			



10	<ul style="list-style-type: none"> <li>• Acceptance Test Plan (ATP);</li> <li>• Installation Design Document (IDD);</li> <li>• Interface Control Document (ICD);</li> <li>• Test Results Documentation (TRD);</li> <li>• Maintenance and Operations Support Plan; and</li> <li>• Operations, Training and User Manuals.</li> </ul>			
11	The Contractor shall document configurations of the cloud system and networking infrastructure (e.g., list of IP addresses).			
12	The Contractor shall submit IDD for CapMetro approval before undertaking or making any modifications to CapMetro equipment or installations.			
13	The IDD shall provide adequately detailed text, drawings, illustrations, and images to allow a technician's quality installation without further training or installation instructions from the vendors of the individual equipment components.			
14	The IDD shall include details on (1) equipment installation locations/mounting; (2) routing, conductors, color-coding, labeling, and connectors for power, communications, and vehicle ground circuits; (3) connections with, any required modifications to and restoration of existing infrastructure; (4) work area and equipment storage requirements; (5) methods and quality standards; and (6) supervision and quality assurance procedures.			
15	The IDD shall include procedures for pre- and post-installation checklists for tests that the installers shall perform. The installations shall not be considered complete unless CapMetro signs off on the pre- and post- installation checklist for each vehicle.			
16	No adjustments, modifications, or substitutions to the IDD shall be made by the Contractor during installation, except with written approval by CapMetro.			
<b>3.5</b>	<b>Training</b>			
1	The Contractor must complete all documentation and training before CapMetro Final System Acceptance.			
2	The Contractor shall provide on site training courses for end users of the V21 system.			
3	The Contractor will also provide training for SMEs and application support staff.			
4	All Training must be completed prior to System Acceptance Testing (SAT).			
4	The Contractor will describe the necessary pre-requisite computer skills and knowledge expected for each of the training courses to develop training classes based on user skill level.			
5	The Contractor shall also provide all training materials in common electronic formats and storage media.			
6	<p>The training plan (TP), including the training schedule and course outlines, must be provided to Metro for review at least three weeks in advance of the start of training. At least the following topics must be included in the TP for each training session:</p> <ul style="list-style-type: none"> <li>• Course objective;</li> <li>• Topics to be covered;</li> <li>• Required CapMetro staff;</li> <li>• Time required for training;</li> <li>• Resources required from CapMetro;</li> <li>• Follow-up need (in-person or webinar);</li> <li>• Prerequisites for trainees; and</li> </ul>			
7	The TP must be approved by CapMetro before the start of any training.			
8	The Contractor shall furnish all special tools, equipment, training aids, and any other materials required to train course participants, for use during training courses only. CapMetro will provide a board room and projector that may be used for training sessions.			
9	The instructors shall demonstrate a thorough knowledge of the material covered in the courses, familiarity with the training materials used in the courses, and the ability to effectively lead students in a classroom setting.			
10	If any instructor is considered unsuitable by CapMetro, either before or during the training, the Contractor shall provide a suitable replacement within five (5) business days of receiving such notice from CapMetro.			
15	The Contractor shall provide a systems manual (SM), documenting (1) the configuration and topology of central systems hardware and software; (2) central systems software functions and operations; (3) scheduled maintenance required for the central systems; (4) the configuration and topology of the cloud environment hardware and software.			
16	The Contractor must provide disaster recovery documentation highlighting how the system can function and prevent any data loss in the case of a natural disaster or other unexpected events.			
<b>3.6</b>	<b>Testing and Acceptance</b>			
1	The Contractor shall submit an Acceptance Test Procedures document (ATP), for CapMetro's approval at least three (3) weeks before undertaking any testing.			
2	The ATP shall clearly address: (1) how each testable specification requirement will be demonstrated, including the method for performing the test; (2) A list of supporting equipment required; (3) the results that will constitute success for each test; (4) entry and exit criteria; (5) responsibilities of both Contractor and CapMetro's representatives during each test; and (6) which contract requirements from the Requirements Matrix each test addresses and how it addresses them.			

3	CapMetro reserves the right at no additional costs to make the following changes to the Test Plans and/or Procedures including during test stages: (1) Procedural changes, adjustments, or reasonable additions to ensure conformance with requirements; and (2) Explanations from Contractor staff as necessary to clarify the purpose, specific methods, functions, and/or results of tests.			
4	The ATP shall include an updated RM from the Design Review Document (DRD). These procedures shall include the test stage at which each contract requirement will be demonstrated and a cross-reference to the test procedure(s) that serve to address each contract requirement.			
5	The ATP shall incorporate multiple distinct testing stages for each proposed system or component, including: (1) User Acceptance Testing (UAT); (2) System Integration Testing (SIT); and (3) System Acceptance Testing with burn-in (SAT). Proposers shall clearly indicate testing stages for each proposed system or component.			
6	The contractor shall demonstrate each contract requirement during the distinct test stages unless otherwise waived by CapMetro or CapMetro's representatives.			
7	CapMetro may authorize the Contractor to proceed to the next testing stage with certain deficiencies not yet resolved.			
8	The Contractor shall provide written notice to CapMetro at least two weeks in advance of any testing, indicating the specific tests to be completed as well as the date, time, and location.			
9	Testing shall be witnessed by CapMetro or CapMetro's representatives.			
10	The Contractor shall provide written Test Results Documentation (TRD) after completing each stage of testing.			
11	CapMetro must approve the TRD before granting Acceptance of the test stage.			
12	The Contractor shall use the RM as a "punch list" to track which requirements have not yet been demonstrated at each stage of testing.			
13	The UAT is intended to provide CapMetro with the ability to test the system and provide feedback to the Contractor prior to any functionality being introduced as part of the production system.			
14	The UAT may happen in multiple phases as functionality is iteratively introduced. All functionality for a specific iteration must be fully demonstrated prior to completion of PT.			
15	SIT can be initiated only once all of the system elements have been installed and configured and all Quality Assurance and Quality Control (QA/QC) have been completed successfully. In addition, all deficiencies from UAT must be rectified before SIT. The SIT looks at the entire system and functionality, and tests are completed to ensure that the overall functional requirements are met.			
16	The Contractor shall complete SIT after the entire system has been implemented and shall rectify any deficiencies before initiating SAT.			
17	With successful completion and approval of SIT, all software and configuration files will be "frozen," and Vendor will make no changes without CapMetro authorization.			
18	SAT shall involve live service use of the system over a 30-day period after system testing is completed. Through SAT, the system is tested under full operations with full scale deployment to ensure that the performance requirements are met, and to measure the system performance metrics, including reliability and availability.			
19	CapMetro will not grant Final System Acceptance until the Contractor has rectified any outstanding deficiencies and formally met all contract requirements through SAT.			
4	<b>System Warranty and Support</b>			
4.1	<b>General Warranty Requirements</b>			
1	The base warranty period for the system shall be through to one (1) year from the date of Final System Acceptance for a phase. Optional Warranty periods will commence on the following date after the base period has ended, based on the Final System Acceptance date and the included first year of coverage.			
2	The Contractor shall offer an option to extend the system's warranty period for one, two, and three additional years. The Contractor shall document any differences in the warranty terms for these option years in their proposal.			
3	The Contractor shall warrant that it has reviewed and evaluated all information CapMetro furnished and has made all inquiries necessary such that the Contractor is fully aware of CapMetro's business requirements and intended uses of system, as set forth or referenced in the Request for Proposals and any Addenda, Amendments, or Final Proposal Requests, as well as in discussions during the Pre-proposal Conference.			
4	During the warranty period, the Contractor shall update all applicable software with the then-current software version at no additional cost to CapMetro.			
5	The Contractor is required to notify CapMetro at least two (2) weeks in advance of the installation when new software releases become available.			
6	The Contractor is required to notify CapMetro at least twelve (12) months in advance when it is expected that the current releases and related systems will no longer be supported.			
7	The Contractor shall coordinate and request CapMetro approval for the implementation of any maintenance activities, including patches or software upgrade.			
8	Any "patches" recommended by the hardware or software Contractors, (including operating systems), shall not void the system warranty.			
9	The Contractor shall conduct all software maintenance activities as per a defined protocol approved by CapMetro. The protocol shall be documented in the Maintenance and Operations Support Plan and shall indicate: <ul style="list-style-type: none"> <li>• Communications before, during, and upon completion of planned activities;</li> <li>• Template of communications prior to planned activity, including:           <ul style="list-style-type: none"> <li>o Expected timing of start and completion of activity (including expected downtime);</li> </ul> </li> </ul>			

	<ul style="list-style-type: none"> <li>o Anticipated impact(s) of activity on system and ongoing operations;</li> <li>• Template of communications during or after planned activity, including</li> <li>o Mitigation plan and associated updates, (if applicable in case of unsuccessful completion of activity).</li> <li>o Notice of successful completion of activity, (in case of successful completion of activity)</li> </ul>			
10	CapMetro shall be notified at least 48 hours prior to any scheduled system downtime (or alternative time period per approved maintenance protocol) required for any software maintenance activities, with CapMetro approval required to proceed with the planned activities.			
11	The Contractor shall ensure that all existing and previous software configurations are protected (through configuration backups or data archives) after the system has been upgraded or updated for the entire duration of the time when CapMetro uses the product.			
12	The Contractor shall provide, license, install, and integrate all released software patches and updates for the proposed solution and provide technical support during the warranty period, including technical support for all proposed hardware and software and a 24/7 support line.			
13	The Contractor shall, in collaboration with CapMetro, enable the ability for the Contractor to access the central software remotely, using a VPN connection approved by CapMetro (or an approved alternate secured remote access method).			
14	CapMetro shall be able to view the status of its support request(s) at any time through an online tracking system the Contractor shall provide.			
15	The Contractor shall provide a reliable method for telephone problem notification. Maintenance issues should be resolved in a timely manner, as agreed to per the CapMetro-approved maintenance plans.			
16	The Contractor shall designate a specific Technical Support contact person (e.g., an account manager) to handle all CapMetro reported issues. This contact person should be the first point of contact for the CapMetro to report all new issues and to follow up on previously reported issues and shall be available during normal CapMetro service operating hours.			
17	The Contractor shall notify CapMetro of the availability of enhancements, releases, and newer versions of the software (including third party software), including all bug fixes, patches, and modifications, or any modifications to the hosting system. The Contractor shall conduct all testing to ensure the enhancements or upgrades do not impact the system, and shall consult with the CapMetro concerning the advisability of incorporating such enhancements and newer versions and shall provide supporting materials.			
18	The Contractor shall only implement the enhancements or hosting upgrades upon CapMetro's approval. On CapMetro's request, significant enhancements, new releases, or new versions shall first be implemented on the test server, and then on the production server once CapMetro staff have tested the updated version on the test server. This testing will be in addition to testing the contractor will conduct. Following installation of the enhancement, new release, or new version on the production system, the Contractor shall be responsible for ensuring system availability.			
<b>4.2</b>	<b>Support Plan</b>			
1	The Contractor shall prepare a Support Plan, including the support hours availability, communication approach, method of tracking tickets and software-related incidents, support team, and severity classifications and response times. The Support Plan shall be in conformance with any finalized SLAs under this project.			
2	The Support Plan shall be approved by CapMetro as part of Final System Acceptance and before the initiation of the warranty period.			
<b>5</b>	<b>IT and Hosting</b>			
1	The Contractor shall provide hosting and IT networking infrastructure for the Trapeze V21 system.			
2	Contractor shall provide the hardware and configuration details for installing the System at data centers the Contractor proposes and CapMetro approves.			
3	All proposed software shall be scalable to support service expansion. Service expansion may include new modes, fleet size increase of up to two times of the current fleet, faster data rates, and a wider geographic coverage area within the Greater Austin region.			
4	The Contractor shall comply with the CapMetro's change management process when making any changes to provided systems. The Contractor shall report these changes to the CapMetro project manager.			
5	The Contractor shall provide both a production and test environment. The test environment is where software updates and configuration changes can be tested prior to being implemented in the production system. Any future updates or upgrades must be tested in the test environment and certified before being placed on production servers.			
6	All proposed software shall be hosted and supported under a Service Level Agreement (SLA).			
7	<p>The SLA shall meet the requirements outlined in this section and shall describe the following:</p> <ul style="list-style-type: none"> <li>• Description and scope of service provided (software that is covered by hosting agreement, scope of coverage and services, restrictions)</li> <li>• Service performance metrics (e.g. system availability, average service request response times, data security metrics)</li> <li>• System monitoring services provided by vendor (e.g. monitored parameters, automatic or manual monitoring, system security services)</li> <li>• Service standards, including service request categories (by priority), associated response times, and response protocols</li> <li>• Vendor communications and timelines</li> </ul>			

	<ul style="list-style-type: none"> <li>Expected CapMetro responsibilities</li> </ul>			
8	<p>SLA response shall meet the following CapMetro standards:</p> <ul style="list-style-type: none"> <li>Critical Outages - response within 15 minutes, workaround within 4 hours, resolution within 24 hours.</li> <li>Major Issues - response within 15 minutes, workaround within 12 hours, resolution within 24 hours.</li> <li>Medium Issues - response within 1 hour, workaround within 5 days, resolution with next software release.</li> <li>Minor Issues - response within 1 days, workaround within 30 days, resolution with upcoming software release.</li> </ul>			
9	The Contractor shall provide the details of the data center to be used. The Contractor shall use at least two parallel data centers in two different geographic locations for server redundancy.			
10	The Contractor shall provide CapMetro with access to all systems with a high degree of availability. The overall system availability (uptime for data and applications access to the production system implemented under this contract divided by the total time not including time scheduled in advance for system maintenance) shall meet or exceed 99.95%. The overall system availability for the test system shall meet or exceed 99%.			
11	Customer support shall be available 24 hours a day, 365 days a year. The Contractor shall address all of CapMetro's technical requests within one hour of notification of the problem. If an issue requires a longer timeframe for resolution, the Contractor shall advise CapMetro accordingly and provide an expected timeframe for resolution.			
12	The Contractor shall electronically monitor all servers, routers, switches, data center security, and facility power 24 hours a day, 365 days a year. If there are any out of tolerance conditions with any server components, the Contractor shall automatically notify its technical support. The Contractor's technical support must respond to these issues within one hour of notification.			
13	The data centers to be used for hosting shall have existing scheduled routine maintenance and emergency situation management plans. The Contractor must submit system availability information, maintenance schedules and emergency plans for the hosting data center with their proposal for CapMetro review.			
14	The Contractor shall be responsible for all layers of security as required for the proposed solution.			
15	CapMetro shall be able to access all proposed software at any time.			
16	CapMetro shall be able to access data and data feed at any given time as needed. Proposers shall describe how CapMetro will be able to access data when database is located at the Contractor-provided data centers.			
17	The Contractor shall make all of the solution's database-related components (e.g. tables, scripts, extensible markup language (XML) schema, and related information) available and fully accessible for CapMetro and its employees' support and use.			
18	The Contractor shall use prescribed standards for SQL Server virtualization to develop and configure their solutions. These solutions shall be flexible enough to run in consolidated database environments with other applications using different schemas and virtualization.			
19	All database queries shall be logged for audit purposes. CapMetro shall have the ability to view these logs when required.			
20	The online data storage system shall ensure data integrity in case of storage drive or SAN failure. This may be achieved through fail-safe fallback data storage, archiving transaction data, or through a restoration of data from an archive while the system is operating. It shall not be necessary to shut the database down while performing a successful backup operation.			
21	The system shall allow all data to be retrieved (whether active or archived) for these purposes when needed.			
22	Historical database records shall be readily accessible in a form that is directly accessible or importable into common database management and analysis tools.			
23	All data shall be CapMetro's property and shall be available immediately to CapMetro. The Contractor shall acknowledge in writing that CapMetro will own any and all data and the database where the data resides.			
24	All software security shall be provided in accordance with best practices identified in International Organization for Standardization and the International Electrotechnical Commission (ISO/IEC) 27002 or an alternative published standard from a recognized security-standards body.			
25	Proposers shall provide evidence of security audit of the proposed solution to verify that proposed solution is free of any security vulnerabilities.			
26	Any vulnerabilities or exploits the Contractor or others discover for the proposed application must be reported to CapMetro immediately with a proposed mitigation strategy.			
27	<p>The system shall include tools necessary to track and report on the following metrics:</p> <ul style="list-style-type: none"> <li>System availability (based on requirements outlined above);</li> <li>System usage (data usage, server usage, etc.);</li> <li>System security breaches and attempted breaches;</li> <li>System errors (server hardware/software malfunctions);</li> <li>Central Software user Internet Protocol (IP) addresses; and</li> <li>Virtual Private Network (VPN) connections.</li> </ul>			
28	The Contractor shall identify and describe the need and procedure for an incremental, daily, or other time frame-based data backup. The Contractor shall also identify and describe other needs related to data archiving, such as hardware and software.			
29	Contractor shall provide a backup and recovery plan that shall include hardware specifications, storage requirements and configuration parameters. The backup and recovery procedures must integrate with CapMetro's existing backup process.			

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Project Phase Tasks and Deliverables. Vendor 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. Vendor shall obtain CMTA review of all deliverables and make changes and updates to deliverables per CMTA review as needed.	
1.0	<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.</b></p> <p><b>Plan Deliverables from Vendor:</b></p> <ol style="list-style-type: none"> <li>1. Project organization chart</li> <li>2. Project schedule and Project Management Plan - (draft)</li> <li>3. Action Items and Issues log (AIL)</li> <li>4. Project Decisions Log</li> <li>5. Project Review Documents (PRDs) for project decisions</li> <li>6. Initial Risk Register</li> <li>7. System Implementation Plan (draft)</li> <li>8. Scope and Compliance Matrix Review and Update</li> </ol>
2.0	<p><b>Design. Vendor's configuration and implementation approach based on CMTA's previously gathered requirements. 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. Vendor 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> <ol style="list-style-type: none"> <li>1. Configuration Management Document ("CMD" - Draft)</li> <li>2. Solution Design Documents / MVP Lists (If Hybrid Agile Approach)</li> <li>3. Application Landscape Design Document</li> <li>4. Integration Design Plan</li> <li>5. System Implementation Plan (Final) / Sprint Plan (If Hybrid Agile Approach)</li> <li>6. Data Migration Plan (Draft)</li> <li>7. Disaster Recovery Plan (Draft)</li> <li>8. Quality Assurance Plan (Draft)</li> <li>9. Risk Management Plan (Final)</li> <li>10. Data dictionary and Entity Relationship Diagram (ERD)</li> <li>11. Project Schedule (Baseline) with Resource Loading</li> <li>12. Network architecture diagram (Draft)</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. Scope and Compliance Matrix Review and Update</li> </ol>
3.0	<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 Vendor 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> <ol style="list-style-type: none"> <li>1. Quality Assurance Plan Including QA/QC Checklist (Final)</li> <li>2. Development of modules, application and interfaces</li> <li>3. Develop and Design Review Sessions per Sprint (If Hybrid Agile)</li> <li>4. Retrospective sessions on prior development (If Hybrid Agile)</li> <li>5. Test Environment Installation that provides CMTA full access throughout the project and the life of the system</li> <li>6. Supporting Infrastructure Implemented as applicable</li> <li>7. Test Procedure/Plan including test Scripts, use cases, acceptance test criteria demonstrating each Compliance Matrix term is developed and meets requirement (Draft)</li> <li>8. Update Compliance Matrix with Test Number(s)</li> <li>9. High-level Training of CMTA Staff to Prepare for Test Phase</li> <li>10. Vendor Warranty and Maintenance Plan Review</li> <li>12. 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 based on functional and technical area</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. Vendor shall provide the agreed-to number of hard copies</li> </ul> </li> </ol>
4.0	<p><b>Test. Vendor shall develop and implement a comprehensive program to test all components and applications that comprise the integrated Vendor ERP solution. Testing is to be performed in five distinct and separate phases:</b></p> <ol style="list-style-type: none"> <li>1. Functional Unit Test (FUT)</li> <li>2. System Integration Test (SIT)</li> <li>3. End to End Test (EET)</li> <li>4. Pilot Test (Day in the Life)</li> <li>5. System Acceptance Test (SAT)</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. Vendor shall develop an ERP 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. Vendor shall not perform any test until the corresponding test plan and procedures have been approved by Capital Metro. Vendor 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> <ol style="list-style-type: none"> <li>1. Test Plan (including automated testing processes)</li> <li>2. Test Procedures (including automated testing processes)</li> <li>3. System Acceptance Test Plan and Execution</li> <li>4. Execution of FUT, SIT, EET, Day in the Life and System Acceptance Testing</li> <li>5. Security Penetration Test (performed as part of SAT)</li> <li>6. Disaster Recovery Test - End-to-End</li> <li>7. Volume and Stress Tests</li> <li>8. Regression Testing of the entire Test Plan for any Class 1 and Class 2 Failures</li> <li>9. Test Results and Reports (including results for failed tests)</li> <li>10. Agency Test Facility</li> <li>11. Procedures for changing environments (dev, test, stage, prod)</li> <li>12. Installation Plan (if applicable)</li> <li>13. Test Failure Log &amp; Remediation Plan. Vendor shall lead testing of the solution including integrations and resolve all Severe (Class 1) and Significant (Class 2) Test Failure Results (TFRs). Vendor shall endeavor to resolve Minor (Class 3) TFRs during this phase; however, the requirement for Class 3 resolution is during the Closeout phase. Definition for each class are as follows: <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>14. Compliance Matrix Review and Update</li> <li>15. Training Plan (Final)</li> <li>16. User, Admin, Maint., Installation, and Training Manuals</li> </ol>
5.0	<p><b>Deploy/Go Live: Deploy: once all the test failures have been corrected, the Vendor 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 Vendor shall be required to participate in the monitoring of the system and respond to issues so they are quickly resolved. Deploy/Go Live Deliverables:</b></p>

SSP 803236  
Exhibit F  
Scope of Services and Compliance Matrix  
Trapeze v21 Upgrade Cloud Migration

	<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>5. Update to Disaster Recovery Plan</li> <li>6. Updates to Data Migration Plan and Actions</li> <li>7. Delivery of all Documentation including User, System Admin, Maintenance, Installation and Training Manuals, (Revise Draft)</li> <li>8. Deployment, Implementation, Configuration and Integration of the Vendor 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. Revised (final) Copies of all Required Documentation including User and Training Manuals</li> <li>14. Compliance Matrix Review and Update</li> </ol>		
6.0	<p><b>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:</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> <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. All AIL items closed</li> <li>5. Resolution of all Minor (Class 3) TFRs</li> </ol> </td> <td style="width: 50%; border: none; vertical-align: top;"> <ol style="list-style-type: none"> <li>6. Final Documentation for Environment Refresh (Develop-Test-Stage-Production)</li> <li>7. Disaster Recovery Plan (Final)</li> <li>8. Configuration Management Documents (CMD – Final)</li> <li>9. APIs and all documentation related to all integrations (Final)</li> <li>10. Warranty and Maintenance Procedure Review and Forms</li> <li>11. As-builts: updates to any documentation including design document changes</li> <li>12. Participation in Lessons Learned</li> </ol> </td> </tr> </table>		<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. All AIL items closed</li> <li>5. Resolution of all Minor (Class 3) TFRs</li> </ol>	<ol style="list-style-type: none"> <li>6. Final Documentation for Environment Refresh (Develop-Test-Stage-Production)</li> <li>7. Disaster Recovery Plan (Final)</li> <li>8. Configuration Management Documents (CMD – Final)</li> <li>9. APIs and all documentation related to all integrations (Final)</li> <li>10. Warranty and Maintenance Procedure Review and Forms</li> <li>11. As-builts: updates to any documentation including design document changes</li> <li>12. Participation in Lessons Learned</li> </ol>
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<p><b>Project Management.</b> Vendor 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. 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 Tasks:</p>				
7.0	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> <ol 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> </ol> </td> <td style="width: 50%; border: none; vertical-align: top;"> <ol 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. Weekly Project Status Report</li> <li>13. Monthly 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> </ol> </td> </tr> </table>		<ol 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> </ol>	<ol 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. Weekly Project Status Report</li> <li>13. Monthly 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> </ol>
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<b>Definitions</b>	
1.01	Project Management Plan - Outlines vendor's approach to day to day project management, including risk management, budget and schedule management, communication management and change management
1.02	System Implementation Plan - Outlines the vendor's approach to implementing (via Traditional or Hybrid Agile) the required system components and modules
1.03	Data Migration Plan - Outlines the vendor's approach to migrating data from the legacy to the future state ERP system, including any data migration to a future state Data Warehouse
1.06	Disaster Recovery Plan - Outlines the vendor's approach to recovering lost data due to external or internal system failure, including archived data
1.07	Quality Assurance Plan - Outlines the vendor's approach to reviewing work product, including configurations, to ensure they meet Capital Metro requirements and specifications
1.08	Integration Design Plan - Outlines the vendor's approach to successfully fulfilling the requirements for internal and external integrations
1.09	Risk Management Plan - Outlines the vendor's approach to identifying and mitigating risk throughout the project
1.10	Test Plan - Outlines the vendor's approach to all testing throughout the lifecycle of the project, including development of test processes, scripts and approach to execution



# TAB 6

EXHIBIT IT-REVISED-1  
ADDITIONAL TERMS AND  
CONDITIONS FOR THE  
PERFORMANCE OF IT  
PRODUCTS AND SERVICES

**EXHIBIT IT-1-REVISED-1**

**ON-PREM SOLUTIONS**

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

**1. DEFINITIONS**

Unless otherwise specified in Exhibit E-Revised-1 (Contractual Terms and Conditions (Services Contract)) to the Contract, the following definitions shall apply, if applicable:

- (a) "Acceptance" shall have the meaning set forth in Section 4(c) 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) "Authority Data" means the term as defined in Article 1 (Definitions) of Exhibit E-Revised-1 (Contractual Terms and Conditions (Services Contract)).
- (d) "Authority Electronic Property" means the term as defined in Article 1 (Definitions) of Exhibit E-Revised-1 (Contractual Terms and Conditions (Services Contract)).
- (e) "Confidential Information" shall have the meaning set forth in Section 1 (Definitions) of Exhibit G (Trapeze Software Licensing and Maintenance Agreement).
- (f) "Contractor's Certification" shall have the meaning set forth in Section 4(c) of this Exhibit.
- (g) "Contractor Technology" means the Software, and On-Prem System, as applicable, 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.
- (h) "Customers" means any purchaser of products or services from the Authority.
- (i) "Deliverables" means all information, data, materials, devices (including equipment and hardware), software (including the Software), systems (including the On-Premises System), interfaces to any software and hardware, system or operating environment including Authority Electronic Property) and other items to be delivered by the Contractor and licensed to the Authority, as specified in the Project Plan.
- (j) "Documentation" means the documentation provided to the Authority including, but not limited to, user manuals, system administration manuals, maintenance manuals, diagrams and operator instructions related to the System, Software, furnished by the Contractor and licensed to the Authority in any format, including paper and electronic.
- (k) "License Term" means the specific term or period (annually or perpetual) for each license to the On-Premises System and/or Software and/or Documentation, and/or other Contractor Intellectual Property, as may be set forth in Exhibit A-Revised-2 (Pricing Schedule) or other parts of the Contract. If no term is specified in Exhibit A-Revised-2 (Pricing Schedule), then the applicable term shall be applicable.
- (l) "Maintenance Support Services" means the maintenance support services for the On-Premises System, Software to be performed by Contractor.
- (m) "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.
- (n) "On-Premises System" means the turn-key system comprised of Software to be installed in the premises, facilities, networks or transportation vehicles controlled or managed by the Authority.
- (o) "Project" means the project from pre-production launch to pre-final notice related to the Software, On-Premises System and any Deliverables and Services as described in more detail in this Exhibit.

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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- (p) "Project Plan" means the project plan for the delivery, implementation, customization, configuration and/or installation of the Software, hardware and/or On-Premises System and any the Services and Deliverables required for the Project, as agreed between the parties. May also be called the Statement of Work ("SOW") as included in Exhibit F-Revised-1 (Scope of Services and Compliance Matrix) to the Contract.
- (q) "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.
- (r) "Security Incident(s)" means:
- (i) the loss or misuse of the Authority Data or the Authority Electronic Property;
  - (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data 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).
- (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 the Authority Data and/or the Authority Electronic Property from unauthorized access, 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-Revised-2 (Pricing Schedule) or E (Contractual Terms and Conditions (Services Contract)) to the Contract, or
  - (ii) with respect to any Maintenance Support Services related to the On-Premises System, Software, the specific term or period set forth in Exhibits A-Revised-2 (Pricing schedule) or E (Contractual Terms and Conditions (Services Contract)) 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.
- (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 On-Premises System, Software, as may be further described in the Contract.
- (x) "Updates" means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of the On-Premises System and/or Software created or acquired by the Contractor during the Service Term.

**2. CONTRACTOR REQUIREMENTS**

(a) Unless specified in the applicable Project Plan, the Contractor will furnish, at its own expense, all resources, personnel, equipment, tools, and supplies necessary for the timely performance of the Services and the Deliverables. The Contractor may use any means necessary and appropriate to perform the Services and the Deliverables under 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 Authority shall take all reasonable and necessary steps to encrypt and/or anonymize Authority Data prior to Contractor having access, possession, or controls of said data.

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

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

(e) 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. The expenses for said audits shall be borne by the Authority.

(f) 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 and facilities as the same may be provided to Contractor then in effect when remotely accessing or on-site at the Authority's premises or systems and all Applicable Laws.

(g) Regarding the Authority's Information Security Policy IT-203, Procedure 19. Only data deemed confidential or sensitive by the Authority must be encrypted and the following shall not apply to Contractor:

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

Authority has the right to review the content of a person's files or access logs, including e-mail, text messages, voicemail and any other other technology used for Authority business for the purpose of monitoring compliance with workplace rules and policies and shall be able to monitor all fileserver space and other related data storage to ensure appropriate use of these services. There is no expectation of privacy on any technology used for Authority business.

(h) Regarding the Authority Technology Usage Policy IT-201, the following language under Enforcement shall not apply to Contractor:

Upon request, the Authority has the right to review the content of a person's files or access logs, including e-mail, text messages, voicemail and any other technology used for the Authority's business for the purpose of monitoring compliance with workplace rules and policies and shall be able to monitor all fileserver space and other related data storage to ensure appropriate use of these services. There is no expectation of privacy on any technology used for the Authority business.

(i) Regarding the Authority Technology Assignment and Acquisition Policy IT-202, this document is only applicable to the Authority's employees and hired contractors and does not apply to Contractor).

(j) The Contractor will promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving the Authority Data or the Authority Electronic Property, to the extent within the Contractor's access, possession, or control. Following a Security Incident, in which the Contractor had access, possession, or control of Authority Data, Contractor will consult in diligent good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable and 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, non-proprietary 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, subject to Contractor's Limitation of Liability contained in the Contract. 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 and/or the Authority Electronic Property under such interlocal agreement).

(k) 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 of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event:

(i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal obligation to notify such Customers or employees and explain in such notice to the Authority the basis for the legal obligation, and

(ii) the Contractor will limit the notices to such Customers and employees to those required by the legal obligation or as pre-approved by the Authority.

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The Contractor will reasonably cooperate in connection with notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

### **3. PROJECT PLAN AND MILESTONE DEADLINES**

The Project Plan shall be the Statement of Work, attached as Exhibit F-Revised-1 (Scope of Services and Compliance Matrix) to the Contract. The Pricing and Payment Milestones shall be attached to the Contract as Exhibit A-Revised-2 (Pricing Schedule).

### **4. ACCEPTANCE**

(a) Unless otherwise defined or specified in an Exhibit to the Trapeze Software Licensing and Maintenance Agreement, the provisions set forth in this Section shall apply to determine the Authority's Acceptance of the On-Premises System, Software.

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

(c) Unless otherwise specified in the Project Plan, within thirty (30) days after installation and testing are completed, the Contractor shall certify in writing that the On-Premises System, Software and/or (as configured) 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 delivery, installation, configuration, deployment (including Authority Data) and or operational testing of the On-Premises System, Software and/or such items are ready for final testing and launch for production use by the Authority and Customers.

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

(e) 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 reasonable time after the issuance of the Contractor's Certification.

(f) 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 On-Premises System, Software and/or for Acceptance by the Authority for review and testing on the same basis as initially submitted. If, in the reasonable professional judgment of the Contractor such discrepancy is not valid, the Contractor shall so notify the Authority in writing.

(g) In the event that the Authority, upon final review, does not accept the On-Premises System and/or only makes a partial acceptance thereof, the Authority may elect to:

(i) accept delivery of the On-Premises System and/or Software "AS IS" at a negotiated equitable reduction in the price and payment schedule for both the On-Premises System, Software and/or any Maintenance Support Services; or

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(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. USE OF ON-PREMISES SYSTEM, THE SOFTWARE AND THE AUTHORITY DATA AND AUTHORITY ELECTRONIC PROPERTY**

(a) Contractor intellectual property licensed hereunder shall be per the licensing terms set forth in the Trapeze Software Licensing and Maintenance Agreement in Exhibit G.

(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. 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, except as expressly stated in writing by the Authority.

### **6. USE OF AUTHORITY'S NAME**

The Contractor agrees not to make any written use of or reference to the Authority's name for any marketing, public relation, advertising, display or other business purpose or make any use of Authority Data for any activity unrelated to the express business purposes and interests of the Authority under the Contract, without the prior written consent of the Authority, which consent will not be unreasonably withheld.

### **7. SPECIFIC PERFORMANCE**

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

### **8. 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.

### **9. WAIVERS**

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

### **10. UCITA**

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

# TAB 7

## EXHIBIT IT-2-REVISED-1, ACCESS AND USE AGREEMENT



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**EXHIBIT IT-2-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 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. 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) 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 as provided to Contractor by Authority, 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 necessary access to the Application and the Authority Electronic Property. The Contractor will reasonably cooperate with and assist the Authority and its contractors to implement security protocols (e.g., firewalls, SSI, etc.) and take necessary actions as agreed 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. Upon agreement by the parties, the Contractor will, upon the Authority's written request, provide to the Authority copies of firewall logs solely for troubleshooting purposes. 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 comply with the Authority's privacy policies and safety and network security policies, as the same are 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, if any, 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. The Contractor will 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) promptly 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. 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 use reasonable efforts to 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 that are provided to Contractor 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 on seven (7) days' prior notice to the Contractor. Within thirty (30) 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. Contractor is entitled to retain any Confidential Information in the electronic form or stored on automatic computer back-up archiving systems during the period such backup or archived materials are retained under Contractor's procedures; 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, and such archived or back-up Confidential Information shall not be accessed except as required by 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**

Contractor:	<b>Trapeze Software Group, Inc.</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.	

# TAB 8

## EXHIBIT G, TRAPEZE SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

**EXHIBIT G  
TRAPEZE SOFTWARE LICENSING AND MAINTENANCE AGREEMENT**

**Between**

**TRAPEZE SOFTWARE GROUP, INC. (“Trapeze”), with a place of business at 5265 Rockwell Drive NE, Cedar Rapids, Iowa 52402, U.S.A.**

**And**

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY (“Licensee”) with its principal place at business at 2910 East 5<sup>th</sup> Street, Austin, TX, 78702, U.S.A.**

Notice Information:

If intended for Trapeze, to:

5265 Rockwell Drive, NE

Cedar Rapids, IA, 52402

Contact: Legal Department

Email: legal@trapezegroup.com

If intended for Licensee, to:

2910 East 5<sup>th</sup> Street

Austin, TX 78702

Contact: Chief Counsel

Email: [Legal@capmetro.org](mailto:Legal@capmetro.org)

**Collectively, Trapeze and Licensee are hereinafter referred to as “Party” or “Parties”. This Software Licensing and Maintenance Agreement (SWLMA), including the Exhibits referred hereto, represents the complete and exclusive agreement between Trapeze and Licensee with respect to the subject matter hereof and supersedes all prior agreements, negotiations, or understandings between Trapeze and Licensee in any way relating to the subject matter of this SWLMA. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this SWLMA or have any legal effect whatsoever. This SWLMA may not be modified except by a later written amendment signed by both parties. Without limiting the generality of the foregoing, Trapeze will not be bound by any standard or printed or referenced terms produced by Licensee, including but not limited to those terms included or referenced in any of Licensee’s purchase orders. Licensee expressly acknowledges that no provisions, representations, undertakings, agreements, regarding the products or services to be provided hereunder, have been made, other than those contained in this SWLMA. The Parties agree that no obligations or duties not set out expressly herein shall be imposed upon the parties or implied by law.**

Signed for and on behalf of Trapeze:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signed for and on behalf of Licensee:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

1. Definitions In this SWLMA the capitalized words set out below will have the following meanings:
- “SWLMA” this Software License and Maintenance Agreement effectively made between Trapeze and Licensee, and the attached exhibits, all of which form an integral part of this SWLMA;
- “Confidential Information” any oral, written, graphic or machine-readable information including, but not limited to technical or non-technical data, patents, patent applications, copyright, copyright applications, research, product or service plans, developments, inventions, processes, designs, drawings, patterns, compilations, engineering methods, techniques, devices, formulae, software (including source and object code), algorithms, business plans, agreements with third parties, lists of actual or potential services or customers, marketing plans, financial plans or finances and similar information relating to either Party furnished by or on behalf of the disclosing Party to the recipient Party or any representatives regardless of the manner in which it is furnished or obtained by the recipient Party or its representatives through observation of the disclosing Party’s facilities or procedures (save and except communications with legal counsel which constitute attorney-privileged information). The disclosing Party agrees to use reasonable efforts to summarize in writing the content of any oral disclosure or other non-tangible disclosure that is proprietary or confidential to the recipient Party within a reasonable time (not to exceed thirty (30) calendar days) after the disclosure. However, failure to provide this summary will not affect the qualification of the disclosing Party’s Confidential Information as such if the Confidential Information was identified as confidential or proprietary when disclosed orally or in any other non-tangible form. Confidential Information shall not include any information that: (i) is or becomes generally known to the public through no fault of the recipient Party; (ii) is obtained without restriction from an independent source having a bona fide right to use and disclose such information, without restriction as to further use or disclosure; (iii) the recipient Party independently develops through persons who have not had access to such information; or (iv) the disclosing Party approves for unrestricted release by written authorization.
- “Documentation” the user documentation and training materials pertaining to the Software as supplied by Trapeze;
- “Equipment” shall refer to any third-party equipment, that may be provided herein and is specified in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1;
- “Software” Trapeze proprietary software licensed to the Licensee, as identified in Exhibit A of this SWLMA;
- “Statement of Work” the specifications for the Services to be provided by Trapeze and the Licensee, attached to the Contract as Exhibit F-Revised-1;
- “Third Party Software” any licensed software products, as further may be outlined in Exhibit A, that are provided hereunder which are not Trapeze intellectual property;
- “Trade Secrets” any information proprietary to either Party (including software source code), concerning a design, process, procedure, formula, or improvement that is commercially valuable and secret (in the sense that the confidentiality of such information affords a competitive advantage to the owner), but shall not include any information that: (i) is or becomes generally known to the public through no fault of the recipient Party; (ii) is obtained without restriction from an independent source having a bona fide right to use and disclose such information, without restriction as

to further use or disclosure; (iii) the recipient Party independently develops through persons who have not had access to such information; or (iv) the disclosing Party approves for unrestricted release by written authorization.

“Upgrades” generic enhancements to the Software that Trapeze generally makes available as part of its long-term software support program.

2. Software License In consideration of payments to be made by Licensee to Trapeze as set out below, Trapeze agrees as follows:

- (a) Trapeze hereby grants to Licensee a personal, non-transferable, non-exclusive license to use a production copy of the object code version of the Software in the form supplied by Trapeze and on hardware approved by Trapeze as of the License Date referred to in Exhibit A (“**License Date**”), restricted to the places of business of the Licensee, for the Licensee’s own operations, in accordance with the operational characteristics described in Exhibit A.
- (b) Trapeze hereby grants to Licensee a personal, non-transferable, non-exclusive license to use the Documentation as of the License Date, but only as required to exercise the Software license granted herein.
- (c) Licensee may make one back-up copy of the Software. Licensee may use the production copy of the Software solely to process Licensee’s own data, and the software may not be used on a service bureau or similar basis to process data of others.
- (d) The license to use the database underlying the Software (“**Trapeze Transit Database**”) is granted to Licensee solely for the development of internal reports by Licensee and for the integrated operation of the Software components. Unless expressly included herein, all other access rights to the Trapeze Transit Database are excluded from this SWLMA, and the Licensee shall not develop or use, or authorize the development or use of, any other interfaces to or from the Trapeze Transit Database. Notwithstanding the previous two sentences, Licensee may develop interfaces for the Trapeze Transit Database either (i) on its own based on the information and Documentation provided by Trapeze to extract data for its internal benefit, so long as such interfaces do not write to, edit, modify or materially degrade the performance of the Trapeze Transit Database or (ii) to a Trapeze-published application programming interface (“**API**”), which may be licensed from Trapeze. However, Licensee shall retain ownership of the raw data that is inputted into the Trapeze Transit Database and any data generated thereof.
- (e) In the case of any third-party Equipment, Third Party Software, related Documentation, or third-party services provided under this SWLMA, such third party shall retain all rights in patents, copyrights, trademarks, trade secrets, and any other intellectual property. The terms and restrictions of the license grants contained in Section 2, in addition to any other terms required by any third-party licensor(s), will apply to the use of any Third Party Software and related Documentation, and the licensors of such Third Party Software are third party beneficiaries of the rights granted under those terms. Where required, Licensee shall enter into a separate end-user-license agreement depending on the product(s) procured. Licensee may only transfer any Software or Third Party Software embedded with any Equipment in accordance with the terms and conditions of this SWLMA.
- (f) Other than the rights of use expressly conferred upon Licensee by this paragraph, Licensee shall have no further rights to use the Software, Third Party Software, or the Documentation, and shall not copy, reproduce, modify, adapt, reverse engineer, disassemble or translate them, without the express written authority of Trapeze. Trapeze shall retain all rights in patents, copyrights, trademarks, trade secrets, and any other intellectual property whether pre-existing or developed under this SWLMA. Furthermore, neither this SWLMA nor the delivery of any services hereunder shall be construed as granting, either by estoppel or otherwise, any right in, or license under, any present or future data, drawings, plans, ideas or methods disclosed in this SWLMA or under any invention, patent, copyright or trade secret now or hereafter owned or controlled by Trapeze. Licensee agrees to: (i) take reasonable steps to maintain



Trapeze's and/or its subcontractors' intellectual property rights; (ii) not sell, transfer, publish, display, disclose, or make available the Software, Third Party Software or Documentation, or copies of the Software, Third Party Software or Documentation, to third parties except where Licensee may disclose software to designated government representatives under a nondisclosure agreement executed by both parties, (iii) not use or allow to be used, the Software, Third Party Software or Documentation either directly or indirectly for the benefit of any other person or entity, and (iv) not use the Software or Documentation, along with its updates, patches or upgrades, on any equipment other than the equipment on which it was originally installed, without Trapeze's written consent.

3. Software Services As applicable, in accordance with the terms of the Scope of Services and Compliance Matrix, Exhibit F-Revised-1, Trapeze will perform services related to Licensee's use of the Software (the "**Services**"). Such services may include installation, modification, testing, training and additional services.

The Parties agree that certain additional Services, including but not limited to training, installation, or testing, may be added by the Parties' representatives via a work order under this SWLMA. The Parties agree that pricing and scope of such additional Services will be finalized between the project managers and any work orders or purchase orders associated with such additional Services shall be governed by the terms of this SWLMA, notwithstanding the presence of any standard terms and conditions associated with such work orders.

4. Software Acceptance Upon completing the delivery, installation, and testing of the Software, Trapeze will notify Licensee in writing. Licensee will have twenty-five (25) business days in which to conduct acceptance test in order to ensure that the Software operates in all material respects. At the end of this period, Licensee will be deemed to accept the Software unless Trapeze receives prior written notice outlining the nature of the Significant Failures in the Software. Notwithstanding the above, Licensee will be deemed to accept the Software when the Licensee puts the Software into operational and functional use. The Software will be deemed to be in operational and functional use when the Licensee first uses the Software to support its then current operations in any capacity.

A "Significant Failure" will mean a failure of the Software to function in accordance with the requirements of the Documentation, where such a failure causes the Software to be inoperable or significantly impairs the functionality of the Software such that there is a critical impact on business operations. Failures that are, without limitation, the result of any operator error, Licensee's or its subcontractors actions or omissions, abuse or misuse of the products or invalid or incorrect data entry by call takers or operators will not be considered in evaluating successful operation.

5. Software Warranty

- a. Trapeze warrants the individual Software component to operate in all material respects as specified in the Documentation for a period of twelve (12) months days from the date upon which the individual Software component is installed. For any breach of this warranty, Licensee's sole and exclusive remedy and Trapeze's entire obligation hereunder shall be to either repair or replace the defective Software. This warranty does not apply to any Software damaged as a result of any accident, negligence, use in any application for which it was not designed or intended, or modification without the prior written consent of Trapeze.
- b. Trapeze warrants it has the right to (i) enter into this SWLMA and (ii) grant the licenses pursuant to this SWLMA. No separate warranty is provided or included by Trapeze with respect to any third-party licensed products including any embedded third-party software or Equipment. Trapeze shall flow through any and all third-party warranty terms that may apply. Trapeze agrees that it shall be the first point of contact for corrective or remedial services with respect to any embedded software, however specific support and upgrades for such embedded software shall be delivered through the applicable third-party provider. Any third-party licenses or Services required to migrate the Software due to any future upgrade or migration of the embedded software are not included in the pricing under this SWLMA and will be separately quoted by Trapeze.
- c. **The foregoing warranties are in lieu of all other warranties or conditions, express or implied, including but not limited to any implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose and any other warranties arising by statute or otherwise in law or from the course of dealing or usage of trade. Trapeze does not represent or warrant that the Software will meet**

**all of Licensee's particular requirements, or that the operation of the Software will operate 100% error-free or uninterrupted, or that all program errors in the Software can be found in order to be corrected.**

6. Software Maintenance During any warranty period and for any annual support period for which maintenance fees have been paid in full by Licensee, and the Software has not reached its commercial end of life:

- a. Trapeze will maintain (i) the Software so that it operates in conformity in all material respects with the descriptions and specifications for the Software set forth in the Documentation, and (ii) one (1) instance of the Software in a test environment and one (1) additional instance of the Software in a production environment;
- b. In the event that Licensee detects any errors or defects in the Software, Trapeze will provide reasonable support services through a telephone software support line from Monday to Friday, 8 am to 8 pm EST (Except North American holidays) and an available twenty-four hours per day line for emergency support in accordance with the Trapeze Service Standards identified in Exhibit B (Service Standard for Maintenance of Trapeze Software). Upon registration by Licensee, Trapeze will also provide Licensee with access to its software support website, and;
- c. Licensee shall be placed on Trapeze's mailing list to receive notifications of updates and Upgrades to Software furnished under this SWLMA, excluding Third Party Software mailings; this shall include application software, system software, and software which Trapeze customizes for this project. Licensee agrees to work with Trapeze to validate and test updates and upgrades in the Test Environment to allow for installation updates and Upgrades in timely manner and further agrees that Trapeze shall provide maintenance services only for the current release of the Software and all other releases whose version number begins with either the same number or two previous numbers left of the left most dot. If Trapeze provides support for versions of the Software other than those specified above, such support will be treated, billed, and paid for, as additional Services.
- d. Documentation for Software Difficulty: Upon the identification of a possible fault or difficulty within any of the Software to be supported hereunder, Licensee shall promptly issue a trouble report to Trapeze that shall include the following information:
  - a) Date of performance anomaly;
  - b) Software module in question and location of where Software is installed;
  - c) Detailed system description of performance anomaly;
  - d) Version number of Software and severity/impact to Licensee's operations;
  - e) Contact name and phone number.

The trouble report information may also be communicated verbally to Trapeze via telephone. Trapeze shall forward the trouble report to the designated repair technician.

- e. Software Excluded from Maintenance: The Parties agree that the above maintenance services shall not apply to maintenance of Third Party Software and Trapeze shall be under no obligation to provide any maintenance services to the Licensee with respect to such third party Software, except for any third party software, such as operating systems, that necessary to run and connect to the TCMS environment.. Trapeze shall be the first point of contact with respect to embedded Third Party Software but remedial services may be required from the respective third party provider. The Parties further agree that the above maintenance services shall not include services which may be required to identify or correct errors, defects, or performance issues in the Software which are caused by the actions or omissions of the Licensee, its employees, contractors or vehicle riders described in the following sentence. In the event that Software is subjected to any of the conditions below by Licensee or any third parties, such Software shall be excluded from maintenance service coverage:
  - a) Software subjected to negligence;
  - b) Software subjected to cannibalization or vandalism;
  - c) Software subjected to alteration or repair in a manner which conflicts with Trapeze's written repair procedures, specifications, or license terms;
  - d) Software subjected to inadequate handling;

- e) Software subjected to fire, wind, flood, leakage, collapse, lightning, explosion, or other Acts of God, including but not limited to acts of war (declared or undeclared), terrorism, or the public enemy; and
  - f) Software altered as a result of third party service bulletins.
- f. Disclaimer: Trapeze does not represent or warrant that the Software under maintenance shall meet any or all of Licensee's particular requirements; or the operation of the Software under maintenance shall be error-free or uninterrupted. Additionally, Trapeze makes no representations with respect to any third party tablets that are procured by the Licensee. Licensee's sole and exclusive remedy and Trapeze's entire obligation for breach of the obligations hereunder shall be to either repair or replace the defective Software under maintenance.
7. Payment: Upon execution of this SWLMA, Licensee will issue a Purchase Order to Trapeze, for the Software license fees, service fees, and related expenses as set out in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1, attached hereto. Trapeze will invoice Licensee for the Software license fees and services fees as set out in and according to the Scope of Services and Compliance Matrix, Exhibit F-Revised-1. The gross amount of the license fee is set out in Exhibit A. Trapeze will invoice Licensee monthly for the Services provided, in accordance with Exhibit F-Revised-1, Scope of Service and Compliance Matrix. The total amounts due for all service fees, modifications fees, and expense are firm fixed amounts and will be invoiced on that basis. The Purchase Order shall be governed exclusively by the terms and conditions of this SWLMA.

Commencing upon completion of the warranty period for each Software application, Licensee shall pay annual maintenance fees to Trapeze as provided in Exhibit A (the "**Maintenance Fee**"), attached hereto. This fee shall be subject to change as set out in Exhibit A. Licensee shall issue a Purchase Order annually specifying the amount set forth in the Trapeze invoice for maintenance services, and the Purchase Order shall be governed by the terms and conditions of this SWLMA. In the event that either Party wishes to terminate the maintenance services to be provided under this SWLMA with regards to a product, the terminating Party must provide the other Party with no less than ninety (90) days written notice of such termination before the expiration of the then current maintenance period, during which ninety (90) day period the applicable maintenance fees will remain payable. Trapeze may suspend provision of any maintenance services during any period of time during which the applicable maintenance fees remain unpaid by Licensee.

8. Trade Secrets and Confidential Information: Licensee acknowledges that all Trade Secrets relating to or concerning the Software, including any modifications made thereto, are owned by Trapeze or Trapeze has the applicable rights of use and Licensee will maintain the Trade Secrets in strict confidence and not disclose the Trade Secrets to any third party without Trapeze's prior written consent. Licensee shall prohibit any persons other than Licensee employees from using any components of the Software and Licensee shall restrict the disclosure and dissemination of all Trade Secrets reflected in the Software to Licensee's employees who are bound to respect the confidentiality of such Trade Secrets. These obligations of confidentiality will survive termination of this SWLMA.

The Parties acknowledge that any Confidential Information disclosed to either Party pursuant to this SWLMA shall remain the property of the respective Party. Either Party shall maintain in confidence and not disclose the same, directly or indirectly, to any third party without the other Party's prior written consent. Both Parties further acknowledge that a breach of this section would cause irreparable harm to the other Party for which money damages would be inadequate and would entitle the non-breaching Party to injunctive relief and to such other remedies as may be provided by law. Notwithstanding the foregoing, this SWLMA is subject to the Texas Public Information Act (Ch. 552 of the Government Code, see Exhibit E-Revised-1, Section 42.)

9. Media and Publication: As set forth in Section 41 of Exhibit E-Revised-1 of the Contract.

10. Force Majeure: As set forth in Section 45 (Excusable Delays) in Exhibit E-Revised-1 of the Contract.

11. Remote Access: Upon reasonable notice and prior request, Licensee may provide Trapeze the limited right to establish a remote connection to Licensee's computer(s) on which the Software is installed, so as to enable Trapeze to monitor the operation of the Software.

12. Intellectual Property Indemnification: Trapeze will defend and indemnify Licensee and its directors, officers, employees, agents, attorneys, representatives, successors and assigns, from and against any and all third-party

claims, demands, or notices (direct or indirect) in whatever form and regardless of the merits thereof, asserted against the party seeking indemnification with respect to actual or alleged liabilities, damages, losses, claims, demands, assessments, actions, causes of action, and costs (including attorneys' fees and expenses), arising out of or resulting from any claim alleging that the provision, receipt or use of the Software, or any deliverable infringes any third party's intellectual property rights. Trapeze will pay any award rendered against Licensee by a court of competent jurisdiction in such action, provided that Licensee gives Trapeze prompt notice of the claim and Trapeze is permitted to have full and exclusive control of any defense. If all or any part of the Software becomes, or in Trapeze's opinion is likely to become, the subject of such a claim, Trapeze may either modify the Software to make it non-infringing or terminate this SWLMA as it relates to the infringing portion of the Software. This is Trapeze's entire liability concerning intellectual property infringement. Trapeze will not be liable for any infringement or claim based upon any unauthorized modification of the Software developed by Licensee or any other third party, or use of the Software in combination with software or other technology not supplied or approved in advance by Trapeze, or use of the Software contrary to this SWLMA or the Documentation.

13. Limitation of Liability

As set forth in Section 36 (Limitation of Liability) of Exhibit E-Revised-1 of the Contract.

14. Termination:

(a) Either party may terminate this SWLMA or any part of it for its convenience upon ninety (90) calendar days' prior written notice to the other Party.

(b) Either party may terminate this SWLMA if the other party is in material breach of any term or condition of this SWLMA, and fails to cure such default within thirty (30) days after receipt of written notice of such default. Without limitation, the following are deemed material breaches under this SWLMA: (i) Licensee fails to pay any amount when due hereunder; (ii) Licensee becomes insolvent or any proceedings will be commenced by or against Licensee under any bankruptcy, insolvency or similar laws or (iii) Licensee breaches the license rights granted herein or violates Trapeze's intellectual property rights.

(c) If Licensee develops software that is competitive with the Software, or Licensee is acquired by or acquires an interest in a competitor of Trapeze, Trapeze shall have the right to terminate this SWLMA upon thirty (30) calendar days' notice to Licensee.

(d) Licensee agrees that in the event that in Trapeze's sole opinion the Software reaches end of its commercial viability (commercial end of life) at a future point in time Trapeze shall be able to terminate this SWLMA with respect to the maintenance services to be provided herein. In the event of such termination, Trapeze shall provide Licensee with a one (1) year notice prior to termination of maintenance services.

(e) In the event Licensee terminates this SWLMA for any reason, Licensee shall pay Trapeze for all license fees and service fees then due, and all costs incurred up to and including the date of termination.

(f) If this SWLMA is terminated, Licensee will immediately return to Trapeze all copies of the Software, the Documentation and other materials provided to Licensee pursuant to this SWLMA and will certify in writing to Trapeze that all copies or partial copies of the Software, the Documentation and such other materials have been returned to Trapeze or destroyed.

15. Audits: Licensee's use of any of the Software is limited to the operational characteristics and such other usage restrictions as are set forth in this SWLMA, including but not limited to Exhibit A. Licensee acknowledges that the Software may include license keys, password protection, anti-copying subroutines and other security measures designed to limit usage of the Software to that which is licensed hereunder. Such measures shall not interfere with Licensee's normal and permitted operation of the Software as licensed hereunder. Licensee and Trapeze will amend the SWLMA to account for any increased operational characteristics revealed by an audit and Licensee shall promptly pay to Trapeze any amounts shown by any audits to be owing to Trapeze.

**EXHIBIT A TO SWLMA**

See Scope of Services and Compliance Matrix, Exhibit F-Revised-1.

**EXHIBIT B TO SWLMA**

**Service Standard for Maintenance of Trapeze Software**

Trapeze will use reasonable efforts to correct any software deficiency or performance anomaly within the time frames established below in order to cause the software to meet the functional and performance criteria set out in the documentation for the software in effect at the time of this SWLMA. Unless provided otherwise in this Exhibit B (Service Standard for Maintenance of Trapeze Software), Trapeze will respond to a trouble report of a software deficiency or performance anomaly in accordance with the severity level reasonably determined by Licensee and communicated to Trapeze, based on the following definitions:

<b>Severity Level</b>	<b>Condition</b>	<b>Response Time (Goal)</b>	<b>Resolution Efforts</b>
Priority 1	An error or performance anomaly that renders software inoperable in a production environment, resulting in the inability to utilize critical system components.	During normal business hours – Immediately After Hours - Within 1 hour	Dedicated staff resources working 24 hours per day, 7 days per week until corrected.  Within 4 hours of receipt of Priority 1 report the management of the issue will escalate to the 1 <sup>st</sup> escalation point until corrected.  Within 8 hours of receipt of Priority 1 report the management of the issue will escalate to the 2 <sup>nd</sup> escalation point until corrected.  Trapeze will remain in regular contact with Licensee (contact will occur, at a minimum, during escalation points, and every 8 hours thereafter).
* Priority 2	An error or performance anomaly with software resulting in major inconvenience for users in the production environment or the public.	Within 2 business hours	For the first 48 hours following receipt of Priority 2 report, dedicated staff resources working during normal business hours until corrected.  Within 24 hours of receipt of Priority 2 report the management of the issue will escalate to the 1 <sup>st</sup> escalation point until corrected.  Within 48 hours of receipt of Priority 2 report the management of the issue will escalate to the 2 <sup>nd</sup> escalation point until corrected.  Trapeze will remain in regular contact with Licensee (contact will occur, at a minimum, during escalation points, and every 24 hours thereafter).
Priority 3	Software issues where the system is functioning but causing minor or short-term inconvenience for specific users with	Within 1 business day	Working on the issue during normal business hours with the same efforts as are employed for other Priority 3 reports.

Severity Level	Condition	Response Time (Goal)	Resolution Efforts
	critical positions using the production environment.		
Priority 4	General questions; software issues resulting in minor inconvenience for non-critical positions using the production environment or testing using a test environment. Includes; hardware support (RMA requests)	Within 1 business day	Working on the issue during normal business hours with the same efforts as are employed for other Priority 4 reports.

\* If Trapeze’s resolution efforts result in a work around that leads Licensee to experience an improvement in the conditions it is reporting, the severity level will be lowered accordingly. For example, where a Priority 1 report is resolved by Trapeze to the point where Licensee is experiencing conditions associated with a Priority 2 severity level, the Priority 1 report will be reclassified as a Priority 2 report, at which time Trapeze shall be deemed to be in “receipt of a Priority 2 report” and Priority 2 resolution efforts shall apply.

**Escalation Management Matrix**

Trapeze strives to provide exceptional customer support services. If this level of service is not experienced, it is important for our customers to have the ability to escalate their concerns so appropriate actions can be taken.

All support issues are logged first with our customer care organization to ensure that all required details can be recorded and allow the customer care team to attempt to resolve the issue within the service level objectives.

**First level Escalation Point**

Customer Care Manager or comparable role.

If you are concerned that your issue is not being progressed in a satisfactory manner, please refer this to the Customer Care Manager.

**Second Level Escalation Point**

General Manager of the respective Vertical Business Unit (VBU) or comparable role.

If you feel your escalation is not being handled at 1st Level escalation, please refer this to the General Manager.

# TAB 9

## EXHIBIT G-1, CLOUD MANAGED SERVICES ADDENDUM



**EXHIBIT G-1  
CLOUD MANAGED SERVICES ADDENDUM**

**1. CLOUD MANAGED SERVICES**

For the purposes of this Cloud Managed Services Addendum all references to “Customer” also means and refers to “Licensee”.

The general scope of services addressed by this Cloud Managed Services Addendum (“Addendum”), which is incorporated and made a part of the Contract, includes the operation, maintenance, and support of the:

- Platform Applications and Services (as defined herein)

All Trapeze Cloud Managed Services (as defined herein) will be provided by Trapeze to and for the Customer’s benefit in order to access and operate the Platform Applications and Services (defined herein) in a manner that will meet the objectives outlined in the Service Level Objectives below.

**1.1 Definitions:**

**“Platform Applications and Services”** means a set of related functionalities deployed for a Customer through an on-demand infrastructure-as-a-service and/or platform-as-a-service cloud based environment and/or platform that has been reviewed and certified by Trapeze in accordance with Trapeze’s program guidelines for partner applications and services. Platform Applications and Services may be provided by Trapeze or by a third party.

**“Trapeze Cloud Managed Services” (“TCMS”)** means those cloud managed services on which the Platform Applications and Services can be deployed and is more fully described below:

The scope of Trapeze Cloud Managed Services specifically excludes operation, maintenance and support of the following:

- All Customer hardware, including, as applicable, Customer’s servers, printers, network hardware (including routers and switches) and other Customer site computing equipment;
- Customer application software different from the Platform Applications and Services, including but not limited to any software on the Customer’s premise that is accessing the Trapeze Cloud Managed Services directly or indirectly;
- Customer Local Area Networks (“LAN”);
- Customer network infrastructure for connecting to the Internet and to the Trapeze Cloud Managed Services.

**“Data”** means all data submitted by Customer or their clients, directly or indirectly, to the Trapeze Cloud Managed Services in connection with the Services, including all content, material, IP and similar addresses, recordings, messages, and software.

**“Downtime”** means a period of time that a system fails to provide or perform its primary function. Downtime does not include any Scheduled Maintenance.

**“Hardware”** means any hardware required to execute this Addendum. Customer shall provide any required hardware such as but not limited to workstations, printers, network hardware, firewall, telecommunications equipment, communication lines, and any associated internet services for connection from Customer’s site to the Trapeze Cloud Managed Service.

**“Infrastructure”** means, collectively, any computer network, computer system, storage system, server, peripheral or physical device hosted and/or maintained by Trapeze or its providers. Infrastructure shall not include any equipment or devices that are dedicated to or maintained by Customer, or which operate outside of the Trapeze Cloud Managed Services premises, directly or indirectly.

**“Support Software”** includes the operating system, utilities, database software, and all necessary licenses required to operate the Software as provided by Trapeze as part of the Trapeze Cloud Managed Service.

**“Maintenance Window”, “Scheduled Maintenance”, “Schedule Downtime”, “Planned Maintenance”** means the time attributable to:

- (a) regularly scheduled maintenance windows for the Trapeze Cloud Managed Service and for times in which Customer has been notified in writing (including e-mail) by Trapeze in advance thereof;
- (b) a Force Majeure Occurrence, as defined herein;
- (c) non-performance of hardware, software, ISP connections, and other equipment that is not provided by Trapeze or certified by Trapeze for use in conjunction with the Trapeze Cloud Managed Services (except as such non-performance is directly caused by Trapeze).

**“Month”** means a calendar month

**“Quarter”** means any one of the following 3 month calendar periods as applicable, namely (a) January 1 to March 31, (b) April 1 to June 30, (c) July 1 to September 30, and (d) October 1 to December 31.

**“Availability” or “Service Availability (SA)”** means the downtime that will be allowed during any month. It is based on an authorized user’s ability to log into the TCMS software during a calendar Month, and will be calculated in accordance with the following formula:

$$x = (y - z) / y * 100$$

Where,

- “x” is the Availability of the Software during the applicable Month;
- “y” is the total number of hours in such Month minus the number of hours during such Month that the Customer is unable to log into the TCMS software because of (a) regularly scheduled maintenance windows for the Software and for times in which Customer has been notified in writing (including e-mail) by Trapeze in advance thereof; (b) a Force Majeure Occurrence, as defined herein; (c) non-performance of hardware, software, ISP connections, and other equipment that is not provided by Trapeze or certified by Trapeze for use in conjunction with the TCMS (except as such non-performance is directly or indirectly caused by Trapeze); (d) any time required to set up and transfer over to a DRE environment if applicable.
- “z” is the number of hours in the applicable Month during which the Customer is unable to log into the TCMS software (other than for reasons set forth in the definition of “y” above); provided that Trapeze has been notified or is otherwise aware (or reasonably should be aware) of Customer’s inability to utilize the Software.

**“Recovery Time Objective (RTO)”** means the maximum period of time in which a provided service must be restored after a major incident. Recovery time is determined by the time elapsed between the declaration of a disaster and restoration of provided service.

**“Recovery Point Objective (RPO)”** means as the maximum period of time in which data may be lost from a provided service due to a major incident. Recovery point is determined by the timestamp of last backup or last database log file that is successfully restored or applied to the disaster recovery environment.

**“Major Incident”** means the Azure region or data center running the Customers solution is non-operational for more than 30 minutes.

**“Incident”** means an unplanned system event which adversely affects application processing running on a production environment with the TCMS solution.

**“Unplanned Maintenance”** means any time during which a problem with the TCMS prevents the Customers connectivity. Unplanned Maintenance does not include any time during which the TCMS or any component are not available due to: (i) scheduled maintenance, (ii) circumstances outside of Trapeze’s control and other force majeure events.

**“Windows Virtual Desktop”, “WVD”, “Remote Desktop”** means the Azure service that provides a desktop and app virtualization service hosting Microsoft Azure. Microsoft does not offer a financially backed service level

agreement and strives to attain at least 99.9% availability for the Windows Virtual Desktop service URLs. This service is used by Trapeze to run Trapeze applications that require a Windows 10 desktop application environment to deliver its functionality.

“**Windows Virtual Desktop Service Eligibility**” means the WVD service eligibility licensing terms and conditions as described here: <https://azure.microsoft.com/en-us/pricing/details/virtual-desktop/> and is subject to change.

## 1.2 Cloud Managed Services Environments

Depending on the Customers business requirements and which solution the Customer is purchasing from Trapeze, Trapeze may provide one or more of the following, separate and secure, hosting service environments to ensure the quality, support and maintenance of the software and services provided in this Addendum. These environments are completely independent, secure, stand-alone environments unless otherwise stated and include all the security, software, infrastructure, databases, networking, and services to deliver the solution outlined in this Addendum.

The Customer will not be provided any direct access to the solution resources provided in the environments except through approved and certified Trapeze software or remote access mechanisms.

Trapeze offers the following environments:

- Production environment – referred to as “PROD”, is where all the main software and services will be provided and is the basis for the costing of the solution. This environment will run with fully licensed software from Trapeze and any 3<sup>rd</sup> party vendors in accordance with their license policies. This environment will be included in the calculations for the Service Availability calculations.
  - Patching and upgrading of the software and services in this environment will be done during the agreed upon maintenance windows, unless otherwise stated.
  - Patching of the environment for security issues may be done in advance of the Customer being notified and outside of regular and agreed upon maintenance windows. Trapeze will make every effort to inform the Customer in advance in these cases.
- Disaster Recovery environment (Optional) – referred to as “DRE”, is a separate, secure and fully managed environment that matches the PROD environment and setup in a different geolocation then the PROD environment. All services and software are setup in a disaster recovery failover configuration to the PROD environment with fully licensed software from Trapeze and any 3<sup>rd</sup> party vendors in accordance with their license policies. If this environment option is purchased by the Customer, then this environment will be included in the calculations for the Service Availability calculations. The DRE environment has the following conditions:
  - The DRE environment will only be enabled if the primary PROD Azure environment experiences a major incident event;
  - The time required to failover to the DRE environment will not be counted as downtime for the purposes of meeting any Service Availability;
  - If the solution contains a VPN connection to the Customer’s on-premise environment, there is no automatic failover to the DRE environment, and it may take up to the agreed upon RTO to recover to the DRE environment to ensure data and system integrity;
  - Patching and upgrading of this environment follow the items outlined for the PROD environment.
- Staging Environment(s) (Optional) – referred to as one or more of these, “STG”, “UAT”, “TEST”, “TRAINING”, are scaled down, fully secure, fully managed, near duplicate environments of the PROD environment that will be used by the Customer for their intended purpose(s). These optional environments can be purchased by the Customer and are subject to the following restrictions:
  - These environments are not included in the calculations for Service Availability and no SLA’s, SLO’s, or SA’s are provided, however ticketing SLAs will still apply to the Staging Environment.

- Support for these environments is only provided during Trapeze normal business hours and are not subject to any Priority 1 or Priority 2 support ticket criteria;
- Upgrading of these environments will be done during normal Trapeze business hours and the Customer will be provided 10 business days' notice (including email notice) prior to the upgrades. Shorter or longer notices can be accommodated based on approval by both the Customer and Trapeze via written notice;
- Patching of the environments for security issues may be done in advance of the Customer being notified. Trapeze will make every effort to inform the Customer in advance in these cases;
- Customer agrees and accepts that the backups and retentions policies for these environments will be determined by and are at the full discretion of Trapeze. Trapeze will make every effort to provide a reasonable backup and retention policy based on the environments intended purpose.
- Customer agrees and accepts that these staging environments are operated and priced based on a sixty percent (60%) reduced usage and capacity by Customer or as specified in the Cloud Services Addendum, Exhibit G-1. If Customer exceeds such usage and capacity limits, additional fees will be charged to Customer on a monthly basis at Trapeze's standard rates. Upon Customer exceeding usage and capacity limits, Customer agrees and accepts that Trapeze, with five (5) calendar days' notice, may disable, scale down, stop, or deallocate resources or otherwise restrict these staging environments to adhere to the reduced usage and capacity mentioned above.
- All staging environments will adhere to a daily downtime schedule where resources will be unavailable for a period of at least eight hours during evening off times and be unavailable during weekend hours as agreed reasonably by both parties.
- Quality Assurance and Testing environment – referred to as “QAT”, is a scaled down, fully secure, fully managed, near duplicate environment of the PROD environment that will be used for quality assurance and testing of upgrades, maintenance, and support issues.
  - All costs associated with the environment will be the responsibility of Trapeze with no SLO or SA's requirements nor any support level imposed
  - Customers will not be provided any access to this environment, either directly or indirectly
  - Customer agrees that Trapeze, at its sole discretion, reserves the right to not setup the environment
  - Customer agrees that Trapeze, from time to time, may use anonymized data based on production data for the intended purposes and will delete the data within 10 business day after the testing, upgrade, or maintenance support issue is completed.
- Development environment – referred to as “DEV”, is a scaled down, fully secure, fully managed, near duplicate environment of the PROD environment that will be used for development and testing of upgrades, maintenance, and support issues.
  - All costs associated with the environment will be the responsibility of Trapeze with no SLO or SA's requirements nor any support level imposed
  - Customers will not be provided any access to this environment, either directly or indirectly
  - Customer agrees that Trapeze, at its sole discretion, reserves the right to not setup the environment
  - Customer agrees that Trapeze, from time to time, may use anonymized data based on production data for the intended purposes and will delete the data within 10 business day after the testing, upgrade, or maintenance support issue is completed

## **2. STANDARD NOTICE**

Trapeze will use commercially reasonable efforts to provide the Customer at least fifteen (15) calendar days' written notice prior to any service or operational level changes unless otherwise stated.

**3. SERVICE LEVEL OBJECTIVES**

These Service Level Objectives (“SLO”) for Trapeze Cloud Managed Services sets forth the level of services to be delivered by the Trapeze Cloud Managed Services to which the Customer has subscribed and based on the solution assumptions outlined in the applicable Cloud Services Addendum, Exhibit G-1 with Trapeze which describes the migration of Customer to the Trapeze Cloud Managed Services.

Service Availability (SA)	<p>99.5% availability percentage for production “PROD” environments of Trapeze Managed Cloud Services calculated as outlined in the “Availability” definition of this Addendum, unless otherwise stated and varies based on the solution provided to the Customer described in the applicable Cloud Services Addendum, Exhibit G-1 executed by the parties for the provision of the Trapeze Cloud Managed Services.</p> <p>99.5% (“two nines five”) means 1.83 days downtime per year, 3.60 hours per month, and 50.4 minutes per week</p>
Recovery Point Objective	<p>2 hours, unless otherwise stated and varies based on the solution provided to the Customer described in the applicable Cloud Services Addendum, Exhibit G-1 executed by the parties for the provision of the Trapeze Cloud Managed Services.</p>
Recovery Time Objective	<p>12 hours, unless otherwise stated and varies based on the solution provided to the Customer described in the applicable Cloud Services Addendum, Exhibit G-1 executed by the parties for the provision of the Trapeze Cloud Managed Service.</p>
Access to Environments	<p>Customer agrees that it will not be provided any direct access to the TCMS solution resources, portals, etc. provided in the environments except through approved and certified Trapeze software or remote access mechanisms.</p> <p>Customer agrees that Trapeze, at its sole discretion, reserves the right to not provide access to any TCMS environment.</p>
Hours of System Operation	<p>The TCMS will be accessible and available to the Customer and capable of any and all normal operating functions except for periods of Scheduled Maintenance and previously approved outages.</p> <p>Trapeze will not be held responsible for inaccessibility arising from communications problems occurring anywhere beyond the hosting services side and outside of Trapeze control nor will such hours of unavailability be counted when calculating Service Availability.</p>
Scheduled Maintenance	<p>Trapeze may complete routine maintenance on the TCMS environments and services monthly.</p> <p>For the purposes of this Agreement, Scheduled Maintenance, as determined by Trapeze or its providers, shall not generally occur between the hours of 7 AM and 8 PM EST, Monday through Friday, without Customer’s authorization or unless exigent circumstances exist, during which time Trapeze or its providers shall perform Scheduled Maintenance or adjustments to its network, servers, services, or to the infrastructure.</p> <p>Trapeze will use commercially reasonable efforts to provide at least fourteen (14) calendar days’ written notice prior to such planned outages.</p> <p>If Trapeze is required to perform additional maintenance outside of the Scheduled Maintenance window, it will notify the Customer via email of such additional outages. The Customer and Trapeze will work on a downtime timeframe that is convenient for both parties, and such additional downtime will then be considered a period of Scheduled Maintenance.</p>

<p>Backups and Retention Policies</p>	<p>The TCMS standard backup and retention policies:</p> <p>PROD Databases – 30 day retention of 5 minute restore points, with monthly backups retained for 13 months unless otherwise specified by the Customer. All other databases will use a 7 day retention, 5 minute restore point policy with no backups, unless otherwise stated in the Agreement.</p> <p>All other virtual machines and additional services will be backed up daily.</p> <p>All logs for security, performance and audit monitoring will be kept for at least 3 months. Any longer retention periods will be kept at additional charge.</p> <p>Trapeze reserves the right to change the retention period in the future and from time to time.</p> <p>Trapeze will use commercially reasonable efforts to provide at least seven (7) calendar days' written notice prior to such changes.</p>
<p>Security Policies</p>	<p>The security items in place for all services that support it will be as follows:</p> <p>All HTTP traffic for public and internal traffic will be over TLS 1.2 or higher (SSL)</p> <p>All data stored at rest will be encrypted using 256-bit AES encryption and is FIPS 140-2 compliant</p> <p>Azure Security Center will be used to monitor and validate the security setup of the TCMS environments and services</p>
<p>Security, Penetration, and Performance Testing</p>	<p>Customer agrees to not perform, directly or indirectly, any security, penetration, or performance testing on any of the Cloud Managed Services Environments or services without written notice and approval from Trapeze.</p> <p>Trapeze will not deny any commercially reasonable requests for security, penetration, or performance tests and must be performed during Scheduled Maintenance.</p> <p>Any violation of this clause will forfeit the terms and conditions outlined in the Service Level Objectives section of this Exhibit G-1.</p>
<p>Patching and Updates of 3<sup>rd</sup> Party Software</p>	<p>Trapeze, through its provider, will keep all the TCMS environments purchased by the Customer, current with critical patches and updates as such patches and updates are released generally by the manufacturers of the Infrastructure.</p> <p>Trapeze change management process will update one main Staging Environment with any patches and updates and provide the Customer a period of fifteen (15) days to test and confirm the changes prior to scheduling an update to the Production environment. After the Production environment is updated, all other non-Production Environments will be updated. Exceptions to this would be a critical security patch or if the Customer did not purchase any Staging Environment.</p> <p>Customer understands and agrees that patches and updates are developed by third party vendors and, on rare occasions, may make the TCMS environments unstable, lower Availability or cause the TCMS services to fail to operate properly even when installed correctly. All changes will be verified by Trapeze and CapMetro in the Staging Environment prior to installation in the Production Environment. This includes third-party software maintained by Trapeze, such as operating systems.</p> <p>Trapeze shall not be responsible for any downtime, loss of Availability or losses arising from or related to the installation or use of any patch or update in the TCMS environments, provided that such patch or update was installed in accordance with manufacturer's instructions.</p> <p>Notwithstanding any provision to the contrary, Trapeze shall not be responsible for any delays or deficiencies in the TCMS environments or services to the extent that such delays or deficiencies are caused by Customer's action or omissions, or due to equipment or services that are not provided or controlled by Trapeze, including but not</p>

	<p>limited to telecommunication lines, networking connections, Customer-side equipment, etc.</p> <p>In the event that such delays or deficiencies occur, Trapeze shall be permitted to extend any relevant deadline as Trapeze deems necessary to accommodate such delays or deficiencies.</p>
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**4. DETERMINATION OF INCIDENT RESPONSES AND PRIORITIZATION**

- (a) Incident Response - Trapeze will follow the procedures outlined below to respond to incidents submitted to Customer Care.
- (b) Response Service Levels.

Trapeze assigns incidents a Priority Code from 1 – 4 based on the criticality and the impact of the incident on Customer (“you” or “your”) business as well as the availability of workarounds. The Priority Code will be the basis for scheduling work and assigning resources to the request. Priority Codes dictate appropriate response and resolution times. Response and resolution times are measured from the time that the incident is opened by Customer Care. Trapeze will apply continuous effort until the incident is resolved.

Priority Level	Condition	Response Time (Goal)	Resolution Efforts
Priority 1	An error or performance anomaly that renders Software inoperable in a production environment, resulting in the inability to utilize critical system components.	During normal business hours – Immediately After Hours - Within 1 hour	Dedicated staff resources working 24 hours per day, 7 days per week until corrected. Within 4 hours of receipt of Priority 1 report the management of the issue will escalate to the 1st escalation point until corrected. Within 8 hours of receipt of Priority 1 report the management of the issue will escalate to the 2nd and 3rd escalation point until corrected. Within 12 hours of receipt of Priority 1 report the management of the issue will escalate to the 4th escalation point until corrected. Trapeze will remain in regular contact with the Licensee (contact will occur, at a minimum, during escalation points, and every 8 hours thereafter).
* Priority 2	An error or performance anomaly with Software resulting in major inconvenience for users in the production environment or the public.	Within 2 business hours	For the first 48 hours following receipt of Priority 2 report, dedicated staff resources working during normal business hours until corrected. Within 24 hours of receipt of Priority 2 report the management of the issue will escalate to the 1st escalation point until corrected. Within 48 hours of receipt of Priority 2 report the management of the issue will escalate to the 2nd and 3rd escalation point until corrected. Within 5 days of receipt of Priority 2 report the management of the issue will escalate to the 4th escalation point until corrected. Trapeze will remain in regular contact with the Licensee (contact will occur, at a minimum, during escalation points, and every 24 hours thereafter).

Priority Level	Condition	Response Time (Goal)	Resolution Efforts
Priority 3	Software issues where the system is functioning but causing minor or short-term inconvenience for specific users with critical positions using the production environment.	Within 1 business day	Working on the issue during normal business hours with the same efforts as are employed for other Priority 3 reports.
Priority 4	General questions; Software issues resulting in minor inconvenience for non-critical positions using the production environment or testing using a test environment. Includes Hardware Support (RMA requests)	Within 2 business day	Working on the issue during normal business hours with the same efforts as are employed for other Priority 4 reports.

\* If Trapeze’s resolution efforts result in a work around that leads Licensee to experience an improvement in the conditions it is reporting, the severity level will be lowered accordingly. For example, where a Priority 1 report is resolved by Trapeze to the point where the Licensee is experiencing conditions associated with a Priority 2 severity level, the Priority 1 report will be reclassified as a Priority 2 report, at which time Trapeze shall be deemed to be in “receipt of a Priority 2 report” and Priority 2 resolution efforts shall apply.

**5. INCIDENT ESCALATION**

Trapeze strives to provide exceptional customer support, you can escalate your concerns if you feel we have not met your expectations. The Customer Care team logs every support issue to ensure that all required details are recorded. This allows us to attempt to resolve the issue within the service level objectives.

- (a) First Level Escalation Point - Customer Success Manager or comparable role if you are concerned that your issue is not progressing in a satisfactory manner, please refer it to the Customer Success Manager.
- (b) Second Level Escalation Point - Product Line Manager or comparable role if you feel your escalation is not being handled by the first level escalation, please refer it to the Product Line Manager.
- (c) Third Level Escalation Point - Customer Care Manager or comparable role if you feel your escalation is not being handled by the second level escalation, please refer it to the Customer Care Manager.
- (d) Fourth Level Escalation Point - Head of Customer Care or comparable role if you feel your escalation is not being handled by the third level escalation, please refer it to the Head of Customer Care.

**6. CUSTOMER RESPONSIBILITIES**

The Customer shall be responsible for:

- A. Assigning a primary and alternate Customer representative to coordinate all communications and activities related to Trapeze’s services.



- B. Providing contact information for a primary and an alternate contact to Trapeze that will be added to the notification lists upon execution of the Agreement.
- C. Providing user identification data and determining the appropriate security profile for each user. Customer shall be solely responsible and shall control security at the Platform Application access level, e.g. the level of access that it grants for its users.
- D. All infrastructure residing at Customer's facilities including site-to-site connectivity between Customer's facilities.
- E. User Acceptance Testing of updates and fixes applied by Trapeze to Platform Application used by Customer. With the exception of emergency fixes, Customer will test updates and fixes prior to their introduction to the production environment within a mutually agreed upon time frame. Trapeze to provide test procedures for all User Acceptance Testing as outlined in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1. All testing will occur in the staging environment, and fixes will not be installed in the Production Environment without acceptance by CapMetro.
- F. Testing upgrades. Upgrades will be moved to production by Trapeze at the end of the Customer testing period unless specific problems are documented in writing to Trapeze.
- G. Customer represents and warrants that at all times, Customer shall not use the Trapeze Cloud Managed Services or the Platform Application, in part or in whole, for any purposes or activities that violate the laws of any jurisdiction, including the sending of unsolicited, bulk commercial email (i.e., SPAM). Customer further represents and warrants that it has the corporate power and authority to enter into this Agreement and to be bound by the terms herein.
- H. Customer shall refrain from engaging in any activities that cause or may cause interference with Trapeze's or its providers' provision of Trapeze Cloud Managed Services offerings to Trapeze's other customers. Trapeze, through its provider(s), may limit or suspend Customer's access to the Trapeze Cloud Managed Services with subsequent notice to Customer if Trapeze believes, in its sole discretion, that Customer's activities pose an imminent threat to the provision of Trapeze Cloud Managed Services or an imminent threat to the security or integrity of the Infrastructure in general. If the perceived threat is not imminent, then Trapeze shall provide Customer with as much advance notice as reasonably possible prior to limiting or suspending Customer's access to the Trapeze Cloud Managed Services pursuant to this paragraph. Trapeze shall be held harmless from and against any and all downtime, as well as the consequences of such downtime, that arises or relates to Trapeze's activities as described in this paragraph.
- I. Customer agrees that any and all parts of the environments chosen by the Customer will be part of the total storage, computer, and bandwidth consumption for the Agreement.
- J. Customer agrees that it and each of its users who will be using the Trapeze Cloud Managed Services will, at a minimum, comply with the following minimum requirements for creating any passwords required for the use of the Trapeze Cloud Managed Services. The failure to comply with the following minimum requirements shall entitle Trapeze to immediately terminate such user's access to the Trapeze Cloud Managed Services:

Enforce password history	Last 10 passwords remembered
Maximum password age	90 Days
Minimum password age	1 Day (This security setting determines the period of time (in days) that a password must be used before the user can change it)
Minimum password length	8 Characters

Password complexity	Enabled (Further explanation below)
Account lockout duration	1 minute. Further incorrect sign-in attempts lock out the user for increasing durations of time.
Account lockout threshold	10 Consecutive invalid attempts
Reset account lockout counter	5 minutes
Additional password complexity requirements	<ul style="list-style-type: none"> <li>• A minimum of 8 characters and a maximum of 256 characters.</li> <li>• Requires three out of four of the following: <ul style="list-style-type: none"> <li>○ Lowercase characters.</li> <li>○ Uppercase characters.</li> <li>○ Numbers (0-9).</li> </ul> </li> <li>• Symbols <ul style="list-style-type: none"> <li>○ A – Z</li> <li>○ a - z</li> <li>○ 0 – 9</li> <li>○ @ # \$ % ^ &amp; * - _ ! + = [ ] { }   \ : ' , . ? / ` ~ " ( ) ;</li> </ul> </li> </ul>

**7. OWNERSHIP OF PLATFORM APPLICATION AND DATA**

Customer shall not obtain any ownership rights, title or interest in the Trapeze Cloud Managed Services, Platform Application, Infrastructure or systems developed or employed by Trapeze or its third party providers in providing any Trapeze Cloud Managed Services under the Addendum. Trapeze shall not obtain any ownership rights, title or interest to Customer’s data contained within the Trapeze Cloud Managed Services. Trapeze shall maintain Customer’s data for a period of thirty (30) calendar days after the termination or expiration of the Addendum. Notwithstanding the foregoing, should the Customer desire Trapeze to maintain the Customer’s data for longer than thirty (30) calendar days. Trapeze shall maintain such data for as long as is mutually agreed between the parties and to the extent there is any additional costs, subject to an equitable adjustment. If Customer issues a written request to Trapeze prior to the termination or expiration of the Addendum, Trapeze agrees to provide Customer with a copy of the Customer’s data, as it exists on the date of expiration or termination. Upon the expiry of the thirty (30) calendar day period after termination or expiration of the Addendum, Trapeze shall have no obligation to maintain such Customer data and may delete such Customer data in its sole discretion.

Customer acknowledges and agrees that all computer and hardware equipment has a data transaction error / data corruption rate. The Infrastructure does offer the native ability to preserve a backup “snapshot” of Customer’s data at a specific moment in time. Despite Trapeze’s efforts, Trapeze does not warrant or represent that the snapshot of Customer’s data will be free of communication-related, checksum errors, latent errors or other types of errors that may result in permanent data loss. Trapeze shall not be held liable for any data loss caused by an operation (or failure thereof) of any hardware, software or communications equipment in the Infrastructure.

**8. FORCE MAJEURE**

Refer to Section 45 (Excusable Delays) of Exhibit E-Revised-1.

**9. WARRANTY DISCLAIMER/LIMITATION OF LIABILITY**

Except as expressly set forth herein, Trapeze disclaims all representations and warranties relating to the services or deliverables provided under this Addendum, including but not limited to any representation or warranty of fitness for a particular purpose or merchantability. Trapeze does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the Internet or any information stored in any system connected to the internet. Trapeze shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Customer’s connection to or use of the Internet. Trapeze shall be held harmless against any changes in the Trapeze Cloud Managed Services, or any downtime, loss or damage to the Platform Application, Infrastructure or Trapeze Cloud Managed Services that arises from or relates to (i) the use or misuse of any

passwords by Customer or its representatives, agents or assigns, whether such use was authorized by Customer or not, and (ii) any failure by Customer to comply with the password requirements listed in this Addendum or to provide proper passwords for any Customer-supplied software or the Platform Application, as required.

**10. DOMAIN NAME**

Trapeze has obtained the domain name “TrapezeOnCloud.com” or will purchase a new domain name for the Customer’s internal use of the TCMS, and will provide to Customer a sub-domain name (the “Sub-Domain Name”) which shall be associated with the web portal for Customer to access the Platform Applications. An example of a sub-domain name is “team.trapezeoncloud.com”. The actual Sub-Domain Name to be provided to Customer shall be agreed upon by the Parties, may be publicly exposed to the internet and should only be used for internal testing purposes or to redirect Customer owned domain names to these domain names.

Customer agrees to comply with the terms and conditions of use established by the domain name provider and registrar: GoDaddy.com LLC. (the “Registrar”). Customer acknowledges and accepts that such terms and conditions may change from time to time without advance notice to Trapeze or Customer. The terms and conditions in force as of the date of this Amendment for use of the domain name and the Sub-Domain Name can be found online at <https://ca.godaddy.com/legal-agreements>. Customer does not waive or relinquish any rights of Customer to any exemptions, privileges, or immunities as may be provided by law.

Customer agrees that Trapeze may, at its sole discretion, change the domain name provider and Registrar, in which case Trapeze shall make reasonable commercial efforts to transfer the domain name and Sub-Domain Name to the new domain name provider and registrar and will notify Customer of the new domain name registrar and the applicable terms and conditions of use of the Sub-Domain Name that may be required by such new domain name registrar.

If for reasons not attributable to Trapeze’s willful misconduct or gross negligence, it is not possible to retain or transfer the Sub-Domain Name, Trapeze shall promptly procure an alternative sub-domain name to be used for accessing the Trapeze software and shall notify Customer in writing of the new sub-domain name.

**TAB 10**

**EXHIBIT G-2, SAAS  
AGREEMENT**

**EXHIBIT G-2  
SAAS AGREEMENT**

This SaaS Agreement (“SaaS Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”), between:

**Trapeze Software Group, Inc.**

A Delaware corporation, with its principal place of business located at 5265 Rockwell Drive NE, Cedar Rapids, Iowa 52402, U.S.A.

(“Supplier”)

**Capital Metro**

an [INSERT DETAILS OF INCORPORATION] with its principal place of business located at 2910 East 5th Street, Austin, Texas, 788702, U.S.A.

(“Customer”)

**Collectively, Supplier and Customer are hereinafter referred to as “Party” or “Parties”.**

**This SAAS Agreement includes and incorporates the Trapeze SaaS Agreement (“SaaS”) Terms and Conditions attached as Appendix “1”. This SaaS Agreement represents the complete agreement between Supplier and Customer concerning Customer’s use of the Subscription Services (as defined herein) and all related matters and supersedes all prior agreements, negotiations, or understandings between Supplier and Customer in any way relating to these matters. This SaaS Agreement may not be modified except by a later written agreement signed by both parties.**

**By executing a copy of this SaaS Agreement or by using or accessing the Subscription Services through any means, Customer acknowledges and agrees that: (i) it has reviewed and understands this SaaS Agreement; (ii) it agrees to be legally bound by the terms and conditions of this SaaS Agreement; and (iii) its use of the Subscription Services and any related products or services will be governed by this SaaS Agreement.**

Trapeze Software Group, Inc.

Capital Metro

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPENDIX 1

TRAPEZE SaaS TERMS AND CONDITIONS

1. **Subscription Services.** Supplier will make available to Customer (on a non-exclusive basis) the Subscription Services indicated in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1 (the “**Subscription Services**”). Customer agrees that its purchase of a subscription to the Subscription Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Supplier regarding future functionality or features.
2. **Restrictions.** Unless specifically indicated otherwise on an Order Form, Customer will use the Subscription Services only for its own, internal business purposes. Customer will not: (i) resell, license, rent, transfer, assign, copy, frame, or mirror any part or content of the Subscription Services; (ii) make the Subscription Services available for timesharing or service bureau purposes; or (iii) otherwise provide access to the Subscription Services to any third-party, except as such third-party access is expressly agreed to between the parties. Customer will not, subject to any non-waivable rights Customer may enjoy under applicable law, directly or indirectly: (i) reverse engineer, create derivative works, decompile, disassemble, or otherwise attempt to discover, the source code or underlying structure, ideas, know-how or algorithms relevant to the Subscription Services or any software, documentation or data related to the Subscription Services; (ii) interfere with or disrupt the integrity or performance of the Subscription Services or third-party data contained therein; (iii) attempt to gain unauthorized access to the Subscription Services or its related systems or networks; (iv) modify, translate, or create derivative works based on the Subscription Services; or (v) remove, modify, or obscure, any proprietary notices, markings, or labels. Customer may not access or use the Subscription Services or Supplier’s content or property (including but not limited to marketing and promotional materials), in order to build, support, or assist a third-party in building or supporting products or services that compete with Supplier or its offerings.
3. **Supplier Software.** Supplier may provide Customer with the ability to obtain certain Supplier software for use with the Subscription Services. If Supplier provides Supplier software to Customer and does not specify separate terms for such software, then such Supplier software is provided as part of the Subscription Services and Customer has the non-exclusive, worldwide, limited right to use such Supplier software, subject to the terms of this SaaS Agreement (except for separately licensed elements of the Supplier software, which separately licensed elements are governed by the applicable separate terms), solely to facilitate Customer’s use of the Subscription Services. Customer may allow its users to use the Supplier software for this purpose, and Customer is responsible for their compliance with the license terms. Customer’s right to use any Supplier software will terminate on the earlier of Supplier’s notice (by web posting or otherwise) or the end of the Subscription Services associated with the Supplier software. Notwithstanding the foregoing, if Supplier software is licensed to Customer under separate terms, then Customer’s use of such software is governed by the separate terms. Customer’s right to use any part of the Supplier software that is licensed under the separate terms is not restricted in any way by this SaaS Agreement.
4. **Suspension.** Supplier may suspend Customer’s access to or use of the Subscription Services if it believes (a) there is a significant threat to the functionality, security, integrity, or availability of the Subscription Services or any content, data, or applications in the Subscription Services; (b) Customer is accessing or using the Subscription Services to commit an illegal act; or (c) there is a violation of the acceptable use or restrictions described herein. When reasonably practicable and lawfully permitted, Supplier will provide Customer with advance notice of any such suspension. Supplier will use reasonable efforts to re-establish the Subscription Services promptly after it determines that the issue causing the suspension has been resolved.
5. **Technical Support.** Supplier will provide Customer with reasonable technical support services (“**Technical Support**”) in accordance with Supplier’s standard practice during standard business hours. Customer acknowledges and agrees that Technical Support is intended to address specific problems experienced by Customer relating to the Subscription Services and is not intended to train Customer’s employees or to support third-party products (“**Other Assistance**”). Supplier will advise Customer during a support session if Supplier considers such request to constitute Other Assistance. If the problem reported by Customer to Supplier is the result of hardware malfunction (not relating to Supported Hardware where such service is specified on the Scope of Services and Compliance Matrix, Exhibit F-Revised-1) or other causes external to the Subscription Services, Supplier will advise Customer to have the hardware/network repaired. Support resulting from hardware/network problems or issues associated with third-party products or services will be billed to Customer at Supplier’s then-current hourly rates.
6. **Integrations/Interfaces.** Integrations or interfaces to third-party vendor systems may be available, as indicated in the documentation associated with the Subscription Services. To the extent such third-party vendor system integrations or

interfaces are available, Supplier will install or make available the integrations or interfaces as agreed between the parties. Customer will act as a liaison between Supplier and any third-party vendor(s) with which the Subscription Services will integrate or interface. Customer will have its third-party vendor available at the time that Supplier is scheduled to connect the integration or interface and to assist with such connection, as required by Supplier. Transactions processed by a third-party vendor system may be subject to separate licensing requirements. Customer acknowledges and agrees that it has the sole obligation to obtain, or cause its third-party vendor to obtain, all such licenses.

7. **Customer Development and Enhancement Requests.** This SaaS Agreement does not include any programming services for custom development or modifications. Such work, if negotiated and agreed to between Supplier and Customer, will be the subject of a separate agreement for development services between the parties. Customer further acknowledges that the Subscription Services are a major and valuable asset of Supplier's business and, as such, Supplier will have complete control of the design and development of the Subscription Services, including with respect to any enhancements and modifications. Therefore, Supplier has the right, and sole discretion, to reject any request for enhancement or modification to the Subscription Services by Customer.
8. **Products.** Supplier agrees to provide to Customer the hardware and third-party software items (collectively, "**Products**"), if any, indicated in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1 subject to the terms and conditions of this SaaS Agreement. Unless specified otherwise in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1, all Products will be shipped DAP Customer location (Incoterms 2020). Customer will be responsible for all delivery costs. Payment by Customer of delivery costs will be due and payable upon its receipt of Supplier's invoice.
9. **Professional Services.** Supplier will provide Customer with the Professional Services, if any, set forth in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1 ("**Professional Services**"). Subject to what is detailed in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1, such Professional Services will be scheduled as mutually agreed upon subject to Supplier's availability following receipt by Supplier of the signed SaaS Agreement and any related deposit. If Customer requires rescheduling of confirmed Professional Service dates, Supplier will make commercially reasonable efforts to accommodate Customer's request and provide Customer with the next available dates based on Supplier's then-current availability. Customer will be responsible for paying for any Professional Services that have been scheduled and confirmed between Customer and Supplier if canceled or rescheduled by Customer less than thirty (30) calendar days prior to the commencement of such Professional Services, unless (and only to the extent that) Supplier is able to reschedule the resource with another customer using commercially reasonable efforts.
10. **Payment Terms.** In accordance with Exhibit E-Revised-1, Section 6, of the Contract.
11. **Taxes.** Customer is a governmental body and exempt.
12. **Third-Party Components.** To properly use the Subscription Services, Customer agrees it may require use of certain third-party components which, if any, will be listed in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1 ("**Third-Party Components**"). Subject to the Scope of Services and Compliance Matrix, Exhibit F-Revised-1, Customer acknowledges that Supplier will have no responsibility for the implementation or operation of such Third-Party Components. Supplier may provide certain notices to Customer in the program documentation, readmes or notice files and that apply to such third-party technology. The existence of a notice does not affect the terms under which third-party technology is licensed to Customer. Third-Party components, such as operating systems, necessary to maintain the TCMS environment and connectivity to that environment shall be the responsibility of Trapeze.
13. **Ownership.** Customer will own all right, title, and interest in and to any data, including digital files and unstructured content objects, entered or submitted by Customer by means of the Subscription Services (the "**Customer Data**"). At all times, Supplier will own all intellectual property rights (including copyright) in and to (i) the Subscription Services; (ii) any software (other than any Third-Party Components) to which access may be provided by means of the Subscription Services; (iii) all upgrades, enhancements, and modifications to the Subscription Services; and (iv) any software, applications, inventions, or other technology developed in connection with the Subscription Services. Supplier or its licensors retain all ownership and intellectual property rights to the programs, methodologies, Subscription Services, and Supplier content.
14. **Customer Input.** Supplier will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Subscription Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, its employees, contractors, and agents relating to the operation or functionality of the Subscription Services (collectively, "**Customer Input**"). Supplier will have no obligation to incorporate Customer Input into the Subscription Services. Customer will have no obligation to provide Customer Input.
15. **Use of Logo for Promotional and Marketing Materials.** In accordance with Exhibit E, Section 41, of the Contract.
16. **Confidentiality.**

- (a) Definition of Confidential Information. “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer’s Confidential Information includes Customer Data; Supplier’s Confidential Information includes the Subscription Services and information regarding features, functionality and performance of the Subscription Services; and Confidential Information of each party includes the terms and conditions of this SaaS Agreement and the Scope of Services and Compliance Matrix, Exhibit F-Revised-1 (including pricing), as well as business and marketing plans, technology and technical information, Intellectual property, trade-secrets, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third-party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. Any combination of information which comprises part of the Confidential Information shall not be deemed to be exempt from the obligations of confidentiality merely because individual parts of that information were publicly known, in the Receiving Party’s possession, or received by the Receiving Party, unless the combination itself was publicly known, in the Receiving Party’s possession, or received by the Receiving Party.
- (b) Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) and will: (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this SaaS Agreement; and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates’ employees and contractors who need that access for purposes consistent with this SaaS Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this SaaS Agreement or the Scope of Services and Compliance Matrix, Exhibit F-Revised-1 to any third-party other than its affiliates, legal counsel, and accountants, without the other party’s prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel, or accountants will remain responsible for such affiliate’s, legal counsel’s or accountant’s compliance with this Section 16.
- (c) Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

**17. Data.**

- (a) Customer will have sole and exclusive responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data, such responsibility also extends to the means by which the Customer Data was acquired. Customer will not send or store infringing, obscene, threatening, libelous or otherwise unlawful, or tortious material, including material that is harmful to children, violates third-party privacy or intellectual property rights, includes malicious code, or that will interfere with the integrity of the Subscription Services, or any other services or Products provided or contemplate herein.
- (b) Apart from what limited information and data is strictly required for Supplier to perform or provide the Subscription Services, Professional Services, or Products, Customer agrees that sensitive personal data may not be submitted to the Subscription Services, including images, text, sounds or other data containing or revealing government-issued identification numbers; financial information (such as credit or debit card numbers, any related security codes or passwords, and bank account numbers); racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, information concerning health or sex life; information related to an individual’s physical or mental health; and information related to the provision or payment of health care. Additionally, Customer may not use the Subscription Services to create or analyze biometric identifiers such as face prints, voiceprints, fingerprints, or scans of eyes, hands or facial geometry, nor may Customer use the Subscription Services for the purposes of analyzing, profiling or targeting someone’s racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, age, gender, sex life, sexual orientation, criminal convictions, disability, health status or medical condition. Customer will not use the Subscription Services to (a) store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights, or (b) store or transmit malicious code (e.g., code, files, scripts, agents, or programs intended to do harm, including, viruses, worms, time bombs, and Trojan horses).



- (c) Unless specifically stated otherwise in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1 Supplier does not want nor does it require, nor will Customer provide or disclose (i) personal information or data, or personal identifiable information or data (each individually or together "PII"), as defined in the Personal Information Protection and Electronic Documents Act (PIPEDA), and other applicable legislation; (ii) personal protected health information, as defined by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable legislation, ("PHA"); or (iii) personal financial data, or payment card data or information ("PCI") as defined by the Gramm-Leach-Bliley Act, the Payment Card Industry Data Security Standards, or other applicable legislation or standards, to the Subscription Services, or for any other reason specified in or contemplated by this SaaS Agreement or the services or Products provided herein. When applicable, Customer must categorize and identify its PII or PHA in accordance with ISO 27001, NIST, or an equivalent standard of equal rigor before sending it to Supplier. Supplier is not a payment processor, and as such is not subject to compliance with PCI standards; Supplier does not warrant that the Subscription Services, or any other services or Products supplied in this SaaS Agreement will be compliant with payment card industry requirements. Supplier will not accept any liability in connection with payment card industry, PII, or PHA, compliance.
- (d) Each party agrees that, in the performance of its respective obligations under this SaaS Agreement, it will comply with the provisions of applicable data protection law to the extent it applies to each of them. The parties further agree that Customer is the data controller in respect of any personal data that Supplier processes while providing services for Customer. Accordingly, Supplier agrees that it will: (i) only process Customer's personal data to provide the Subscription Services, Professional Services, or Products, or in accordance with any lawful instructions reasonably given by Customer from time to time; (ii) implement reasonable appropriate technical and organizational measures to protect personal data against unauthorized or unlawful processing and accidental destruction or loss; (iii) include provisions which are equivalent to those in this Section **Error! Reference source not found.**7 in any contract with any subcontractors who will process personal data; (iv) take reasonable steps to ensure the reliability of its employees who have access to the personal data; and (v) as soon as reasonably practicable refer to Customer any requests, notices or other communication from data subjects, data protection or other law enforcement authority, for Customer to resolve.
- (e) Where Customer is subject to EU data protection laws, Customer acknowledges and agrees that Supplier may transfer personal data which it processes on Customer's behalf to countries outside the European Economic Area to provide the Subscription Services and carry out Supplier's other obligations under this SaaS Agreement.
- (f) Supplier will notify Customer as soon as reasonably possible upon discovery of any data security incident impacting Customer Data. Supplier will not be responsible for any loss or damage to Customer Data unless such loss or damage was caused solely, entirely, and directly by Supplier.
- (g) Customer grants to Supplier a royalty-free, non-transferable, non-exclusive license for the term of this SaaS Agreement to use Customer Data to the extent necessary to perform the Subscription Services or Professional Services, or to deliver Product. Notwithstanding anything to the contrary, Supplier will have the right to collect and analyze data and other information relating to the provision, use, and performance of various aspects of the Subscription Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Supplier will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Subscription Services and for other development, diagnostic and corrective purposes in connection with the Subscription Services and other Supplier offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.
- (h) SUPPLIER RESERVES THE RIGHT AT ITS SOLE DISCRETION TO DELETE, AT ANY TIME AND FOR ANY REASON, ANY CONTENT, APPLICATION OR SOFTWARE IN THE SUBSCRIPTION SERVICES, INCLUDING BUT NOT LIMITED TO ANY CUSTOMER DATA. ANY CONTENT, APPLICATION OR SOFTWARE MAY BECOME PERMANENTLY LOST IF SO DELETED. Supplier has no obligation to monitor the Customer Data, but at its sole discretion, may access, monitor, or review Customer's activity, and the Customer Data in the Subscription Services. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and ownership of all Customer Data.
- (i) Customer will obtain at its sole expense, any rights, and consents from third-parties necessary for the Customer Data and any other third-party content or vendors' products provided by Customer that Customer uses with the Subscription Services, including such rights and consents as necessary for Supplier to provide the Subscription Services.

#### 18. Indemnification.

- (a) Intellectual Property Infringement Indemnification in Favour of Customer. Supplier will defend and indemnify Customer and its officers, directors, employees, agents, successors, and permitted assigns from and against costs, damages and expenses arising out of any claim brought against Customer by a third-party based on the claim that the Subscription

Services, or Customer's use of the Subscription Services infringes or misappropriates any United States, Canadian, United Kingdom, European Union, Australian or New Zealand patent, copyright, trade secret, or trademark of that third-party ("Claims"), provided that Customer (i) notifies Supplier in writing no later than thirty (30) calendar days after Customer's receipt of notification of potential Claims; (ii) allows Supplier to assume sole control of the defense of such Claim(s) and all related settlement negotiations and (iii) provides Supplier, at Supplier's sole cost and expense, with all reasonable assistance, information and authority necessary to perform Supplier's obligations under this Section 18. Supplier will not be liable for any infringement or Claim based upon any modification of the Subscription Services developed by Customer, or use of the Subscription Services in combination with software or other technology not supplied or approved in advance by Supplier, or use of the Subscription Services contrary to this SaaS Agreement or the documentation related to the Subscription Services, including operator and user manuals. If the Subscription Services are held by a court of competent jurisdiction to infringe, Supplier, at its own expense, will (a) replace or modify the Subscription Services to be non-infringing; (b) obtain for Customer a right to continue using the Subscription Services; or (c) if neither (a) nor (b) is feasible, terminate the SaaS Agreement and refund a portion of the subscription fee paid by Customer for the Subscription Services for which Customer has not yet enjoyed use of the Subscription Services, including fees or costs associated with custom development and services paid for but not yet delivered.

Further, Supplier will not indemnify Customer to the extent that an infringement claim is based upon products or services not provided by Supplier. Supplier will not indemnify Customer to the extent that an infringement claim is based on any third-party content or material from a third-party portal or another external source that is accessible or made available to Customer within or by the Subscription Services (e.g., a social media post from a third-party blog or forum, a third-party Web page accessed via a hyperlink, marketing data from third party data providers, etc.). Supplier will not indemnify Customer to the extent that an infringement claim is based upon the combination of any products or services provided hereunder with any products or services not provided by Supplier. Supplier will not indemnify Customer for infringement caused by Customer's actions against any third-party if the products or services as delivered to Customer and used by Customer in accordance with the terms of this SaaS Agreement would not otherwise infringe any third-party intellectual property rights. Customer will not indemnify Supplier for any infringement claim that is based on: (1) a patent that Customer was made aware of prior to the effective date of this SaaS Agreement (pursuant to a claim, demand, or notice), or (2) Customer's actions prior to the effective date of this SaaS Agreement. Customer's Acknowledgement. The Customer acknowledges that the Supplier, its affiliates, and any of their respective officers, directors, employees, agents, successors and permitted assigns will not be held liable for any costs, damages, and expenses arising out of or on account of (i) Customer's use of the Subscription Services or Products, (ii) the Customer Data, (iii) Customer's obligations of privacy to any person or entity, (iv) Customer's failure to obtain any necessary consents, permits, or authorization, or (v) Customer's breach or violation of any provision of this SaaS Agreement.

THE FOREGOING STATES SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER INDEMNIFIED PARTIES WITH RESPECT TO ANY CLAIM, WHETHER OF (I) INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY THIRD-PARTY, OR (II) OTHERWISE.

- (b) The Customer acknowledges that the Supplier is not responsible for any alleged infringement of intellectual property rights related to any information, design, specification, instruction, software, data, or material provided by the Customer to the Supplier under this SaaS Agreement.

#### 19. Warranty & Warranty Disclaimer

- (a) Subscription Services – Limited Warranty. Supplier warrants that the Subscription Services will conform in all material respects to the documentation provided by Supplier in relation to the Subscription Services. As Customer's sole remedy for any breach of this warranty, if Customer brings to Supplier's notice any incidence of non-conformance, Supplier will use reasonable efforts to correct the error. Supplier's maintenance hours for receiving any such calls are standard business hours. Supplier does not warrant that the Subscription Services, Professional Services, or Products, will perform error-free or uninterrupted, or that Supplier will correct all errors related thereto.
- (b) Internet. Supplier will use commercially reasonable efforts to ensure that the web pages generated with the Subscription Services will be served (*i.e.*, delivered from Supplier's internal network or that of its Internet service provider) promptly regardless of the level of traffic to Supplier's servers, subject to outages, communication and data flow failures, interruptions, and delays, inherent in Internet communications. Customer acknowledges that problems with the Internet, equipment, software and network failures, impairments or congestion, or the configuration of Customer's computer systems, may prevent, interrupt, or delay Customer's access to the Subscription Services, or data stored within the Subscription Services. Supplier is not liable for any delays, interruptions, suspensions, or unavailability of the Subscription Services or the data stored within the Subscription Services, attributable to problems beyond its control, including but not limited to problems with the Internet or the configuration of Customer's computer systems.

- (c) System Requirements. Customer acknowledges that the Subscription Services are intended to perform with, and Supplier provides the Subscription Services based upon, the system requirements specified in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1 or additional documentation made available by Supplier to Customer, as those may be updated by Supplier from time to time. Supplier has no liability for failure of the Subscription Services based upon Customer's failure to comply with such system requirements.
- (d) Products. Supplier represents that it has the authority of each producer or manufacturer of Products which are subject to this SaaS Agreement to sell the same to Customer. Customer acknowledges that Supplier makes no warranties, conditions, representations, or guarantees, express or implied, concerning Products. Supplier, in so far as it is possible, hereby assigns to Customer the producer's or manufacturer's warranty(ies), if any, applicable to the Products. To the extent permitted by law, Supplier makes no representations regarding the validity or enforceability of any such producer's or manufacturer's warranty and Customer understands that its sole remedy for any breach of warranty is such as may exist against the producer or manufacturer under the producer's or manufacturer's warranty.
- (e) Warranty Limitation. The conditions and warranties set forth in this SaaS Agreement do not apply to the extent that non-compliance is caused by, or has resulted from, whether directly or indirectly, (i) Customer's use of the Subscription Services other than as authorized in this SaaS Agreement; (ii) use of the Subscription Services in combination with other software, data, or products that are defective, incompatible with, or not authorized in writing by Supplier for use with the Subscription Services; (iii) any malfunction of Customer's hardware, computers, computer-related equipment, or network connections; and (iv) any modification of the Subscription Services not performed by Supplier or otherwise authorized by Supplier in writing.
- (f) Disclaimer. EXCEPT FOR THE WARRANTIES PROVIDED IN THIS SECTION 19 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SUBSCRIPTION SERVICES, THE PROFESSIONAL SERVICES, IF ANY, AND THE PRODUCTS, IF ANY, ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND SUPPLIER DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY AND CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE USE OF REASONABLE SKILL AND CARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES, OR CONDITIONS, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE USE OF REASONABLE SKILL AND CARE, NON- INFRINGEMENT, SATISFACTORY QUALITY, ACCURACY, FREEDOM FROM ERROR, OR THAT THE SUBSCRIPTION SERVICES, THE PROFESSIONAL SERVICES, IF ANY, AND THE PRODUCTS, IF ANY, WILL MEET ALL OF CUSTOMER'S REQUIREMENTS. SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES, OR CONDITIONS, WITH RESPECT TO ANY THIRD-PARTY SOFTWARE, HARDWARE, OR SERVICES, PROVIDED IN CONNECTION WITH THE SUBSCRIPTION SERVICES. SUPPLIER'S LIMITED WARRANTIES DO NOT APPLY TO ANY SOFTWARE WHICH HAS BEEN MODIFIED OR ALTERED IN ANY MANNER BY ANYONE OTHER THAN SUPPLIER OR ITS AUTHORIZED AGENT. SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES, OR CONDITIONS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. IN THAT EVENT, SUCH WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS WHICH THE LAW FORBIDS FROM BEING EXCLUDED ARE LIMITED IN DURATION TO THE WARRANTY PERIOD TO THE EXTENT LEGALLY PERMISSIBLE.

Nothing in this SaaS Agreement excludes, restricts, or modifies, any right or remedy, or any guarantee, representation, warranty, condition, or other term, implied or imposed by any applicable law which cannot lawfully be excluded or limited. This may include any consumer law which contains guarantees that protect the purchasers of goods and services in certain circumstances. If any guarantee, representation, warranty, condition, or other term is implied or imposed concerning this SaaS Agreement under any consumer law or any other applicable law and cannot be excluded (a "**Non-Excludable Provision**"), and Supplier is able to limit Customer's remedy for a breach of the Non-Excludable Provision, then the liability of Supplier for breach of the Non-Excludable Provision is limited to one or more of the following, at Supplier's option: (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or (b) in the case of services, the supplying of the Subscription Services again, or the payment of the cost of having the Subscription Services supplied again. Customer may make such a guarantee claim by contacting the Supplier at the contact details set forth in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1.

The parties agree that it is Customer's responsibility to determine whether the Subscription Services are suitable for Customer's requirements. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express, or implied, will form a part of this SaaS Agreement or have any legal effect whatsoever.

- (g) Third-Party Web Sites, Content, Products, and Services. The Subscription Services may enable the addition of links to Web sites and access to material, products, and services of third parties, including users, advertisers, affiliates, and

sponsors of such third parties. Except as specifically provided in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1, (a) Supplier is not responsible for any third-party Web sites or third-party material provided on or through the Subscription Services and (b) each party bears all risks associated with the access and use of such Web sites and third-party material, products, and services.

**20. Limitation of Liability.** As stated in Exhibit E-Revised-1, Section 36, of the Contract.

**21. Term and Termination**

- (a) Termination by Supplier. Supplier has the right to terminate this SaaS Agreement if Customer is in default of any term or condition of this SaaS Agreement and fails to cure such default within thirty (30) days after receipt of written notice of such default. Without limitation, if Customer fails to pay any amount when due hereunder, Supplier may, in its sole discretion, be immediately (without notice or cure period required) deemed a Customer default under this SaaS Agreement. Further, Supplier may terminate this SaaS Agreement immediately if: (i) Customer breaches Section 2 (Restrictions) or Section 17(a) (Customer Data); or (ii) Customer becomes insolvent, a receiver, administrator, controller, or a liquidator is appointed to Customer, Customer assigns any of its property for the benefit of creditors or any class of them, or any proceedings have been commenced by or against Customer under any bankruptcy, insolvency or similar laws.
- (b) Early Termination. Customer understands that Supplier has undertaken significant implementation and investment costs which are intended to be amortized over any initial term indicated on the Scope of Services and Compliance Matrix, Exhibit F-Revised-1 (“**Initial Term**”). In consideration of the costs and the pricing structure acknowledged and accepted in the Scope of Services and Compliance Matrix, Exhibit F-Revised-1, Customer agrees to pay liquidated damages if Customer elects early termination during such Initial Term (other than pursuant to Section 19(c)). The liquidated damages for such early termination will be the value of the fees for the remainder of the Initial Term, along with any outstanding fees for additional modules and services ordered but not yet paid for by Customer since the date of this SaaS Agreement. These liquidated damages are due and payable in a lump sum on the date of termination of the SaaS Agreement. Customer acknowledges that the actual damages likely to result from a breach of the Initial Term by Customer are difficult to ascertain and that the foregoing liquidated damages are intended to represent estimated actual damages and are not intended as a penalty.
- (c) Data Portability and Deletion. Before the Subscription Term expires, upon thirty (30) days written request by Customer, Supplier will make the Customer Data available to Customer for export or download. Following the termination or expiration of this SaaS Agreement, Supplier shall have no obligation to maintain or provide any Customer Data beyond the expiration or termination of this SaaS Agreement.
- (d) Surviving Provisions. Following the termination of this SaaS Agreement, the Sections titled “Payment Terms,” “Taxes,” “Ownership,” “Customer Input,” “Confidentiality,” “Data,” “Indemnification,” “Warranties & Warranty Disclaimer,” “Limitation of Liability,” “Term and Termination,” “Assignment,” “Dispute Resolution,” “Governing Law” and “General Provisions” will continue in full force and effect in accordance with their terms.

**22. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld). Any permitted assignee will assume all assigned obligations of its assignor under the SaaS Agreement.

**23. Governing Law.** In accordance with Exhibit E-Revised-1, Section 54(j), of the Contract.

**24. Reserved.**

**25. Reserved.**