



CONTRACT NO. 500128
(RFP 802696)
RAIL CONFIGURATION MANAGEMENT SYSTEM

CONTRACTOR:

XORAIL, INC.
5011 Gate Parkway, Building 100, Suite 400
Jacksonville, FL 32256
Phone: 904-614-9780
Email: kmarlowe@wabtec.com

AWARD DATE: January 23, 2024

CONTRACT TERM: February 6, 2024 THRU February 6, 2025

PRICE: \$64,000.00

PROJECT MANAGER: Gabriel Hasser
Telephone # (512) 369-6519
Email Address gabriel.hasser@capmetro.org

CONTRACT ADMINISTRATOR: Jeffery Yeomans
Email Address jeffery.yeomans@capmetro.org

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

Contract 500128

(RFP 802696)

RAIL CONFIGURATION MANAGEMENT SYSTEM

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EXHIBIT A-REVISED-1


FPR

PRICING SCHEDULE

RFP 802696

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

1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT

Company Name (Printed)	Xorail, Inc.		
Address	5011 Gate Parkway Bldg 100 Suite 400		
City, State, Zip	Jacksonville, FL 32256		
Phone, Fax, Email, Point of Contact	+1 (904) 899-5688 ntehrani@Wabtec.com Nima Tehrani		
The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein.			
Authorized Agent Name and Title (Printed)	Nima Tehrani, Group Vice President, Signaling, Communication and Wayside - North America		
Signature and Date	 <small>Nima Tehrani (Jan 11, 2024 08:05 MST)</small>		Jan 11, 2024

2. ACKNOWLEDGEMENT OF AMENDMENTS

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

3. PROMPT PAYMENT DISCOUNT

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

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

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	Jeffery Yeomans, Contracting Administrator
Signature and Date	February 6, 2024
Accepted as to:	Exhibit A-Revised-1 Pricing Schedule, Section 6 PRICING BASE PERIOD 1 (Contract Year 1), all items 1 through 6 for a total Base Period not to exceed \$64,000.00

The remainder of Exhibit A – Pricing Schedule has been redacted.

For further information regarding Exhibit A, you may:

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

OR

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

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



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:

Florida

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:

WESTINGHOUSE AIR BRAKE
TECHNOLOGIES CORPORATION
30 Isabella Street
Pittsburgh, PA 15212
[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
Donna VanSickler	Mar 28-Apr 6, 2022; Scheduling application demo and answering questions re: application capabilities
Justin Morrison	Mar 28-Apr 6, 2022; Scheduling application demo and answering questions re: application capabilities
Jyothi Divi	Mar 28-Apr 6, 2022; Scheduling application demo and answering questions re: application capabilities

(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. 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:

Xorail

Type/Print Name of Signatory:

Katy Marlowe

Signature:

Katy Marlowe

Date:

Sept. 11, 2023

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

1. DEFINITIONS

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

- (a) “Applicable Anti-Corruption and Bribery Laws” means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor’s provision of goods and/or services to Authority, including without limitation “FCPA” or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.
- (b) “Authority”, “Capital Metro”, “CapMetro”, “CMTA” means Capital Metropolitan Transportation Authority.
- (c) “Authority Data” means all data, content and information (i) submitted by or on behalf of the Authority or its customers to the Contractor or loaded into the System, (ii) obtained, developed, produced or processed by the Contractor or by the Application or System in connection with the Contract, or (iii) to which the Contractor has access in connection with the Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
- (d) “Authority Electronic Property” means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any application programming interfaces (API) to the Authority’s information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by customers obtaining products or services from the Authority.
- (e) “Change Order” means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (f) “Contract” or “Contract Documents” means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (g) “Contract Award Date” means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by the Authority.
- (h) “Contract Modification” means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (i) “Contract Sum” means the total compensation payable to the Contractor for performing the Services as originally contracted for or as subsequently adjusted by Contract Modification.
- (j) “Contract Term” means period of performance set forth in the paragraph entitled “Term” contained in Exhibit E.
- (k) “Contracting Officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings 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) “FAR” means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (o) “FCPA” means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (p) “Force Majeure Event” means strikes, lockouts, or other industrial disputes; explosions, epidemics, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.
- (q) “FTA” means the Federal Transit Administration.
- (r) “Fully Burdened Hourly Labor Rate” means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- (s) “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, moral rights or neighboring rights, and any derivative works thereto; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- (t) “Manufacturing Materials” mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.
- (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 the services to be performed by the Contractor under this Contract, and includes services performed, workmanship, and supplies furnished or utilized in the performance of the Services.
- (z) “Subcontract” means the Contract between the Contractor and its Subcontractors.
- (aa) “Subcontractor” means subcontractors of any tier.
- (bb) “Works” means any tangible or intangible items or things that have been or will be specifically, generated, prepared, created, or developed by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract, for the exclusive use of, and ownership by, Authority

under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, and (vi) all documentation and materials related to any of the foregoing.

2. 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 six (6) option periods for a twelve (12) month duration each at the option prices set forth in Exhibit A - Pricing Schedule upon written notice to the Contractor.

5. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE

If the options granted in Paragraph 4 have been exercised in their entirety, the Authority shall have the unilateral right and option to require continued performance of any services within the limits and rates specified in the Contract. This option may be exercised more than once, but the extension of performance hereunder shall not exceed a total of 6 months. The Authority may exercise the option by written notice to the Contractor. **If the Authority elects not to extend the Contract Term and notifies Contractor in writing within sixty (60) days in advance of the end of the Term, the Talon product will be discontinued immediately upon the end of the Term, and the Authority shall have ninety (90) days to retrieve its Data from the application.**

6. INVOICING AND PAYMENT

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

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

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

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

- (1) the Contract and order number (if any);
- (2) a complete itemization of all costs including quantities ordered and delivery order numbers (if any);

- (3) any discounts offered to the Authority under the terms of the Contract;
- (4) evidence of the acceptance of the supplies or Services by the Authority; and
- (5) any other information necessary to demonstrate entitlement to payment under the terms of the Contract.

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

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

(d) In the event an overpayment is made to the Contractor under this Contract or the Authority discovers that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset the amount of such overpayment or unauthorized charges against any indebtedness owed by the Authority to the Contractor, whether arising under this Contract or otherwise, including withholding payment of an invoice, in whole or in part, or the Authority may deduct such amounts from future invoices. If an overpayment is made to the Contractor under this Contract which cannot be offset under this Contract, the Contractor shall remit the full overpayment amount to the Authority within thirty (30) calendar days of the date of the written notice of such overpayment or such other period as the Authority may agree. The Authority reserves the right to withhold payment of an invoice, in whole or in part, or deduct the overpayment from future invoices to recoup the overpayment.

7. PERFORMANCE BOND

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

(b) The bond shall be accompanied by a valid Power-of-Attorney, issued by the surety company and attached, signed and sealed, with the corporate embossed seal, to the bond, authorizing the agent who signs the bond to commit the surety company to the terms of the bond, and stating on the face of the Power-of-Attorney the limit, if any, in the total amount for which he/she is empowered to issue a single bond.

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

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

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

(e) The Contractor shall provide a Performance Bond in an amount equal to twenty percent (20%) of the contract amount for the effective option periods during maintenance and warranty terms.

8. PAYMENT MILESTONES

Payment for each of the project phases shall be paid in the following percentages of the total contract amount based on deliverables and implementation strategy.

Project Phase	Percentage
Plan	5%
Design	10%
Develop	15%
Test	15%
Deploy/Go Live	30%
Closeout	25%

9. PERFORMANCE DEFICIENCY CREDITS (PDC)

The foundation of a successful project is the adherence to scope, schedule, and budget with the quality expected. The project schedule as agreed between the parties and incorporated into the Contract will be used to manage Contractor performance. At the discretion of the Authority and for reasons caused solely by Contractor, the Contractor will be assessed a PDC when a Phase End Milestone due date is missed. When that occurs, the Contractor is expected to provide additional resources or other measures in order to get back on schedule. The Contractor will not be assessed a PDC for any delays caused by the Authority.

Payment Milestone	Payment Value (% of Contract)	Performance Deficiency Credits (PDCs)			
		Disincentive	Payment Re- ceived	Payment With- held	Payment Lost
Plan	5%	> 30 days	50%	50%	0%
Design	10%				
Develop	15%				
Test	15%				
Deploy/Go Live	30%				
Closeout	25%	> 30 days	90%	0%	10%
	+ Any payments with- held	31 – 90 days	80%	0%	20%
		> 90 days	70%	0%	30%

10. LIQUIDATED DAMAGES

(a) If the contractor fails to perform the Work within the time specified in this Contract, or any extension, the Contractor shall in place of actual damages, pay to the Authority the sum of \$250 for each calendar day of delay as liquidated damages and not as a penalty. It is agreed that such liquidated damages represent an estimate of actual damages and are not intended as a penalty; and that such delay will cause the Authority to incur substantial economic damage in amounts which are difficult or impossible to ascertain with certainty. Liquidated damages do not limit the Authority's right to terminate this Contract for default or otherwise as provided elsewhere in this Contract. Liquidated damages do not limit the Authority's right to terminate this Contract for default or pursue other remedies available to

the Authority elsewhere in this Contract. Liquidated damages may be deducted from any amounts due and owing Contractor under this Contract.

11. 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 these policies. Within thirty (30) days~~ 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 ~~Workers' Compensation and 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) **Comprehensive General Liability Insurance** Coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) with an aggregate of Two Million Dollars and No/100 Dollars (\$2,000,000) with coverage that includes:

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

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

(3) **Statutory Workers' Compensation** in the State of Texas. Employers Liability Insurance with minimum limits of liability of One Million Dollars and No/100 Dollars (\$1,000,000).

(4) **Technology Errors & Omissions Insurance:** Combined Technology & Omissions Policy with a minimum One Million and No/100 Dollars (\$1,000,000) claim limit, including (a) Professional Liability Insurance covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated (such coverage to be maintained for at least two (2) years after termination of this contract, which obligation shall expressly survive termination of this contract; and (b) Privacy, Security and Media Liability

Insurance providing liability for unauthorized access or disclosure, security breaches or system attacks, as well as infringement of copyright and trademark that might result from this contract.

~~(5) — Terrorism Coverage shall be included on all policies.~~

(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-CONTIBUTORY 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. The above required insurance All required endorsements shall be evidenced on the Certificate of Insurance, which shall be evidenced on the Certificate of Insurance.~~ Proof that insurance coverage exists shall be furnished to the Authority by way of a Certificate of Insurance before any part of the Contract work is started.

(e) If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority may terminate this Contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due the Contractor.

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

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

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

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

12. 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.

13. 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.

14. 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.

15. 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.

16. COMPOSITION OF CONTRACTOR

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

17. 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.

18. 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.

19. CONTRACTOR AND SUBCONTRACTOR ANNUAL AUDITED FINANCIAL STATEMENTS AND ABILITY TO PERFORM

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

The Contractor shall provide to the Authority a copy of Contractors' and Subcontractors' latest audited financial statements, which may include Contractor's balance sheet, statements of income, retained earnings, cash flows, and the notes to the financial statements, as well as Contractor's most current 10-K, if applicable, throughout the term of the Contract. The audited financial statements shall be provided annually. The financial statements shall be provided to the Authority within ninety (90) calendar days from the end of Contractor's fiscal period. For instance, if Contractor's fiscal period ends each December 31st, then the financial statements shall be provided to the Authority no later than March 31st of the following year. The Authority, at its' discretion, may accept unaudited financial reports.

20. PERSONNEL ASSIGNMENTS

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

(b) The Contractor certifies that the Contractor, and each Subcontractor, have established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that the Contractor and each Subcontractor conducts criminal history checks on its assigned personnel in accordance with such policy to identify, hire and assign personnel to work on this Contract whose criminal backgrounds are appropriate for the Services being performed, considering the risk and liability to the Contractor and the Authority. The Authority reserves the right to require the Contractor and any Subcontractor to disclose any criminal or military criminal convictions of assigned personnel and the right to disapprove the use of assigned personnel with criminal or military convictions.

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

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

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

(3) National Sex Offender Registry

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

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

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

Offense Type	Action Required
Crimes Against the Person (other than sex crimes)	
Felony	Submit to CapMetro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to CapMetro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to CapMetro for review if less than 5 years from date of conviction
Crimes Against the Person - Sex Crimes/Registered Sex Offenders	
ALL	Submit to CapMetro for review
Crimes Against Property	
Felony	Submit to CapMetro for review if less than 10 years from date of release from confinement
Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography	
Felony	Submit to CapMetro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to CapMetro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to CapMetro for review if less than 5 years from date of conviction
Driving Offenses	
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 Contractor may not assign an employee to provide Services if the employee has any conviction in the applicable categories listed above, unless an exception is granted by the Authority in accordance with subparagraph (d).

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

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

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

- the candidate's application/resume;
- a copy of the criminal conviction history, including those tried in a military tribunal;
- available court information related to the conviction;
- any publicly available information related to the offense and conviction;

- a statement from the candidate addressing any/all factors set forth above and explaining why the person is qualified for the assignment notwithstanding the conviction; and
- a statement from the candidate explaining why the person is an acceptable risk for the work to be performed by the candidate.

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

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

21. 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. The misuse of a badge may result in termination of the Contract.

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

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

22. 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.

23. TERMINATION FOR DEFAULT

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

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

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

(b) In the event the Authority terminates this Contract in whole or in part as provided in subparagraph (a) of this paragraph, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent, if any, it has not been terminated under the provisions of this 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) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this subparagraph, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority any Manufacturing Materials as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor

shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed Manufacturing Materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this Contract under the provisions of this paragraph, it is determined by the Authority that the Contractor was not in default or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be those provided in the paragraph entitled "Termination for Convenience" contained in this Exhibit E.

(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.

24. TERMINATION FOR CONVENIENCE

(a) The Authority may, whenever the interests of the Authority so require, terminate this Contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

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

(c) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "Manufacturing Materials") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract. The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and Manufacturing Materials.

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

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

(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.

25. 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.

26. INTELLECTUAL PROPERTY; DATA PRIVACY PROVISIONS

~~(a) As between the Contractor and the Authority, the Works and Intellectual Property Rights therein are and shall be owned exclusively by CapMetro, and not the Contractor. The Contractor specifically agrees that all Works shall be considered "works made for hire" and that the Works shall, upon creation, be owned exclusively by the Authority. To the extent that the Works, under applicable law, may not be considered works made for hire, the Contractor hereby agrees that this Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to the Authority all right, title and interest in and to all worldwide ownership rights in the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the Authority shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works.~~

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

~~(c) All Data is proprietary to and shall remain the sole property of Contractor. Authority is granted a limited license for any Data delivered by Contractor, whether as part of any Product or separately.~~

~~(1) This limited, non-exclusive, non-transferable, revocable, personal license allows Authority to use Data for Authority's Internal Business Purposes solely related to the intended use of the Product(s) for which the Data is provided or according to applicable Software specifications. With respect to any Software, the limited license permits Authority:~~

~~(i) to use the Software only on the Products on which it is installed at the time of delivery or on which it is permitted to be installed as stated in the Contract; or~~

~~(ii) if the Software is supplied separately for use in relation to specific assets or operations of Authority, to use the Software only in relation to such specific assets or operations of Authority, and only for the ordinary purpose for which Wabtec designed the Software. Further, if the Software is supplied separately, Authority may make one copy of the Software in machine-readable form solely for backup purposes. In no event is any license or right granted in the source code for any Software.~~

~~(2) Without limiting Section (1), all Data that is disclosed to Authority in confidence shall be subject to the confidentiality provision in this Contract. Authority shall not remove existing notices regarding confidentiality or proprietary of Data.~~

(3) Authority may not distribute copies of the Data to others. Contractor and Authority acknowledge that the Data is provided and protected pursuant to contractual obligations, and may be further protected by copyright, trade secret, and patent laws of the United States of America (and by applicable international treaties). Authority may not decompile, reverse engineer, disassemble, or reduce any Software to a human-perceivable form. AUTHORITY MAY NOT MODIFY, ADAPT, TRANSLATE, LEASE, LOAN, RESELL, DISTRIBUTE, OR CREATE DERIVATIVE WORKS BASED UPON THE DATA OR ANY PART THEREOF, INCLUDING THE LOOK AND FEEL OF ANY SOFTWARE, AND MUST NOT OTHERWISE COMMERCIALY EXPLOIT THE SOFTWARE OR MAKE THE SOFTWARE AVAILABLE TO ANY THIRD PARTY. Authority shall not allow any third party to access Data, such as, but not limited to, intercepting equipment data streams, particularly during operation of equipment. Authority shall not use Data, or provide Data to any other person, for the design, manufacture, repair, or maintenance of any products or processes. Authority shall not use Data in the creation, manufacture, development, or derivation of repair and maintenance processes, modifications, spare parts, designs or configuration changes, or to obtain any regulatory approval of any of the foregoing. Nothing herein shall prohibit Authority from forward selling a Product acquired hereunder in which applicable Software is installed. Nothing herein shall obligate the Contractor to provide any support, upgrade or revision to any Software, except as otherwise agreed in writing between Authority and Contractor. Authority shall not permit any third party to access the Data unless such third party agrees to be bound by the restrictions contained herein relating to use and confidentiality of the Data. Nothing herein shall obligate the Contractor to provide any support, upgrade or revision to any Software, except as otherwise agreed in writing between Authority and Contractor.

~~(4) With respect to any data or information that Contractor receives from Authority ("Authority Data"), Contractor is granted a non-exclusive, perpetual, irrevocable, worldwide limited license to use any such Authority Data for Contractor's internal business purposes, which includes without limitation maintenance, development, research, upgrade or improvement of products, software and services.~~

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

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

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

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

(2) where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Authority of such pre-existing or third party rights or limitations, request the Authority's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third-party rights on such terms as may be reasonably negotiated, and obtain the Authority's written approval of such pre-existing or third-party rights and the limited use of same. The Contractor shall provide the Authority with documentation indicating a third party's written approval for the Contractor to use any pre-existing or third-party rights that may be embodied, contained, reserved or reflected in the Works. The Contractor shall indemnify, defend and hold the Authority harmless from and against any and all claims, demands, regulatory proceedings and/or causes of action, and all losses, damages, and costs (including attorneys' fees and settlement costs) arising from or relating to, directly or indirectly, any claim or assertion by any third party that the Works infringe any third-party rights. The foregoing indemnity obligation shall not apply to instances in which the Authority either:

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

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

(e) The Contractor hereby warrants and represents to the Authority that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed by or on behalf of the Contractor for the use by or benefit of the Authority, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. The Contractor agrees to defend, indemnify and hold the Authority harmless from any claims, including but not limited to claims for invasion of privacy, infringement of the right of publicity, libel, unfair competition, false advertising, intentional or negligent infliction of emotional distress, copyright or trademark infringement, and/or claims for attorney's fees, resulting from such use, etc., of the Personality Rights.

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

(g) The Contract is intended to protect the Authority's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the Authority's business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property and confidentiality provisions of this Contract, upon a request by the Authority, without requiring proof of irreparable injury as same should be presumed.

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

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

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

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

(k) This Section 26 will survive termination or expiration of this Agreement for any reason.

27. 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.

28. INSPECTIONS AND APPROVALS

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

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

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

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

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

29. 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.

30. PAYMENT TO SUBCONTRACTORS

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

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

31. 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.

32. 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.

33. 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. The questionnaire shall be sent to the Authority's Contract Administrator.

34. 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.

35. PUBLICATIONS

All published material and written reports submitted under this Contract must be originally developed material unless otherwise specifically provided in the Contract document. When material, not originally developed, is included in a report, it shall have the source identified. This provision is applicable when the material is in a verbatim or extensive paraphrased format.

36. REQUEST FOR INFORMATION

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than the Authority and its authorized agents except as otherwise provided by this Contract or after obtaining the prior written permission of the Authority.

(b) This Contract, all data and other information developed pursuant to this Contract shall be subject to the Texas Public Information Act. The Authority shall comply with all aspects of the Texas Public Information Act.

(c) The Contractor is instructed that any requests for information regarding this Contract and any deliverables shall be referred to the Authority.

(d) The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid/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.

37. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

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

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

38. 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 intentional tort or fraud. Contractor shall include similar liability provisions in all its Subcontracts. 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 the two (2) times the not-to-exceed value of the Contract. ~~In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to the Contractor or its Subcontractors for special, indirect, incidental or consequential damages, resulting from the Authority's performance, nonperformance, or delay in performance of its obligations under this Contract, or the Authority's termination of the Contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. The Contractor shall include similar liability provisions in all its Subcontracts.~~

39. 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.

40. 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.

41. 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.

42. 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.

43. PUBLICITY RELEASES

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the Services hereunder which the Contractor or any of its Subcontractors desires to make for the purposes of publication in whole or in part, shall be subject to approval by the Authority prior to release.

44. 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.

45. INDEMNIFICATION

(a) **THE CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "INDEMNIFIED PARTY") HARMLESS FROM AND AGAINST AND PAY ANY AND ALL DAMAGES (AS DEFINED HEREIN) DIRECTLY OR INDIRECTLY RESULTING FROM, RELATING TO, ARISING OUT OF OR ATTRIBUTABLE TO ANY OF THE FOLLOWING:**

(1) **ANY BREACH OF ANY REPRESENTATION OR WARRANTY THAT THE CONTRACTOR HAS MADE IN THIS CONTRACT;**

(2) **ANY BREACH, VIOLATION OR DEFAULT BY OR THROUGH THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OF ANY OBLIGATION OF THE CONTRACTOR IN THIS CONTRACT OR ANY OTHER AGREEMENT BETWEEN THE CONTRACTOR AND THE AUTHORITY;**

(3) **THE USE, CONDITION, OPERATION OR MAINTENANCE OF ANY PROPERTY, VEHICLE, FACILITY OR OTHER ASSET OF THE AUTHORITY TO WHICH THE CONTRACTOR HAS ACCESS OR AS TO WHICH THE CONTRACTOR PROVIDES SERVICES; OR**

(4) **ANY ACT OR OMISSION OF THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CUSTOMERS, INVITEES, REPRESENTATIVES OR VENDORS.**

(b) **"ACTION" MEANS ANY ACTION, APPEAL, PETITION, PLEA, CHARGE, COMPLAINT, CLAIM, SUIT, DEMAND, LITIGATION, MEDIATION, HEARING, INQUIRY, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.**

(c) **"DAMAGES" MEANS ALL DIRECT OR INDIRECT DAMAGES, LOSSES, LIABILITIES, DEFICIENCIES, SETTLEMENTS, CLAIMS, AWARDS, INTEREST, PENALTIES, JUDGMENTS, FINES, OR OTHER COSTS OR EXPENSES OF ANY KIND OR NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, CONTINGENT OR VESTED, MATURED OR UNMATURED, AND WHETHER OR NOT RESULTING FROM THIRD-PARTY CLAIMS, INCLUDING COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, OTHER PROFESSIONAL ADVISORS AND EXPERT WITNESSES) RELATED TO ANY INVESTIGATION, ACTION, SUIT, ARBITRATION, APPEAL, CLAIM, DEMAND, INQUIRY, COMPLAINT, MEDIATION, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.**

(d) **"THREATENED" MEANS A DEMAND OR STATEMENT HAS BEEN MADE (ORALLY OR IN WRITING) OR A NOTICE HAS BEEN GIVEN (ORALLY OR IN WRITING), OR ANY OTHER EVENT HAS OCCURRED OR ANY**

OTHER CIRCUMSTANCES EXIST THAT WOULD LEAD A PRUDENT PERSON OR ENTITY TO CONCLUDE THAT AN ACTION OR OTHER MATTER IS LIKELY TO BE ASSERTED, COMMENCED, TAKEN OR OTHERWISE PURSUED IN THE FUTURE.

(e) IF ANY ACTION IS COMMENCED OR THREATENED THAT MAY GIVE RISE TO A CLAIM FOR INDEMNIFICATION (A "CLAIM") BY ANY INDEMNIFIED PARTY AGAINST THE CONTRACTOR, THEN SUCH INDEMNIFIED PARTY WILL PROMPTLY GIVE NOTICE TO THE CONTRACTOR AFTER SUCH INDEMNIFIED PARTY BECOMES AWARE OF SUCH CLAIM. FAILURE TO NOTIFY THE CONTRACTOR WILL NOT RELIEVE THE CONTRACTOR OF ANY LIABILITY THAT IT MAY HAVE TO THE INDEMNIFIED PARTY, EXCEPT TO THE EXTENT THAT THE DEFENSE OF SUCH ACTION IS MATERIALLY AND IRREVOCABLY PREJUDICED BY THE INDEMNIFIED PARTY'S FAILURE TO GIVE SUCH NOTICE. THE CONTRACTOR WILL ASSUME AND THEREAFTER DILIGENTLY AND CONTINUOUSLY CONDUCT THE DEFENSE OF A CLAIM WITH COUNSEL THAT IS SATISFACTORY TO THE INDEMNIFIED PARTY. THE INDEMNIFIED PARTY WILL HAVE THE RIGHT, AT ITS OWN EXPENSE, TO PARTICIPATE IN THE DEFENSE OF A CLAIM WITHOUT RELIEVING THE CONTRACTOR OF ANY OBLIGATION DESCRIBED ABOVE. IN NO EVENT WILL THE CONTRACTOR APPROVE THE ENTRY OF ANY JUDGMENT OR ENTER INTO ANY SETTLEMENT WITH RESPECT TO ANY CLAIM WITHOUT THE INDEMNIFIED PARTY'S PRIOR WRITTEN APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. UNTIL THE CONTRACTOR ASSUMES THE DILIGENT DEFENSE OF A CLAIM, THE INDEMNIFIED PARTY MAY DEFEND AGAINST A CLAIM IN ANY MANNER THE INDEMNIFIED PARTY REASONABLY DEEMS APPROPRIATE. THE CONTRACTOR WILL REIMBURSE THE INDEMNIFIED PARTY PROMPTLY AND PERIODICALLY FOR THE DAMAGES RELATING TO DEFENDING AGAINST A CLAIM AND WILL PAY PROMPTLY THE INDEMNIFIED PARTY FOR ANY DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RELATING TO A CLAIM.

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

(g) THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CONTRACT.

46. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS

(a) The Contractor will retain, and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and the Authority and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

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

(d) The Contractor shall maintain all books, records, accounts and reports required under this paragraph for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(e) The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.

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

(g) If an audit pursuant to this paragraph reveals that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset or recoup such amounts against any indebtedness owed by it to the Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.

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

47. 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.

48. 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.

49. 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.

50. 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.

51. INTERPRETATION OF CONTRACT – DISPUTES

All questions concerning interpretation or clarification of this Contract, or the acceptable fulfillment of this Contract by the Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the 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.

52. 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.

53. ORDER OF PRECEDENCE

In the event of inconsistency between the provisions of this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order, as revised:

1. Exhibit A – Pricing Schedule
2. Exhibit E – Contractual Terms and Conditions
3. Exhibit B – Representations and Certifications
4. Exhibit F – Scope of Services
5. Exhibit F-1 – Compliance Matrix
6. Exhibit G – On-Premises Solutions
7. Exhibit H – IT Proprietary Rights and Data Security Addendum
8. Exhibit I – IT (Services)
9. Exhibit J – IT Hosted Solutions
10. Exhibit K – IT Access and Use Agreement
11. Other provisions or attachments to the Contract

54. ANTI-CORRUPTION AND BRIBERY LAWS

The Contractor shall comply with all Applicable Anti-Corruption and Bribery Laws. The Contractor represents and warrants that it has not and shall not violate or cause the Authority to violate any such Anti-Corruption and Bribery

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

55. RESERVED

56. ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

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

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

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

57. MISCELLANEOUS

(a) This Contract does not intend to, and nothing contained in this Contract shall create any partnership, joint venture or other equity type agreement between the Authority and the Contractor.

(b) All notices, statements, demands, requests, consents or approvals required under this Contract or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party; an agent of such party; or by overnight courier service, postage paid and addressed to the party to be notified; or by e-mail with delivery confirmation. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

If to the Contractor: As set forth in Exhibit B to this Contract

If to the Authority: CapMetro
Attn: Chief Contracting Officer
2910 E. 5th Street
Austin, Texas 78702

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

- (c) In the event the Authority finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants or conditions herein, the Contractor shall pay to the Authority its reasonable attorneys' fees and expenses, regardless of whether suit is filed.
- (d) If any term or provision of this Contract or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be void, invalid or unenforceable, the remainder of this Contract will remain in full force and effect unless removal of such invalid terms or provisions destroys the legitimate purpose of the Contract in which event the Contract will be terminated.
- (e) This Contract represents the entire agreement between the parties concerning the subject matter of this Contract and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations. In executing this Contract, the parties do not rely upon any statement, promise, or representation not expressed herein. This Contract may not be changed except by the mutual written agreement of the parties.
- (f) A facsimile signature shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase "facsimile signature" includes without limitation, an image of an original signature.
- (g) Whenever used herein, the term "including" shall be deemed to be followed by the words "without limitation". Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. All Exhibits attached to this Contract are incorporated herein by reference.
- (h) All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Authority, whether provided by law, equity, statute, or otherwise. The election of any one or more remedies the Authority will not constitute a waiver of the right to pursue other available remedies.
- (i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve the Contractor from any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.
- (j) The failure of the Authority to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive the Authority thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, the Authority is a governmental entity, and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.
- (k) This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the State of Texas, sitting in Travis County, Texas and the Contractor expressly consents to the personal jurisdiction of these courts.
- (l) This Contract is subject to the Texas Public Information Act, Tex. Gov't Code, Chapter 552.
- (m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and authority to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.
- (n) The person signing on behalf of the Contractor represents himself or herself and the Contractor that he or she is duly authorized to execute this Contract.
- (o) No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

(p) 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.

58. RESERVED

59. 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.

60. RESERVED



EXHIBIT F
SCOPE OF SERVICES
RAIL CONFIGURATION MANAGEMENT SYSTEM

INTRODUCTION

Capital Metropolitan Transportation Authority is requesting software and services for an RCMS product to meet mandated requirements from the Federal Rail Administration (FRA). CapMetro's current Rail Configuration Management System (RCMS) does not satisfy the FRA's mandated requirements. An RCMS is the systematic approach for identifying, documenting, and changing the characteristics of a site or product's structures, systems, and components. This is to ensure that conformance is maintained between the design requirements, physical configuration, and site configuration information. An RCMS will let CapMetro's Rail staff know exactly what and where assets are and how they have changed over time. It will also enable staff to track the current state of all assets, to optimize operational performance and leverage data to make the right decisions at the right time. The intent of an RCMS is to monitor, in real time, the configuration of CapMetro's Rail systems and facilities thereby ensuring that safety critical systems, facilities, and operating practices are continually maintained.

CapMetro operates passenger services along the Red Line, a 31 miles segment of the 162-mile rail network between Leander and Downtown Austin. With Project Connect, CapMetro is expanding its service and is looking for an RCMS to enable future expansion along other segments.

SCOPE OF WORK

The offeror shall provide all software and services necessary for the implementation, launch and support of its RCMS product. The intent of this scope is to procure software licenses, design solutions and professional services, including but not limited to configuration, implementation, integration, training, and all services needed to build and deliver the offeror's environment for CapMetro. The requirements that shall be addressed in the Scope of Work are documented in Exhibit F-1 – Compliance Matrix.

CapMetro personnel will be available in a timely manner for scheduled workshops and activities as well as to resolve any issues and provide feedback when needed. Capital Metro will:

1. Provide a primary point of contact to answer or resolve all issues and questions.
2. CapMetro will provide executive leadership over the project to assist in leadership level decisions under reasonable circumstances. An example may include an executive steering committee.
3. Training, communication and support for the end-user community except as otherwise contracted or stated in this SOW.

When this project is complete the following goals will have been met:

1. CapMetro will have a successfully implemented offeror's RCMS solution.
2. CapMetro staff are fully trained in the offeror's RCMS solution.
3. Third-party applications have successfully integrated with the offeror's RCMS solution.



EXHIBIT F-1 - COMPLIANCE MATRIX
INSTRUCTIONS

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 RCMS - Please provide a response to each item. Additional instructions are provided within the Appendix.

3. Appendix B: 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 CapMetro 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 CapMetro or CapMetro agrees to an alternative.



**EXHIBIT F-1 -COMPLIANCE MATRIX
GENERAL REQUIREMENTS**

Ref. #	Compliance Term	Select from Drop-Down <u>C-Comply;</u> <u>N-Cannot Comply;</u> <u>A-Will Comply with Alternative</u>	Release	Vendor Comments	CapMetro Response	Test #
1.0	Overview					
1.1	Scope and Compliance Matrix					
1.2	<p><u>Scope of Work:</u> The offeror shall provide all software and services necessary for the implementation, launch and support of its RCMS product. The intent of this scope is to procure software licenses, design solutions and professional services, including but not limited to configuration, implementation, integration, training, and all services needed to build and deliver the offeror's environment for CapMetro. The requirements that shall be addressed in the Scope of Work are documented in Appendix A - Core Requeuments Rail Configeration Management System, under Exhibit F-1 - Compliance Matrix.</p>					
2.0	Project Approach - Project Management					
2.1	The vendor shall provide a robust project management team and project management plan to support the implementation of the ** 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 Contractor shall comply with all requirements of "Appendix B Definitions" which define project management requirements.					
3.0	Project Approach - Project Management Plan					
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.					
4.0	Project Approach - Design and Development					
4.1	The Installation and Transition Plan will describe detailed installation and configuration of all software systems, including the RCMS, interfaces, and web applications, and their respective schedules.					
4.2	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.					

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4.3	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.					
5.0	Project Approach - Testing: General Requirements					
5.1	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.					
5.2	Before starting all formal testing activities that are to be witnessed and approved by CapMetro, the vendor shall conduct "dry-run" testing to identify and resolve any issues and avoid unexpected results during the formal testing.					
5.3	The vendor shall provide CapMetro with scripts to test.					
5.4	The vendor shall provide a methodology for uploading mass amounts of historical and transactional data for the purposes of testing.					
5.5	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					
6.0	Project Approach - Testing: Test Documentation					
6.1	The vendor shall submit a draft Test Plan for CapMetro 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. Testing should include functional, technical, security, and user acceptance at a minimum.					
6.2	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.					
6.3	Detailed test procedures will include mapping to the design documents and the requirements in the SOW that are related to the test.					

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7.0	Project Approach - Training					
7.1	Vendor shall provide a comprehensive program to educate and train personnel in all details of the System, enabling them to properly operate, service, and maintain the system and each of its components throughout its useful life.					
7.2	Vendor shall develop and submit for CapMetro review and approval a Training Plan that documents the design of the program for training personnel and each course to be delivered.					
7.3	The course curriculum will include instruction of personnel in at least the following broad categories using a train-the-trainer model: <ul style="list-style-type: none"> • Utilization of all financial and procurement modules • Utilization of any optional modules exercised by CapMetro, as applicable • Back-office system administration, configuration, operations and maintenance, reporting, backup, and disaster recovery. • Reporting, including ad hoc report creation, canned report generation, and report utility 					
7.4	The Training Plan will include a schedule for delivery of the training courses. The schedule will consider the sequence of training, hours of instruction, system readiness and proximity to startup, trainee availability, and venue for the training.					
7.5	The vendor shall provide all necessary training materials and equipment for the delivery of each course discussed in the Training Plan. Training documentation will be separate from the operation and maintenance manuals but may reference them. Recordings of the training shall be provided by The vendor.					
8	Project Approach - Manuals					
8.1	The vendor shall provide instruction manuals that describe and illustrate in detail how to manage, operate, and maintain the System delivered under the vendor contract. The manuals will include detailed documentation for all equipment, systems, and software.					
8.2	Disaster recovery procedures will be clearly specified in sufficient detail to consider all possible scenarios. Recovery instructions will describe detailed procedures to be followed in the event that system recovery is needed. Detailed data backup and recovery procedures will be provided.					

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9	Project Approach - Data Migration					
9.1	The vendor shall provide a holistic Data Migration Plan, including manual entry and automated data migration options. 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).					
10	Project Approach: Demos and Scripted Demos					
10.1	The vendor shall prepare demonstrations of system functionality (should it be necessary for oral presentations). The demonstrations shall take place in a sandbox or test environments and not consist of a static presentation or screenshots.					
11.0	System Design & Architecture - Common Design Requirements and Guidelines					
11.1	The vendor shall provide a cloud based Software as a Service (SaaS) system that is scalable to meet the growing needs of CapMetro. The Rail Configuration Management System (RCMS) system should be designed such that it can handle future increases in transactional volume and increased service.					
11.2	The vendor shall provide a cloud based system meeting CapMetro's requirement to accommodate future system upgrades, patches, and fixes that are rolled out centrally by the RCMS software provider.					
11.3	The vendor shall present solution design documents for all discreet components of the RCMS system for review and approval by CapMetro					
11.4	The Vendor shall develop an application landscape and RCMS system architecture diagrams for review and approval by CapMetro					
11.5	Users should have the ability to have multiple sessions open simultaneously. This includes sessions within the same environment and sessions across environments (Test, QA and Production).					

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11.6	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.					
12.0	System Design & Architecture - Accessibility and ADA Compliance					
12.1	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. 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.					
12.2	COMPLIES WITH WCAG 2.0 AA ACCESSIBILITY STANDARDS AND MEETS ALL FOUR SUCCESS CRITERIA.: - All screens are compatible with assistive technologies including screen readers and screen magnification - 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. - Properly labelled images and proper use of alt tags is required. - The ability to navigate pages, utilize functionality and traverse layouts without a mouse is required. - Users of assistive technology shall have ways to skip redundant navigation. - Correct headings and labelling structures for pages, forms and data tables. - Readable content with sufficient contrast ratios and font sizing. - Contractor shall provide information about user testing with people with disabilities and the results of such testing. - 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.					

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13.0	System Design & Architecture - Code and Regulation Compliance					
13.1	Vendor shall design the System to be compliant with relevant standards, laws, and regulations to ensure that the System: <ul style="list-style-type: none"> • Americans with Disabilities Act (ADA) • Americans with Disabilities Act Accessibility Guidelines (ADAAG) • Advanced Encryption Standard • ANSI X9.24, Financial Services Retail Key Management • European Norm EN55022, Emissions standards for CE marking • European Norm EN55024, Immunity standards for CE marking • FCC Part 15 Class B – Radio Frequency Devices • FIPS 140-2 • IEEE 802.11 a/b/g/n standard for wireless data communications • IEEE 802.11 i standard for wireless data network security • IEEE 802.11-2016 • International Electrotechnical Commission Standard 529 (IEC529) • ISO/IEC 7810, Identification Cards – Physical Characteristics • ISO 9001 • ISO/IEC-8583 – Financial transaction card originated messages • ISO/IEC 14443 Parts 1 through 4 – Contactless Smart Card Standard • ISO/IEC 18092 / ECMA-340, Near Field Communication Interface and Protocol-1 • ISO/IEC 21481 / ECMA-352, Near Field Communication Interface and Protocol-2 • National Electrical Code (NFPA 70) • National Electrical Manufacturers Association Publication 250-2003 • National Electrical Safety Code (ANSI C2) • National Fire Protection Association (NFPA) 130 • NCITS 322-2002, American National Standard for Information Technology – Card Durability Test Methods • Occupational Safety and Health Administration (OSHA) • Payment Card Industry Data Security Standards (PCI-DSS) • Payment Card Industry Payment Application Data Security Standards (PA-DSS) • Society of Automotive Engineers SAE J1113-13 Electrostatic Discharge (cont. below)					

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	(Cont. 13.1) <ul style="list-style-type: none"> • Society of Automotive Engineers SAE J1455 Vibration and Shock • UL Standard 60950, "Information Technology Equipment – Safety" • World Wide Web Consortium, Mobile Web Application Best Practices • Web Content Accessibility Guidelines WCAG 2.0 • Presents no safety hazards for customers and CapMetro employees. • Will withstand the rigors of the environments in which the equipment will be installed, and the public use to which it will be subjected. • Provides for the secure storage and transmittal of data. • Is designed using state-of-the-art methods to maximize quality. • Satisfies federal, state, and other requirements for ergonomics and usability. 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.					
13.2	In the case of conflict between the provisions of codes, laws, ordinances, statutes, standards, rules, and regulations, the more stringent requirement will apply.					
14.0	System Design & Architecture - Information Security					
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 CapMetro.					
14.2	Vendor shall propose a physical and logical architecture (e.g. virtualized servers, spare load balancers, etc.) that meets all redundancy capabilities for CapMetro review and approval at design review.					

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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 CapMetro'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.					

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15	Operations and Maintenance Services - Performance Measurement					
15.1	Update the Warranty and Maintenance Agreement with the following components: back-office availability will be calculated based on the total out of service time for the associated system: Back-office application availability = 1 - (out of service time / total operating time) 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. The availability requirement for each System back-office application is as follows: Application availability must meet or exceed 99.99% each calendar month					
15.2	Back-office accuracy shall be based on the number of incidents where a device or Back-office generated transaction is recorded incorrectly within the associated system. Performance will only be measured for those applications for which Vendor is responsible. The accuracy requirements for the System Back-office applications are as follows: Financial Management application: No more than 2 incidents of inaccurate reporting per calendar month.					
END						

EXHIBIT F-1 - COMPLIANCE MATRIX
APPENDIX A - CORE REQUIREMENTS

Ref. #	Requirements	Proposer Questions Submitted Pre-RFP Submission	CapMetro Response to Questions Submitted Pre-RFP Submission	Select from Drop-Down C-Comply; N-Cannot Comply; A-Will Comply with Alternative	Comments, Include Where in Proposal Compliance or Alternatives Are Described	CapMetro Response to Comments	Post-Award Test #
1.01.00	Overview						
<p>CapMetro is requesting software and services to meet mandated requirements from the Federal Rail Administration (FRA). CapMetro's current Rail Configuration Management System (RCMS) does not satisfy the FRA's mandated requirements. An RCMS is the systematic approach for identifying, documenting, and changing the characteristics of a site or product's structures, systems, and components. This is to ensure that conformance is maintained between the design requirements, physical configuration, and site configuration information. An RCMS will let CapMetro's Rail staff know exactly what and where assets are and how they have changed over time. It will also enable staff to track the current state of all assets, to optimize operational performance and leverage data to make the right decisions at the right time. The intent of an RCMS is to monitor, in real time, the configuration of CapMetro's Rail systems and facilities thereby ensuring that safety critical systems, facilities, and operating practices are continually maintained.</p> <p>Instructions:</p> <ul style="list-style-type: none"> • For each Compliance Term, select "C-Comply", "N-Cannot Comply" or "A-Will Comply with Alternative"; if "N" or "A", comments are required, however, Capital strongly recommends that comments be added for each item. • The selected Contractor ("Contractor") shall deliver the Solution encompassing all all hardware, software, licenses, and services to fully configure, integrate, and rollout to the organization within the existing environment, including delivery of third-party products to make the Solution fully functional. • The requirements in the Scope of Services and Compliance Matrix are functional in nature. The Contractor shall determine, through the Plan and Design phases, the impacts of the Solution and specific technical modifications needed to carry out the intent herein. The Contractor shall document and discuss said needs with CapMetro and implement the agreed-upon solution accordingly. • Contractor shall deliver all Compliance Terms unless it is within a section marked "Optional" that is not exercised or CapMetro agrees to an alternative. • The final column entitled "Test #" shall be used during the Develop Phase when the Contractor will update the Compliance Matrix with the test number that corresponds with each line. 							
2.01.00							
2.01.01	Comply with all Federal Rail Administration (FRA) Positive Train Control (PTC) mandates including the following: <ol style="list-style-type: none"> database to hold all asset information including useful life info. database should include tracking of version control numbers. database should track software changes and updates. database should include historical information for all assets. database should allow for the storage of pdf documents. 						
2.01.02	Employ security measures generally accepted state-of-the-art practices for preventing unauthorized local or remote access to software for processor-based signal and train control systems						

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2.01.03	Store executive and application software as well as firmware and include identification of: a. All hardware comprising the system or product. b. The location of each spare PROM. c. The location of all hardware spare. d. Software cyclic redundancy check (CRC). e. Technical documentations.						
2.01.04	Track software updates and parts replacement to include historical data (previous part and software version, current, etc.)						
2.01.05	Require a user to verify that firmware is the most recent for all parts and equipment to include date and user performing verification by requesting the user to select a checkbox stating the software version or part number is the latest and entering the date verified and user verifying.						
2.01.06	System shall allow, at minimum the identification of software by: a. Name b. Version number c. Revision number d. Date e. Check Sum and CRC if applicable						
2.01.07	System shall allow, at minimum the identification for each hardware by: a. Name b. Part number c. Serial Number d. Revision Level						
2.01.08	System shall generate auto number for each request entered.						
2.01.09	System shall track dispatch software (Rail COMM) updates to include when the update was approved and completed and who completed.						
2.01.10	System shall include ability to view all components in vehicles or locations by vehicle number or location individually or in group.						
2.01.11	System shall allow the ability to create events and workflows from the admin area that can be used to assign how a process flows, who needs notification, who approves, etc., what asset needs maintenance, etc.						
2.01.12	System shall allow the ability create custom fields to track additional information if needed.						
2.01.13	CAD files should only be checked out to a single vendor at a time.						

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2.01.14	Software should only be checked out to a single vendor at a time.						
2.01.15	System shall include a check out button to disable edits on any part of an asset while it is being worked on, replaced, or reconfigured.						
2.01.16	System shall allow super user to build out entire location profile without multiple work requests.						
2.01.17	System shall allow comment threads to be posted for updates and details not covered in standard fields for CAD / Software / Hardware.						
2.01.18	System shall allow comment threads to be posted for updates and details not covered in standard fields for CAD / Software / Hardware.						
2.01.19	System shall include strict validation for all input fields.						
2.01.20	System shall allow easy front end expansion or the ability to add custom fields to allow for tracking of additional information that is currently not being tracked.						
2.01.21	System shall allow superuser to add comments to a work request that is being canceled or updated.						
2.01.22	System shall include support and training to include the ability to update back end without additional cost if needed.						
2.01.23	System shall include the ability to record the marking and disposing invalid/superseded software, firmware, and hardware.						
2.01.24	System shall include ability to record software information such as but not limited to: <ul style="list-style-type: none"> a. Location identification, milepost, etc. b. Software name c. Software revision levels d. Software Checksums and/or CRC values e. Software Version Number (if applicable) f. Name of module software will be installed on (if applicable) g. Asset Tag ID and part number of module the software is installed on (if applicable) h. Revision number of Module the software is installed on (if applicable) i. Socket positions of PROMS or EPROMS (EPROM Location) j. Equipment type k. Associated Executive Software 						

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2.01.25	System must allow Control lines CAD file to be checked out on a 'per sheet' basis.						
2.02.00	General						
2.02.01	System shall be web based and accessible through a secure web connection. Web site access shall be restricted anonymously by hardware, with an internal router, and by software with proxy server(s).						
2.02.02	Solution's front-end general user interfaces are accessed via the web.						
2.02.03	Solution logs all activities which create, edit, or delete content within the front- and back-ends of the solution with time stamp.						
2.02.04	System shall include the ability to be accessed from any location with the ability to connect to the CMTY network.						
2.02.05	System shall allow the ability to be backed up daily.						

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2.03.00 Security							
2.03.01	Admin area shall allow super user to add or retire locations directly into database individually or in a batch upload to include all components and corresponding data related to the location.						
2.03.02	Admin area where new users and security levels are assigned, including contact information.						
2.03.03	System must allow super user to add multiple platforms per location (Electrologix, GCP4000, XP4)						
2.04.00 Configuration							
2.04.01	Admin area include the ability to configure any part of the front end system.						
2.04.02	System shall allow the ability create custom fields to track additional information if needed.						
2.04.03	System shall include configuration control for all configuration items.						
2.05.00 Reporting & Inquiry							
2.05.01	System shall allow the ability to search by location, equipment, software, or any other database field or asset.						
2.05.02	System shall allow import of existing assets from CSV or excel to easily migrate from other systems.						
2.05.03	System shall include at minimum the following reports: a. PTC (E-ATC) Product Vendor List b. Operations and Maintenance Manual Report c. Baseline Configuration Report d. Baseline Difference Report e. Configuration Item Report CIR						

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2.06.00 Training & User Materials							
2.06.01	System shall allow the control of asset-related documentation, such as owner's manuals, configuration settings, lease agreements and warranty certificates as well as asset images.						
2.6.02	Materials shall be in electronic format.						
2.07.00 Workflow							
2.07.01	System shall allow the ability to create events and workflows from the admin area that can be used to assign how a process flows, who needs notification, who approves, etc., what asset needs maintenance, etc.						
2.08.00 Audit & Data Management							
2.08.01	Contains administrative tools to manage user accounts and entitlements.						
2.08.02	System shall include a historical audit trail for all requests made to include date, user, change, approval, who was notified, who approved, and outcome for all change orders entered into system.						
2.08.03	Includes tools to manage ancillary tables to "age out" or make inactive data points which are no longer part of business logic.						
2.08.04	Includes tools for archive of system data including, but not limited to, customer records and trip histories to ensure compliance under federal, state, and local regulations and best practices of the transit industry.						
2.09.00 Accessibility							
2.09.01	The product is compatible with Web Content Accessibility Guidelines WCAG 2.0 AA standards and satisfies accessibility compliance requirements for Title II public entities under the Americans with Disabilities Act.						

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2.09.02	All customer- and staff-facing screens are compatible with screen reader technology using text-to-speech output and/or a refreshable Braille display. These screens make proper use of forms mode, include contextual labels on all data collection boxes and image fields, and metadata read-back is strictly limited.						
2.09.03	All customer- and staff-facing screens can be adjusted with high contrast settings native to the solution or current windows based screen magnification technology systems.						
2.09.04	The font size of all customer- and staff-facing screens can be adjusted for visibility.						
2.09.05	Any CAPTCHA (or similar) anti-bot checks include an alternative audio challenge.						
2.09.06	All customer-facing screens are presented in English.						
2.10.00 Infrastructure							
2.10.01	Primary Hosting Site shall utilize top-tier cloud service provider (Gartner recognized cloud service provider) and have redundancy housed in a secondary site.						
2.10.02	Solution does not rely on the public internet for transport or shall use CapMetro's private network.						
2.10.03	Each data center shall have the capability to instantly switch (active/inactive) to an alternate carrier or route should an active carrier fail and report the status of each site and the operation of the service.						
2.10.04	Performance management system data is provided to CapMetro including uptime, availability, response, delay, etc. (Also applies to top-tier cloud service provider).						

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2.10.00	Warranty & Support						
2.10.01	Provide first-line software support (perform diagnostics and troubleshooting).						
2.10.02	Provides notifications of system health and system status.						
2.10.03	Maintenance shall include 24 x 7 x 365 monitoring with proactive fault resolution. Notification to CapMetro designated staff shall be made by telephone, email, or text as specified by CapMetro.						
2.10.04	Maintenance shall include any software upgrades to any components and any upgrades necessary for the interfacing or integration of any CapMetro system or third party component or system necessary for the continued successful operation off the solution.						
2.10.05	Provides notification when an upgrade or release of the product is scheduled (roadmap) and available.						
2.10.06	Incorporates release notes and technical documentation.						
2.10.07	Provides health monitoring system with ability to set email notifications for all equipment based on events.						
2.10.08	Includes a development, test, stage and production environment with change and version control and automated release to subsequent environments without the need to re-enter the same configuration information.						
2.10.09	Support OS patching and OS upgrades with minimal impact on performance; security patches shall be tested, installed and verified during a monthly process of updates to prevent any security incidents from occurring.						
2.10.10	Use a vendor-independent design based on non-proprietary technology that does not have to be operated on proprietary hardware or operating system platforms.						
2.10.11	Use secure XML standards for communications (data exchange) to external parties.						
2.10.12	Support web services using WSS SOAP, Rest or other standard APIs.						
2.11.00	Security						
2.11.01	Allows for the definition of solution user security at field level.						

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2.11.02	Allows for the creation and application of user security groups.						
2.11.03	System shall allow superuser to cancel and/or update a request if there is an issue or mistake with the request once submitted and prior to approval.						
2.11.04	Offers the user the ability to access all (applicable) areas of the solution using pass-through authentication.						
2.11.05	Allows CapMetro staff to manage user system/data access with appropriate roles and rights.						
2.11.06	System shall include Identity Access and Management (IAM) to identify, authenticate, and authorize individuals or groups to have access to the system by associating user rights and restrictions with established identities. The ID system should be role-based, with the ability to provision/deprovision and delegate. It should also include the ability to be audited by the Agency.						
2.11.07	Access shall provide multi-factor authentication and directly integrate with the Agency's active directory system.						
2.11.08	All voice, signaling, and media processed by the hosting site shall be encrypted.						

Ref. #	Requirements	Proposer Questions Submitted Pre-RFP Submission	CapMetro Response to Questions Submitted Pre-RFP Submission	Select from Drop-Down C-Comply; N-Cannot Comply; A-Will Comply with Alternative	Comments, Include Where in Proposal Compliance or Alternatives Are Described	CapMetro Response to Comments	Post-Award Test #
2.11.09	All encryption of voice, signaling, and media by the hosting solution shall employ Transport Layer Security (TLS) and Secure Real-Time Transport Protocol (SRTP).						
2.11.10	The proposed hosting solution shall comply with the Service Organization Controls (SOC2) standard.						
2.11.11	The proposed hosting solution shall provide the controls that are in place and shall be made available to CapMetro for auditing.						
2.12.00 Test Environment							
2.12.01	Separate from Production (Live) Operations Data.						
2.12.02	Copy Data from Production (Live) History For Use in Test Scenarios.						
2.12.03	Test new features/functionality, bug fixes, pre-upgrades, security scenarios, vehicle types, driver schedules, vehicle capacities, other system settings.						
2.13.00 Integration							
2.13.01	Solution shall provide API integration with CapMetro's existing Enterprise Asset Management software to allow a user to submit a work order from the RCMS to the Asset Management System for resolution and receive work order resolution from Asset Management System when a work order has completed for work orders submitted through system.						
2.13.02	System shall allow batch upload of parts inventory which is also integrated through API with CapMetro's existing Enterprise Asset Management software.						
2.13.03	Solution shall provide data through a secured API for 3rd party metric dashboards used by CapMetro's vehicle operations service providers.						
END							



**EXHIBIT F-1 -COMPLIANCE MATRIX
APPENDIX B - DEFINITIONS**

Ref. #	DEFINITIONS
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
1.04	Disaster Recovery Plan - Outlines the vendor's approach to recovering lost data due to external or internal system failure, including archived data
1.05	Quality Assurance Plan - Outlines the vendor's approach to reviewing work product, including configurations, to ensure they meet Capital Metro requirements and specifications
1.06	Integration Design Plan - Outlines the vendor's approach to successfully fulfilling the requirements for internal and external integrations
1.07	Risk Management Plan - Outlines the vendor's approach to identifying and mitigating risk throughout the project
1.08	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

END

EXHIBIT G ON-PREMISES SOLUTIONS

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

1. DEFINITIONS

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

- (a) “Acceptance” shall have the meaning set forth in Section 4(d) 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 all data, content and information
 - (i) submitted by or on behalf of the Authority or Customers to the Contractor,
 - (ii) obtained, developed, produced or processed by the Contractor in connection with the Contract, or
 - (iii) to which the Contractor has access in connection with the Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
- (d) “Authority Electronic Property” means:
 - (i) any websites, servers, hardware, equipment, routers and other system components, software or networks owned or controlled by the Authority,
 - (ii) any Authority mobile device apps,
 - (iii) any interfaces to the Authority’s information technology systems,
 - (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and
 - (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by Customers.
- (e) “Confidential Information” shall have the meaning set forth in Section 9(b) of this Exhibit.
- (f) “Contractor’s Certification” shall have the meaning set forth in Section 4(c) of this Exhibit.
- (g) “Contractor Technology” means the Software, Hardware, and On-Premises System, as applicable, and any technology, information, content and data, together with intellectual property rights related thereto, owned or used by the Contractor in the performance of the Services.
- (h) “Customers” means any purchaser of products or services from the Authority.

- (i) “Deliverable(s)” means all information, data, materials, devices (including equipment and Hardware), software (including the Software), systems (including the On-Premises System), interfaces to any software and hardware, system or operating environment (including Authority Electronic Property) and other items to be delivered by the Contractor to the Authority, as specified in the Project Plan.
- (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 On-Premises System, Software, or Hardware furnished by the Contractor to the Authority in any format, including paper and electronic.
- (k) “Hardware” means all equipment, hardware, routers and other system components to be delivered by the Contractor to the Authority, as specified in the Project Plan.
- (l) “License Term” means the specific term or period (annually or perpetual) for each license to the On-Premises System and/or Software set forth in Exhibit A of the Contract. If no term is specified in Exhibit A, then the applicable term shall be perpetual.
- (m) “Maintenance Support Services” means the maintenance support services for the On-Premises System, Software and/or Hardware to be performed by Contractor as defined and described in Section 5 of this Exhibit.
- (n) “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.
- (o) “On-Premises System” means the turn-key system comprised of Hardware and Software to be installed in the premises, facilities, networks or transportation vehicles controlled or managed by the Authority.
- (p) “Project” means the project from pre-production launch to pre-final notice related to the Software, Hardware and On-Premises System and any Deliverables and Services as described in more detail in this Exhibit.
- (q) “Project Plan” means the project plan for the delivery, implementation, customization, configuration and/or installation of the Software, Hardware and/or On-Premises System and any Deliverables and Services required for the Project, as provided or approved by the Authority.
- (r) “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.
- (s) “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).
- (t) “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.
- (u) “Service Term” means:
- (i) the term of the contract as set forth in Exhibits A or E to the Contract, or
 - (ii) with respect to any Maintenance Support Services related to the On-Premises System, Software and/or Hardware, the specific term or period (monthly, quarterly or annual) set forth in Exhibits A or E of the Contract.
- (v) “Services” means collectively all services to be performed by the Contractor for or on behalf of the Authority or Customers, as described in the Project Plan and this Exhibit.
- (w) “Software” means the software to be provided by the Contractor, as may be further described in the Technical Specifications.
- (x) “Technical Specifications” means the technical specifications, functional specifications, descriptions, designs, standards, instructions, and business requirements of the Authority related to the On-Premises System, Software and/or Hardware, as may be further described in the Contract.
- (y) “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 shall 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 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/or Hardware and all Authority Data and Authority Electronic Property disclosed or provided to the Contractor so as to enable the Contractor to satisfy its obligations under 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 and upgrades at all times to minimize potential induced security issues from such Contractor devices.

(c) The Contractor will perform formal classroom training and provide necessary related documentation required or requested for the operation and use of the On-Premises System, Software and/or Hardware, upon initial deployment, as various entities come on to the Project, and during the Service Term, as reasonably requested by the Authority. Such training will be performed on the operating environment at the Authority's facilities or via the Internet as an on-line class (unless otherwise agreed upon by the parties in the Project Plan).

(d) The Contractor and/or its designated third-party auditor(s) will perform all audits requested by the Authority or otherwise necessary or required under the Security Requirements to ensure data integrity and adherence to the requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data and the Authority Electronic Property backed up by the Authority's or its Project contractors.

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

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

(g) The Contractor will timely 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 any Security Incident the Contractor will consult in diligent good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. Without limiting the foregoing, the Contractor will:

- (i) immediately undertake investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics,
- (ii) timely share with the Authority any Security Incident-related information, reports, forensic evidence and due diligence obtained from the investigation into the Security Incident and cooperate

with the Authority in response to regulatory, government and/or law enforcement inquiries and other similar actions,

(iii) cooperate with the Authority with respect to any public relations and other crisis management services, and litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each instance of Security Incident, be liable and responsible for payment of legal costs, disbursements, fines, settlements and damages. To the extent that the Authority is bound to comply with any interlocal agreements pertaining to shared information (including the Authority Data), the Contractor agrees that it will comply with, and cooperate with the Authority in its compliance, with all rights and obligations pertaining to the Authority Data and/or the Authority Electronic Property under such interlocal agreements.

(a) Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact Customers or employees of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event:

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

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

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

3. PROJECT PLAN AND MILESTONE DEADLINES

(a) The Contractor shall provide Services necessary to assess and evaluate the Authority's business requirements and information technology systems in order to create, deploy, configure, customize, migrate, deliver and/or implement the On-Premises System, Software, the Hardware and, if required by the Authority, any Authority Data to be migrated, interfaced to or used in conjunction with the On-Premises System, Software and/or Hardware. Unless otherwise provided or specified by the Authority, the Contractor will prepare for the Authority's review and approval a Project Plan setting forth in detail:

(i) the scope of the Project and the Services required to complete the Project,

(ii) the milestones and schedule for completing all tasks and requirements for the Project (including the creation, deployment, configuration, customization, migration, delivery and/or implementation of the Software, the Hardware and any Authority Data),

(iii) all Authority Electronic Property required for the Contractor to perform the Services, if any,

(iv) all Deliverables, and

(v) all acceptance criteria, testing and post-implementation tasks.

No Project Plan will be effective until approved in writing by the Authority's designated project manager.

(b) This is a fast-track Project with completion deadlines that cannot reasonably be extended. For this reason, it is the desire of the Authority to recognize any likely budget overruns as soon as possible, and by

the Contract it is employing the Contractor to perform design monitoring, estimating, value analysis and other functions to help the Authority meet the Project budget. At any time that the Contractor develops concerns about the integrity of the budget for the Project, the Contractor shall promptly advise the Authority of the concerns through a variance report, which shall, at a minimum, state:

- (i) the Contractor's concern;
- (ii) the apparent cause of the concern, delay, or budgetary issue;
- (iii) in the event of a concern about a delay, specifically demonstrate the negative impact of the delay to the critical path for the Project Plan;
- (iv) define any cost impacts to the Project; and
- (v) provide the Contractor's proposed resolution to the concern.

If any estimate submitted to the Authority exceeds previously approved estimates or the Authority's budget, the Contractor shall make appropriate recommendations to the Authority.

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

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

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

4. ACCEPTANCE

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

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

(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 Hardware (as configured) conforms to the Technical Specifications and is capable of being put into full commercial productive use in accordance with the Technical Specifications and otherwise meets the functional and business requirements set forth in 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 migration) and operational testing of the On-Premises System, Software and/or Hardware and such items are ready for final testing and launch for production use by the Authority and Customers.

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

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

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

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

(ii) terminate the Project and receive a refund of all fees paid in advance to the Contractor, which in such event.

The Contractor shall immediately repay all fee advances paid by the Authority under the Project Plan and the Authority may retain all holdbacks.

5. MAINTENANCE SUPPORT SERVICES

Unless otherwise defined or specified in an Exhibit to the Contract, this Section 1.5 shall be the default provision governing and shall define the Maintenance Support Services.

- (a) The Contractor shall:
- (i) promptly notify the Authority of any errors in the On-Premises System, and/or Software of which it learns from any source;
 - (ii) respond to user identified errors in no more than thirty (30) minutes after notification and use best efforts to provide the Authority with a practical solution or work-around to correct the problem within four (4) hours after notification, and implement corrected Updates (preferably in batch manner and in accordance with a pre-approved schedule coordinated in advance with the Authority) or other work-arounds or bypasses such that the On-Premises System and/or Software performs in all material respects in accordance with the Documentation, within 1 business day thereafter;
 - (iii) provide to all authorized users on a 24 hours per day, 7 days per week basis, all reasonably necessary telephone, email and/or web consultation requested by them in connection with their use and operation of the On-Premises System and/or Software; and
 - (iv) treat any Authority Data, Authority Electronic Property or any other information, code or documentation provided from users to resolve a reported problem as Confidential Information of the Authority. The Contractor will cooperate fully with the Authority's personnel in the diagnosis of any error or defect and provide status reports to the Authority regularly for as long as the problem remains unresolved.
- (b) The Contractor will periodically release Updates with minimum impact and downtime to Authority and after business hours. At no additional cost to the Authority, the Contractor will provide the Authority true and correct copies of all Updates to the On-Premises System and/or Software that are provided by the Contractor to any of its other customers purchasing Maintenance Support Services. In each case, the Contractor will provide the Authority with prior written notice (by as much time as practicable) but in no event less than fifteen (15) days of the release by the Contractor of any Updates, and if contractually obligated, will implement such Updates, but only upon receipt of written approval or request from the Authority, (including any configuration, data migration or integration thereto) for the delivery, installation and use by the Authority at no additional cost to the Authority; provided that the Contractor may proceed with Updates without prior notice to the extent necessary to prevent or correct the occurrence of a Security Incident. If the Authority requests the Contractor to test such updates, the Contractor will promptly test such update to the Authority at no additional cost. If any Update is installed, such Update will thereupon be deemed to be part of the relevant Software upon delivery subject to Acceptance by the Authority. The Authority shall have the right to not implement any Update in whole or in part (other than any Updates to correct Security Incidents). All such updates, where reasonably necessary, will be accompanied by detailed release notes, installation instructions and updated Documentation. The Contractor covenants that each Update will be backwards compatible with all parts of the On-Premises System and/or Software. The Contractor will continue to provide Maintenance Support Services during the Service Term for at least the current version and one prior major release of the Software and each version of the On-Premises System installed for the Authority.
- (c) If and only after Contractor's execution of an agreement to abide by Authority's security policy and to the extent thereafter authorized or approved in writing by the Authority, the Contractor may remotely access the On-Premises System and/or Software using the Authority Electronic Property in order to perform Maintenance Support Services, in a manner least disruptive to the Authority's business. The Contractor shall notify the Authority in advance of any remote access.
- (d) The Contractor shall provide the following Maintenance Support Services for the Hardware during and after the expiration of the applicable Warranty Period:
- (i) promptly issue Return Material Authorizations for Hardware;

- (ii) repair, test, configure and return the Hardware to the Authority in operational condition; and
- (iii) provide for the deployment and optionally installation of replacement Hardware.

The Authority is responsible for costs for the shipment of the Hardware to the Contractor or its designated repair facility using best commercial practices in the packaging and shipment of the Hardware, after the expiration of the Warranty Period. Defects in Hardware shall be reporting using the response procedures specified for the Software above, unless otherwise specified in writing by the parties.

6. ADDITIONAL REPRESENTATIONS AND WARRANTIES

In addition to all other representations, warranties, and covenants included in the Contract, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that:

- (a) it is not contractually prohibited from engaging in the Services or providing the Deliverables, and that it is not a party to any contract or under any obligation which conflicts with the terms of the Contract or which prohibits Contractor from carrying out its responsibilities under the Contract;
- (b) it is fully able to furnish the Services as contemplated by the Contract;
- (c) there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the Contract, and the Contractor agrees not to enter into any such contract during the pendency of the Contract;
- (d) it is experienced in the type of engineering necessary for completion of the Project, and it understands the complexity involved in this type of project and the necessity of coordination of its Services Authority project stakeholders within which the Project will be performed;
- (e) the On-Premises System and/or Software will not contain any Malware, and any Updates likewise will not contain any Malware;
- (f) the On-Premises System, Software and/or Hardware will not contain any security mechanisms, including, but not limited to, copy protect mechanisms, encryptions, time-activated disabling devices or other codes, instructions or devices which may disable the features, components or other software or erase or corrupt data;
- (g) the On-Premises System, Software and/or Hardware will comply with all Applicable Laws at all times from the date of Acceptance to the expiration of the applicable License Term;
- (h) with respect to the On-Premises System, Software and/or Hardware:
 - (i) all modules and other materials (other than third party software and hardware sufficiently documented to the Authority with evidence of proper licensing thereof and preapproved by the Authority) will be original;
 - (ii) there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect to the On-Premises System, Software and/or Hardware, or any component thereof, alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country; and
 - (iii) the On-Premises System, Software and/or Hardware, and any use thereof, shall not infringe upon any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country; and
- (i) the On-Premises System and/or Software will not contain or otherwise be developed using any Open-Source Software (as defined below) in a manner that subjects the Authority to any license obligations of such Open-Source Software. "Open-Source Software" means any software licensed under terms requiring that other software combined or use or distributed with such software:
 - (i) be disclosed or distributed in source code form, or

- (ii) be licensed on terms inconsistent with the terms of the Contract.

7. ADDITIONAL WARRANTY REMEDIES

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

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

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

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

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

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

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

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

(b) As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to any Authority Data and Authority Electronic Property, together with all improvements, derivative works or enhancements to any of the foregoing and all intellectual property rights related thereto. Except as expressly authorized in this Exhibit in the performance of the Services solely for the benefit of the Authority or Customers, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or Process any Authority Data or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is harmful to the Authority.

9. PROPRIETARY INFORMATION AND NON-DISCLOSURE

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

(b) "Confidential Information" as used herein, shall mean and include, without limitation:

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

(ii) All Authority Data and Authority Electronic Property.

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

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

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

(f) The Contractor's obligation of confidentiality hereunder shall not apply to information that:

(i) is already in the Contractor's possession without an obligation of confidentiality;

- (ii) is rightfully disclosed to the Contractor's by a third party with no obligation of confidentiality; or
- (iii) is required to be disclosed by court or regulatory order, provided the Contractor's gives the Authority prompt notice of any such order.

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

(h) Upon any termination or expiration of the Contract, the Contractor agrees to deliver to the Authority any and all Confidential Information except that the Contractor may keep one file copy of any Confidential Information pertinent to its rights and obligations surviving the expiration or termination of the Contract, which copy shall be held in confidence in accordance with this Section.

10. USE OF AUTHORITY'S NAME

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

11. SPECIFIC PERFORMANCE

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

12. 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.

13. WAIVERS

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

14. UCITA

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

15. INDEMNIFICATION

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

The Contractor shall indemnify, defend and hold harmless the Authority and its affiliates and their trustees, directors, officers, employees, Customers and agents from and against any and all Damages of any nature or kind to the extent arising out of, caused by, or resulting from:

- (a) any bodily injury or death of any person incurred by the Authority or any third party resulting from the negligence or willful misconduct of the Contractor or its employees, contractors or representatives;

(b) any failure of the On-Premises System, Software and/or Hardware to conform with Applicable Laws or the Technical Specifications or other requirements set forth in the Contract;

(c) any Security Incident; and

(d) any actual or alleged violation, infringement or misappropriation of any copyright, patent, trademark, trade secret, product name, right of privacy or persona or other intellectual property right and proprietary right of a third party related to the Services and the On-Premises System, Software and/or Hardware regardless of whether or not such claim, damage, loss, or expense is caused in part by any indemnitee.

In particular, the Contractor acknowledges that the Contractor's obligation to indemnify the Authority extends to any liability arising out of any actual negligence by the Contractor in the delivery of any products or services under the Contract. Notwithstanding the foregoing, the Contractor shall not be liable to an indemnitee for any losses incurred by such indemnitee to the extent such claim is attributable solely to that indemnitee's sole negligence.

EXHIBIT H

IT PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM

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

1. DEFINITIONS

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

(a) “Authority Data” means all data, content or information, in any form or format, including interim, Processed, compiled, summarized, or derivative versions of such data, content or information, and any insights that may be learned from such data, content or information, that may exist in any system, database, or record that is either

- (i) provided by or on behalf of the Authority or its customers to the Contractor, or
- (ii) is obtained, developed, produced or Processed by the Contractor or its systems, in each of (i) and (ii) in connection with the relationship or arrangements established by the Contract, but excluding any data or information that is expressly defined as owned by the Contractor in the Contract.

(b) “Authority Electronic Property” means:

- (i) any websites controlled by the Authority,
- (ii) any Authority mobile device apps,
- (iii) any application programming interfaces (API) to the Authority’s information technology systems,
- (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and
- (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by customers obtaining products or services from the Authority.

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

(d) “Data Law” means, as in effect from time to time, any law, rule, regulation, declaration, decree, directive, statute or other enactment, order, mandate or resolution, which is applicable to either the Contractor or the Authority, issued or enacted by any national, state, county, municipal, local, or other

government or bureau, court, commission, board, authority, or agency, relating to data security, data protection and/or privacy. Data Laws also include ISO 27001 and ISO 27002, the most current Payment Card Industry Data Security Standard (the “PCI DSS”, and other industry standard practices) and any financial standards or business requirements applicable to the Authority’s business or the Authority Data and/or the Authority Electronic Property.

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

(f) “Process” or “Processing” means, with respect to Authority Data, to collect, access, use, process, modify, copy, analyze, disclose, transmit, transfer, sell, rent, store, or retain or destroy such data in any form. For the avoidance of doubt, “Process” includes the compilation or correlation of Authority Data with information from other sources and the application of algorithmic analysis to create new or derivative data sets from Authority Data.

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

- (i) development and delivery of legal notices to affected individuals or other third parties;
- (ii) establishment and operation of toll-free telephone numbers for affected individuals to receive specific information and assistance;
- (iii) procurement of credit monitoring, credit or identity repair services and identity theft insurance from third parties that provide such services for affected individuals;
- (iv) provision of identity theft insurance for affected individuals;
- (v) cooperation with and response to regulatory, government and/or law enforcement inquiries and other similar actions;
- (vi) undertaking of investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics;
- (vii) public relations and other crisis management services; and
- (viii) cooperation with and response to litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each case of examples (i) through (viii), payment of legal costs, disbursements, fines, settlements and damages.

(h) “Security Incident” means:

- (i) the loss or misuse of Authority Data and/or the Authority Electronic Property;
- (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of the Authority Data and/or the Authority Electronic Property;
- (iii) unauthorized access to internal resources;
- (iv) programmatic manipulation of a system or network to attack a third party;
- (v) elevation of system privileges without authorization;

- (vi) unauthorized use of system resources;
- (vii) denial of service to a system or network; or
- (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).

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

(j) “Security Procedures” means statements of the step-by-step actions taken to achieve and maintain compliance with Security Requirements.

(k) “Security Requirements” means the security requirements set forth below in Section 7 of this Addendum and any security requirements requested by the Authority from time to time.

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

2. FISMA COMPLIANCE

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

3. AUTHORITY DATA

As between the Contractor and the Authority (*i.e.*, without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to Authority Data and the Authority Electronic Property. Except as expressly authorized in the Agreement, the Contractor may not use, edit, modify, create derivatives, combinations, or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or Process any Authority Data or Authority Electronic Property. The Contractor will not use Authority Data or Authority Electronic Property in a manner that is harmful to the Authority.

4. PERSONAL IDENTIFYING INFORMATION

The Contractor will comply with any Data Laws relating to the use, safeguarding, or Processing of any Personal Identifying Information, including any requirement to give notice to or obtain consent of the individual. In Processing any Personal Identifying Information, the Contractor will at all times comply with any posted privacy policy or other representations made to the person to whom the information is identifiable, and to communicate any limitations required thereby to any authorized receiving party (including any modifications thereto) in compliance with all Data Laws. The Contractor will ensure that any

such receiving party abides by any such limitations, in addition to the requirements of the Agreement. Notwithstanding the foregoing, the Contractor represents and warrants that Personal Identifying Information will not be Processed, transmitted, or stored outside of the United States. The Contractor shall take reasonable steps to maintain the confidentiality of and will not reveal or divulge to any person or entity any Personal Identifying Information that becomes known to it during the term of this Contract. The Contractor must maintain policies and programs that prohibit unauthorized disclosure of Personal Identifying Information by its employees and subcontractors and promote training and awareness of information security policies and practices. The Contractor must comply, and must cause its employees, representatives, agents, and subcontractors to comply, with such commercially and operationally reasonable directions as the Authority may make to promote the safeguarding or confidentiality of Personal Identifying Information. The Contractor must conduct background checks for employees or sub-Contractors that have access to Personal Identifying Information or systems Processing Personal Identifying Information. The Contractor must limit access to computers and networks that host Personal Identifying Information, including without limitation through user credentials and strong passwords, data encryption both during transmission and at rest, firewall rules, and network-based intrusion detection systems. In addition to the foregoing, to the extent that any Personal Identifying Information qualifies as Protected Health Information that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA," found at Public Law 104-191), and certain privacy and security regulations promulgated by the U.S. Department of Health and Human Services to implement certain provisions of HIPAA and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and its implementing regulations found in the Omnibus Final Rule (collectively the "HIPAA Regulations") found at 45 C.F.R. Parts 160, 162 and 164, the Contractor will execute and abide by the rights and obligations set forth in the Business Associate Agreement of the Authority.

5. NO IMPLIED RIGHTS

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

6. PROHIBITED INTERNET PRACTICES

The Contractor will not, and will not authorize or encourage any third party to, directly or indirectly:

- (a) use any automated, deceptive or fraudulent means to generate impressions, click-throughs, or any other actions in relation to advertisements or Internet promotions on Authority Electronic Property or in relation to advertisements or Internet promotions of the Authority (or its products or services) on third party websites; or
- (b) collect or Process data from an Authority Electronic Property other than as has been expressly authorized by the Authority in the Agreement or another written agreement with the Authority. Except as expressly allowed in the Agreement, the Contractor will not "screen-scrape" Authority Electronic Property or conduct any automated extraction of data from Authority Electronic Property or tracking of activity on Authority Electronic Property.

7. SECURITY REQUIREMENTS

The Contractor will apply reasonable physical, technical and administrative safeguards for Authority Data that is in the Contractor's possession or control in order to protect the same from unauthorized Processing, destruction, modification, or use that would violate the Agreement or any Data Law. The Contractor represents and warrants that the Security Policies, Security Procedures and Security Technical Controls as they pertain to the services being rendered to the Authority by the Contractor or its subcontractors and any Processing of Authority Data by the Contractor or its subcontractors will at all times be in material compliance with all Data Laws. In addition, the Contractor will require any of its employees, agents or

contractors with access to Authority Data to adhere to any applicable Data Laws, and the Contractor represents and warrants that such employees, agents and contractors have not been involved in any violation of applicable Data Laws in the twenty-four months before the Effective Date. The Contractor will take into account the sensitivity of any Authority Data in the Contractor's possession in determining reasonable controls used to safeguard such Authority Data.

8. DATA SEGREGATION AND ACCESS

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

9. PCI COMPLIANCE

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

10. SECURITY REVIEWS AND AUDITS

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

11. SECURITY INCIDENTS

The Contractor will timely and promptly notify the Authority upon discovering or otherwise learning of a Security Incident involving the Authority Data or the Authority Electronic Property, to the extent within the Contractor's access, possession or control. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. The Contractor will:

- (a) at the Authority's direction undertake Remediation Efforts at the Contractor's sole expense and reimburse the Authority for its reasonable costs and expenses in connection with any Remediation Efforts it elects to undertake,

- (b) ensure that such Remediation Efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident, and
- (c) reasonably cooperate with any Remediation Efforts undertaken by the Authority.
- (d) Without limiting the foregoing, the Contractor will:
 - (i) immediately undertake investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics,
 - (ii) timely share with the Authority any Security Incident-related information, reports, forensic evidence and due diligence obtained from the investigation into the Security Incident and cooperate with the Authority in response to regulatory, government and/or law enforcement inquiries and other similar actions, (iii) cooperate with the Authority with respect to any public relations and other crisis management services, and litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each instance of Security Incident, be liable and responsible for payment of legal costs, disbursements, fines, settlements and damages. To the extent that the Authority is bound to comply with any interlocal agreements pertaining to shared information (including the Authority Data), the Contractor agrees that it will comply with, and cooperate with the Authority in its compliance, with all rights and obligations pertaining to the Authority Data and/or the Authority Electronic Property under such interlocal agreements.

12. NOTICE TO THE AUTHORITY CUSTOMERS AND EMPLOYEES

Any notifications to any of the Authority's customers or employees regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact the Authority's customers or employees relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event:

- (a) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal obligation to notify such customers or employees and explain in such notice to the Authority the basis for the legal obligation and
- (b) the Contractor will limit the notices to any of the Authority's customers and employees to those required by the legal obligation or as pre-approved by the Authority.
- (c) The Contractor will reasonably cooperate in connection with notices to the Authority's customers and employees regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

13. EQUITABLE RELIEF

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



EXHIBIT I - IT (SERVICES)
ADDITIONAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF
INFORMATION TECHNOLOGY (IT) SERVICES

- 1.1 Definitions. Unless otherwise specified in this Contract (or an Exhibit hereto), the following definitions shall apply, if applicable:
- 1.1.1 “Acceptance” shall have the meaning set forth in Section 1.4 of this Exhibit.
 - 1.1.2 “Applicable Laws” means any and all applicable statutes, laws, treaties, rules, codes, ordinances, regulations, permits, interpretations, or orders of any Federal, state, or local governmental authority having jurisdiction over the Project, this Contract, and the parties all as in effect as of the date of this Contract and as amended during the Service Term of this Contract.
 - 1.1.3 “Authority Data” means all data, content and information (i) submitted by or on behalf of the Authority or Customers to the Contractor, (ii) obtained, developed, produced or processed by the Contractor in connection with this Contract, or (iii) to which the Contractor has access in connection with this Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
 - 1.1.4 “Authority Electronic Property” means (i) any websites, servers, hardware, equipment, routers and other system components, software or networks owned or controlled by the Authority, (ii) any Authority mobile device apps, (iii) any interfaces to the Authority’s information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by Customers.
 - 1.1.5 “Confidential Information” shall have the meaning set forth in Section 2.2 of this Exhibit.
 - 1.1.6 “Contractor’s Certification” shall have the meaning set forth in Section 1.4.3 of this Exhibit.
 - 1.1.7 “Contractor Technology” means all software and hardware as applicable, and any technology, information, content and data, together with Intellectual Property Rights related thereto, owned or used by the Contractor in the performance of the Services.
 - 1.1.8 “Deliverable(s)” means all information, data, materials, devices (including equipment and hardware), software, systems, integrations with any software and hardware, interfaces to any software and hardware, system or operating environment (including Authority Electronic Property) and other items to be delivered by the Contractor to the Authority as part of the Services, as specified in the Project Plan.
 - 1.1.9 “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 Services furnished by the Contractor to the Authority in any format, including paper and electronic.
 - 1.1.10 “Intellectual Property Rights” means any and all intellectual property rights, including without limitation, invention, patents, patent and patent applications (including all reissues, divisions, renewals, continuations, continuations-in-part, extensions, provisionals, and reexaminations) and all rights therein provided by international treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application, trademarks, service marks, trade dress, logos, slogans, configurations, trade names, corporate names, and business names, whether or not registered, including all common law rights, and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, works of authorship and copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, all internet uniform resource locators, and domain names, including any domain name application or registration, all industrial designs and any registration or application thereof anywhere in the world, data and database rights, trade secrets, proprietary know-how



and show-how, whether or not reduced, all rights to obtain and rights to apply for patents, and to register trademarks and copyrights, and any similar or equivalent rights to any of the foregoing anywhere in the world.

- 1.1.11 “Malware” means any malicious data, code, script, active content, program, or other malicious software that could damage, destroy, alter or disrupt any computer program, data, firmware or hardware.
- 1.1.12 “Project” means the project from pre-production launch to pre-final notice related to any Deliverables and Services as described in more detail in this Exhibit.
- 1.1.13 “Project Plan” means the project plan for the delivery, implementation, customization, configuration and/or installation of any software, hardware and any Deliverables and Services required for the Project, as provided or approved by the Authority.
- 1.1.14 “Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident, which may be required by Applicable Law or by the Authority’s or the Contractor’s policies or procedures or under the Security Requirements, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident.
- 1.1.15 “Security Incident(s)” means: (i) the loss or misuse of Authority Data; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data; (iii) unauthorized access to internal resources; (iv) programmatic manipulation of a system or network to attack a third party; (v) elevation of system privileges without authorization; (vi) unauthorized use of system resources; (vii) denial of service to a system or network; or (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).
- 1.1.16 “Security Requirements” means industry best practices and other reasonable physical, technical and administrative safeguards, procedures, protocols, requirements and obligations related to facility and network security in order to protect Authority Data from unauthorized access, processing, destruction, modification, distribution and use, as approved in writing by the Authority.
- 1.1.17 “Service Term” means the term of the contract as set forth in Exhibit A to the Contract.
- 1.1.18 “Services” means collectively all services to be performed by the Contractor for or on behalf of the Authority, as described in the Project Plan and this Exhibit.
- 1.1.19 “Technical Specifications” means the technical specifications, functional specifications, descriptions, designs, standards, instructions, and business requirements of the Authority related to the S, as may be further described in this Contract. Unless otherwise agreed upon in writing by the Authority, the Technical Specifications shall be outlined in detail in Exhibit H to this Contract.
- 1.1.20 “Updates” means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of any software created or acquired by the Contractor and used in provision of the Services during the Service Term.

1.2 Contractor Requirements.

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

- 1.2.2 The parties agree that the Contractor will not be tasked or responsible for establishing and managing Security Requirements necessary to protect Authority Data integrity in performance of the Services. The Authority agrees that it will be solely responsible for and ensure that all desired Security Requirements necessary to protect Authority Data integrity are established, implemented and managed internally. If requested, however, by the Authority, the Contractor will reasonably cooperate with and assist the Authority and the Authority's other Product contractors to implement security protocols (e.g., firewalls, SSI, McAfee anti-virus, configuring the system for Cisco ICE, configuring the system for the NetScaler application firewall, monthly Microsoft security patches, etc.) and take appropriate actions with respect to any software, hardware and all Authority Data and Authority Electronic Property disclosed or provided to the Contractor so as to enable the Contractor to satisfy its obligations under this Contract and to help prevent the loss, alteration or unauthorized use of the Authority Data and the Authority Electronic Property, to the extent within the Contractor's access, possession or control. The Contractor agrees that it will, and it will cause its personnel and contractors to timely comply with the Authority's privacy policies and safety and network security policies, as the same may be provided to the Contractor's, at all times while on-site at the Authority's facilities or remotely accessing the Authority's systems or facilities. In event that the Contractor utilizes computers, laptops or other devices comprising development software, applications or tools in its performance of the Services, Contractor is required to consult in advance of use thereof with Authority and review security measures installed on such computers or devices and sign-off that it will ensure its computers and devices are consistently maintained during the term of this Agreement per Authority with all patches and upgrades at all times to minimize potential induced security issues from such Contractor devices.
- 1.2.3 The Contractor will perform formal classroom training and provide necessary related documentation, equipment, tools, training aids and other materials, required or requested for the operation and use of the Deliverables and any software and/or hardware, upon initial deployment and during the Service Term, as reasonably requested by the Authority. Such training will be performed on the operating environment at the Authority's facilities (unless otherwise agreed upon by the parties in the Project Plan).
- 1.2.4 The Contractor and/or its designated third party auditor(s) will perform all audits necessary to ensure data integrity and adherence to the requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority's or its Project contractors.
- 1.2.5 The Contractor will use commercially reasonable efforts to reasonably assist the Authority, if requested, to adopt and implement all facility and network security, disaster recovery plans and back-up plans as to protect against theft and unauthorized access, disclosure and use of the Authority Data, the Authority Electronic Property and the Authority's Confidential Information, to the extent within the Contractor's access, possession or control, and to ensure the integrity and continuity of the performance of Services and the Project under this Contract and consult and cooperate with the Authority and any contractors it designates, in its performance of these obligations.
- 1.2.6 The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority rules, regulations, and guidelines then in effect when on-site at the Authority and all Applicable Laws.
- 1.2.7 The Contractor will promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data. Following any Security Incident the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable.

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

1.3 Project Plan and Milestone Deadlines.

1.3.1 The Contractor shall provide Services necessary to assess and evaluate the Authority's business requirements and information technology systems in order to create, deploy, configure, customize, migrate, deliver and/or implement the Services and any software and/or hardware and, if required by the Authority, any Authority Data to be migrated, interfaced to or used in conjunction with the Deliverables. Unless otherwise provided or specified by the Authority, the Contractor will prepare for the Authority's review and approval a Project Plan setting forth in detail (i) the scope of the Project and the Services required to complete the Project, (ii) the milestones and schedule for completing all tasks and requirements for the Project (including the creation, deployment, configuration, customization, migration, delivery and/or implementation of any software, hardware, systems and any Authority Data), (iii) all Authority Electronic Property required for the Contractor to perform the Services, if any, (iv) all Deliverables, and (v) all acceptance criteria, testing and post-implementation tasks. No Project Plan will be effective until approved in writing by the Authority's designated project manager.

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

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

- 1.3.4 The Contractor shall use its best efforts, after obtaining explicit consent from the Authority, to re-sequence the Services to overcome and/or mitigate, to the greatest practicable extent, the effect of any delays regardless of the cause of such delays. Without limiting the foregoing, the Contractor shall diligently prosecute its Services in order to meet the proposed start date despite a dispute with the Authority relating in any way to this Contract including, without limitation, any and all the Contractor's claims for modifications to the payments due to the Contractor. The Contractor and the Authority shall cooperate to resolve all disputes and to adjust the Project Plan accordingly by Contract modification in a timely manner (not to exceed two (2) weeks from the date of notice).
- 1.3.5 Should the Contractor not progress in its performance of Services at a rate commensurate with the Service Term of this Contract, or fail to meet any scheduled date under the Project Plan, the Authority may, in its sole discretion, direct the Contractor to accelerate the Services by employing additional personnel and equipment or providing overtime to existing personnel as is necessary to complete by the start date. Notwithstanding any dispute, controversy, or question that might arise in the interpretation of any provision of this Contract, the performance of any Services, the delivery of any material, the payment of any monies to the Contractor, or otherwise, the Contractor agrees that it will not directly or indirectly stop or delay any Services or part thereof on its part required to be performed, nor will it stop or delay the delivery of any materials on its part required to be furnished for the Deliverables, pending the determination of such dispute or controversy so long as the Authority pays the Contractor for undisputed amounts in accordance with the Contract.

1.4 Acceptance.

- 1.4.1 Unless otherwise defined or specified in an Exhibit to this Contract, the provisions set forth in this Section 1.4 shall apply to determine the Authority's Acceptance of the Services performed and associated Deliverables.
- 1.4.2 Implementation shall be completed in a timely manner and appropriate tests conducted by the Authority to facilitate Acceptance of each Deliverable as more fully set forth in this Exhibit and the Project Plan; provided, however, that the Authority may upon written request require that the Contractor perform testing with cooperation of the Authority.
- 1.4.3 Unless otherwise specified in the Project Plan, within thirty (30) days after installation and testing are completed, the Contractor shall certify in writing that any software, hardware, integration and implementation related to the Services conforms to the Technical Specifications and is capable of being put into full commercial productive use in accordance with the Technical Specifications and otherwise meets the functional and business requirements set forth in this Contract (the "Contractor's Certification"). The Contractor Certification shall not be issued by the Contractor unless the Contractor has completed all tasks required for the delivery, installation, configuration, deployment (including Authority Data migration) and operational testing of any Deliverables, as applicable, and such items are ready for final testing and launch for production use by the Authority.
- 1.4.4 The Deliverables shall be finally accepted by the Authority when all action items opened from the beginning of the Project through the Warranty Period are closed and each component is fully installed and operational on the Authority's facilities, network, transportation vehicles or operating environment properly configured by the Contractor, and in conformity with the requirements outlined in this Contract ("Acceptance"). The final invoice will not be issued by the Contractor until final Acceptance by the Authority. The Authority reserves the right to modify the Acceptance plan during the implementation process if it is evident that anything related to Acceptance has been missed or are not appropriate for the successful provisioning of any solution.

- 1.4.5 If there is any objection to Acceptance, the Authority will provide the Contractor with a written notice (the “Defect Notice”) reasonably identifying any claimed discrepancies between the actual performance and the requirements set forth in this Contract within reasonable time after the issuance of the Contractor’s Certification.
 - 1.4.6 Upon receiving a Defect Notice from the Authority, the Contractor shall confer with the Authority and jointly review each asserted discrepancy to determine if the claimed discrepancy is valid. The Contractor shall promptly correct the discrepancy and resubmit for Acceptance by the Authority for review and testing on the same basis as initially submitted. If, in the reasonable professional judgment of the Contractor such discrepancy is not valid, the Contractor shall so notify the Authority in writing.
 - 1.4.7 In the event that the Authority, upon final review, does not accept the Deliverables or any hardware or software or only makes a partial acceptance thereof, the Authority may elect to: (i) accept delivery of the Deliverables “AS IS” at a negotiated equitable reduction in the price and payment schedule for the Services and any Deliverables; or (ii) terminate the Project and receive a refund of all fees paid in advance to the Contractor, which in such event. The Contractor shall immediately repay all fee advances paid by the Authority under the Project Plan and the Authority may retain all holdbacks.
- 1.5 Additional Representations and Warranties. In addition to all other representations, warranties, and covenants included in this Contract, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that:
- 1.5.1 it is not contractually prohibited from engaging in the Services or providing the Deliverables, and that it is not a party to any contract or under any obligation which conflicts with the terms of this Contract or which prohibits Contractor from carrying out its responsibilities under this Contract;
 - 1.5.2 it is fully able to furnish the Services as contemplated by this Contract;
 - 1.5.3 there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the Contract, and the Contractor agrees not to enter into any such contract during the pendency of this Contract;
 - 1.5.4 it is experienced in the type of engineering necessary for completion of the Project, and it understands the complexity involved in this type of project and the necessity of coordination of its Services Authority project stakeholders within which the Project will be performed;
 - 1.5.5 any software provided or utilized in the Services will not contain any Malware;
 - 1.5.6 the Services and all Deliverables will comply with all Applicable Laws at all times from the date of Acceptance; and
 - 1.5.7 with respect to the Services and all Deliverables there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect such Services or Deliverables, or any component thereof, alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country.
- 1.6 Additional Warranty Remedies. The Authority is entitled to all warranties implied by law or regulation. These warranties shall survive any inspection, testing, acceptance and payment by the Authority for the Services and are in addition to, and shall not be construed as restricting or limiting the warranties of the Contractor, express or implied, that are provided by law or exist by operation of law. For any breach of the warranties contained in this Section, the Authority’s remedy, in addition to all remedies available at law or in equity, shall be:



- 1.6.1 For the Services. The satisfactory re-performance of the Services within ten (10) days (or such other reasonable period of time approved by the parties in writing) following the Authority's notice to the Contractor that the Services were not performed satisfactorily in accordance with the Project Plan.
 - 1.6.2 For the Deliverables. The correction of errors or otherwise in the Deliverables that cause breach of the warranty. If the Contractor is unable to provide such error corrections or otherwise make the Deliverables operate as warranted within the periods specified in this Contract, the Authority shall be entitled to terminate this Contract with respect to the affected feature and recover a prorated amount paid to the Contractor based on each feature, which prorated amount will be calculated based on a useful life of five years from the date of final Acceptance. If, however, the loss of functionality cause by such error impacts the overall performance of any Deliverables, then the Authority shall be entitled to terminate this Contract and recover all amounts paid to the Contractor by the Authority.
- 1.7 Intellectual Property Rights.
- 1.7.1 As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to any Authority Data and Authority Electronic Property and all Deliverables (excluding the Contractor Technology included in or embodied in the Deliverables), together with all improvements, derivative works or enhancements to any of the foregoing and all Intellectual Property Rights related thereto ("Authority IP"). Except as expressly authorized in this Exhibit in the performance of the Services solely for the benefit of the Authority or Customers, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or Process any Authority Data or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is harmful to the Authority. To the extent possible, the Deliverables (excluding any Contractor Technology embodied therein) shall be a work made for hire specifically commissioned for the Authority. In order to protect and preserve the Authority's rights, the Contractor hereby irrevocably and unconditionally assigns and transfers to the Authority all right, title and interest in and to the Authority IP that the Contractor may acquire without further consideration.
 - 1.7.2 The Contractor grants to the Authority a non-exclusive, perpetual, royalty free, fully paid up, irrevocable, and transferable license, with the right to sublicense, in and to any Contractor Technology embodied in the Deliverables for the Authority and service providers to exercise and exploit its and their ownership rights in the Deliverables in any manner. The foregoing license does not authorize the Authority to separate any Contractor Technology from the Deliverable in which it is incorporated for creating a standalone product for marketing to others.
2. Proprietary Information and Non-Disclosure.
- 2.1 The Contractor acknowledges and agrees that this Contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the Term of this Contract, the Contractor may acquire certain "Confidential Information" (as defined herein) from or regarding the Authority employees, agents and representatives or documents, or otherwise as a result of performing the Services of the Contractor hereunder.
 - 2.2 "Confidential Information" as used herein, shall mean and include, without limitation:
 - 2.2.1 Any information concerning the Authority or the Project, which is provided by the Authority or any Project team members to the Contractor, such as accounting and financial data, product, marketing, development, pricing and related business plans and budgets, and all of the information and plans related to the Project, which are not published;



- 2.2.2 All Authority Data and Authority Electronic Property; and
- 2.2.3 All Deliverables (including without limitation all work in progress) and any Contractor Technology included or embodied therein.
- 2.3 The Contractor acknowledges and agrees that all such Confidential Information is and shall be deemed the sole, exclusive, confidential and proprietary property and trade secrets of the Authority at all times during the Service Term of this Contract and following any expiration or termination hereof. The Contractor agrees to hold in confidence without disclosing or otherwise using any Confidential Information, except as such disclosure or use may be required in connection with and limited to the Services of the Contractor hereunder.
- 2.4 The Contractor acknowledges and agrees that the Authority would not have entered into this Contract unless the Authority was assured that all such Confidential Information would be held in confidence by the Contractor in trust for the sole benefit of the Authority.
- 2.5 The Contractor shall not improperly use or disclose any proprietary information or trade secrets of any third party and will not bring on to the premises of the Authority any unpublished documents or any property belonging to any third party unless consented to in writing by the third party.
- 2.6 The Contractor's obligation of confidentiality hereunder shall not apply to information that: (i) is already in the Contractor's possession without an obligation of confidentiality; (ii) is rightfully disclosed to the Contractor's by a third party with no obligation of confidentiality; or (iii) is required to be disclosed by court or regulatory order, provided the Contractor's gives the Authority prompt notice of any such order.
- 2.7 The Authority shall have the perpetual and unrestricted right to use, copy, and incorporate into other works all reports, materials, presentations and other work product prepared by the Contractor and delivered to the Authority.
- 2.8 Upon any termination or expiration of this Contract, the Contractor agrees to deliver to the Authority any and all Confidential Information except that the Contractor may keep one file copy of any Confidential Information pertinent to its rights and obligations surviving the expiration or termination of this Contract, which copy shall be held in confidence in accordance with this Section.
- 3. Use of Authority's Name. The Contractor agrees not to make any written use of or reference to the Authority's name for any marketing, public relation, advertising, display or other business purpose or make any use of the Authority Data or Authority Electronic Property for any activity unrelated to the express business purposes and interests of the Authority under this Contract, without the prior written consent of the Authority.
- 4. Specific Performance. The Contractor acknowledges and agrees that the remedy at law for the breach of provisions of this Contract (particularly with respect to ownership of intellectual property and Confidential Information) may be inadequate and that the Authority may be entitled to injunctive relief without bond, in addition to any other rights or remedies which the Authority may have for such breach.
- 5. Indemnification. In addition to general indemnification set forth elsewhere in the Contract, the following indemnification obligations shall apply:
 - 5.1 The Contractor shall indemnify, defend and hold harmless the Authority and its affiliates and their trustees, directors, officers, employees, Customers and agents from and against any and all Damages of any nature or kind to the extent arising out of, caused by, or resulting from: (i) any bodily injury or death of any person incurred by the Authority or any third party resulting from the negligence or willful misconduct of the Contractor or its employees, contractors or representatives; (ii) any failure of the Services or Deliverables to conform with Applicable Laws or the Technical Specifications or other requirements set forth in this Contract; (iii) any Security Incident; and (iv) any actual or alleged violation, infringement or misappropriation of any copyright, patent, trademark, trade secret, product name, right of privacy or persona or other intellectual property right and proprietary



right of a third party related to the Services and Deliverables regardless of whether or not such claim, damage, loss, or expense is caused in part by any indemnitee. In particular, the Contractor acknowledges that the Contractor's obligation to indemnify the Authority extends to any liability arising out of any actual negligence by the Contractor in the delivery of any products or services under this Contract. Notwithstanding the foregoing, the Contractor shall not be liable to an indemnitee for any losses incurred by such indemnitee to the extent such claim is attributable solely to that indemnitee's sole negligence.

- 5.2 If the Deliverables are held to infringe or it is believed by the Authority to infringe the rights of others, the Contractor's will, at its expense and upon the Authority's request, to: (i) modify the infringing item to be non-infringing so long as the utility or performance of the Deliverables are not materially impaired and the Deliverables continue to conform to the Technical Specifications and the Authority's original requirements in all respects, subject to the Authority's approval; or (ii) obtain for the Authority a license to continue using the infringing item.
- 5.3 The indemnity obligations contained in this Section shall survive the termination, suspension, abandonment and/or completion of this Contract.
6. Approval. Any approval given by the Authority shall not relieve the Contractor of its obligations and other duties under this Contract or be construed as an assumption or waiver by the Authority.
7. Waivers. No failure by the Authority to insist upon the performance by the Contractor of any provision of this Contract, and no failure of the Authority to exercise any right or remedy consequent upon a breach or other default, and no payment by the Authority or its use of the Project during the continuance of any breach or other default, shall constitute a waiver of the Contractor's breach or default or of any provision of this Contract.
8. UCITA. Neither the Uniform Computer Information Transactions Act nor any state laws incorporating such Act apply to this Contract or the transactions contemplated hereunder.

EXHIBIT J IT HOSTED SOLUTIONS

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

1. DEFINITIONS

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

- (a) "Acceptance" shall have the meaning set forth in Section 4(e) of this Exhibit.
- (b) "Applicable Laws" means any and all applicable statutes, laws, treaties, rules, codes, ordinances, regulations, permits, interpretations, or orders of any Federal, state, or local governmental authority having jurisdiction over the Project, the Contract, and the parties all as in effect as of the date of the Contract and as amended during the Service Term of the Contract.
- (c) "Application" means the technical system, platform, application and/or subscription services to be provided by the Contractor, as may be further described in the Technical Specifications.
- (d) "Authority Data" means all data, content and information:
 - (i) submitted by or on behalf of the Authority or Customers to the Contractor or loaded into the System,
 - (ii) obtained, developed, produced or processed by the Contractor or by the Application or System in connection with the Contract, or
 - (iii) to which the Contractor has access in connection with the Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
- (e) "Authority Electronic Property" means:
 - (i) any websites controlled by the Authority,
 - (ii) any Authority mobile device apps,
 - (iii) any interfaces to the Authority's information technology systems,
 - (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and
 - (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by Customers.
- (f) "Confidential Information" shall have the meaning set forth in Section 9(b) of this Exhibit.
- (g) "Contractor's Certification" shall have the meaning set forth in Section 4(d) of this Exhibit.
- (h) "Contractor Technology" means:
 - (i) the System,
 - (ii) the Application, and
 - (iii) any technology, information, content and data, together with intellectual property rights related thereto, owned or used by the Contractor in the performance of the Services.
- (i) "Customer" means any purchaser of products or services from the Authority.

- (j) “Deliverables” means all information, data, materials, devices (including equipment and hardware), software (including the Application) and other items to be delivered by the Contractor to the Authority, as specified in the Project Plan.
- (k) “Documentation” means the documentation provided to the Authority, including user manuals and operator instructions related to the Application furnished by the Contractor to the Authority in any format, including paper and electronic.
- (l) “Malware” means any malicious data, code script, active content program, or other malicious software that could damage, destroy, alter or disrupt any computer program, data, firmware or hardware.
- (m) “Process” or “Processing” means, with respect to any Authority Data, to migrate, collect, access, use, process, modify, copy, analyze, disclose, transmit, transfer, sell, rent, store, or retain or destroy such data in any form. For the avoidance of doubt, “Process” includes the compilation or correlation of any Authority Data with information from other sources and the application of algorithmic analysis to create new or derivative data sets from any Authority Data.
- (n) “Project” means the project related to the Application and the Authority’s information technology systems as described in more detail in this Exhibit.
- (o) “Project Plan” means the project plan for the implementation, customization, configuration and/or installation or hosting of the Application and the Services and Deliverables required for the Project, as approved by the Authority in writing.
- (p) “Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident, which may be required by Applicable Law or by the Authority’s or the Contractor’s policies or procedures or under the Security Requirements, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident.
- (q) “Security Incident” means:
- (i) the loss or misuse of Authority Data and/or the Authority Electronic Property;
 - (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of the Authority Data and/or the Authority Electronic Property;
 - (iii) unauthorized access to internal resources;
 - (iv) programmatic manipulation of a system or network to attack a third party;
 - (v) elevation of system privileges without authorization;
 - (vi) unauthorized use of system resources;
 - (vii) denial of service to a system or network; or
 - (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).
- (r) “Service Levels” shall have the meaning set forth in Section 11(a) of this Exhibit.
- (s) “Security Requirements” means security measures under Applicable Laws, industry best practices and other reasonable physical, technical and administrative safeguards, procedures, protocols, requirements and obligations related to facility and network security in order to protect Authority Data and the Authority Electronic Property from unauthorized processing, destruction, modification, distribution and use, as approved in writing by the Authority.
- (t) “Service Term” means:
- (i) the term of the contract as set forth in Exhibits A or E to the Contract, or
 - (ii) with respect to any hosted service related to the Application, the specific term or period for subscription services set forth in Exhibits A or E of the Contract.

- (u) “Services” means all services to be performed by the Contractor for or on behalf of the Authority or Customers, as described in the Project Plan and this Exhibit.
- (v) “System” means an application, network, database or system provided or used to perform the Services by the Contractor.
- (w) “Technical Specifications” means the technical specifications, functional specifications, descriptions, designs, standards, instructions, and business requirements of the Authority related to the Application and the Authority’s information technology systems, as may be further described in the Contract.
- (x) “Termination Assistance Services” means the Contractor’s cooperation with the Authority in order to assist in the transfer of Authority Data to the Authority and to facilitate the transition to an alternative software or service for the Application at such time when the Authority may obtain authorization and/or funding for such replacement.
- (y) “Updates” means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of the Application during the Service Term.

2. CONTRACTOR REQUIREMENTS

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

(b) The Contractor will establish and manage all Security Requirements necessary to protect the integrity of the Authority Data and permit appropriate access to the Application and the Authority Electronic Property. The Contractor will enable and stop access as users enter and leave the Application. The Contractor will cooperate with and assist the Authority and its other Project contractors to implement security protocols (e.g., firewalls, SSI, etc.) and take appropriate actions with respect to the Application and all Authority Data stored therein and the Authority Electronic Property so as to enable the Contractor to satisfy its obligations under the Contract and to help prevent the loss, alteration or unauthorized access to the Application and all Authority Data stored therein, or the Authority Electronic Property, to the extent within the Contractor’s control. The Contractor will, upon the Authority’s request, for each year of the Term of the Contract under the Project Plan, provide to the Authority copies of monthly firewall logs and third-party audit reports, summaries of test results and other equivalent evaluations with regard to security and confidentiality in connection with the Services that the Contractor provides to the Authority. The Contractor will use commercially reasonable efforts in accordance with the Security Requirements to secure the Application and all Authority Data stored therein against access by parties external to the Project and by unauthorized users, and against damage, disruption and other activity aimed at data availability or the services or other trespass or illegal actions. The Contractor will employ computer anti- Malware protections and other reasonable commercial means to ensure a safe computing environment. The Contractor agrees that it will, and it will cause its personnel and contractors to timely comply with the Authority’s privacy policies and safety and network security policies, as the same may be provided to the Contractor, at all times while on-site at the Authority’s facilities or remotely accessing the Authority’s systems or facilities (including Authority Electronic Property). The Contractor and/or its designated third-party auditor(s) will perform all audits necessary to ensure the Authority Data integrity and adherence to the Security Requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority or its Project Contractors.

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

the Authority's data center and network systems (including the Authority Data and the Authority Electronic Property) in the performance of the Services.

(d) The Contractor and/or its designated third-party auditor(s) will perform all audits requested by the Authority or otherwise necessary or required under the Security Requirements to ensure data integrity and adherence to the requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority's or its Project contractors.

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

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

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

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

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

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

(g) Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact Customers or employees of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event:

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

(ii) the Contractor will limit the notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

3. PROJECT PLAN AND MILESTONE DEADLINES

(a) The Contractor shall provide Services necessary to assess and evaluate the Authority's business requirements and information technology systems in order to create, deploy, configure, customize, migrate, deliver and/or implement the Application and any Authority Data to be migrated, interfaced to or used in

conjunction with the Application unless otherwise provided or specified by the Authority , the Contractor will prepare for the Authority's review and approval a Project Plan setting forth in detail:

- (i) the scope of the Project and the Services required to complete the Project,
- (ii) the milestones and schedule for completing all tasks and requirements for the Project (including the creation, deployment, configuration, customization, migration, and implementation of the Application and any Authority Data,
- (iii) all Authority Electronic Property required for access and use of the Authority and any Authority Data hosted by the Contractor,
- (iv) all Deliverables and
- (v) all acceptance criteria, testing and post-implementation tasks.

No Project Plan will be effective until approved in writing by the Authority's designated project manager.

(b) This is a fast-track Project with completion deadlines that cannot reasonably be extended. For this reason, it is the desire of the Authority to recognize any likely budget overruns as soon as possible, and by the Contract it is employing the Contractor to perform design monitoring, estimating, value analysis and other functions to help the Authority meet the Project budget. At any time that the Contractor develops concerns about the integrity of the budget for the Project, the Contractor shall promptly advise the Authority of the concerns through a variance report, which shall, at a minimum, state:

- (i) the Contractor's concern;
- (ii) the apparent cause of the concern, delay, or budgetary issue;
- (iii) in the event of a concern about a delay, specifically demonstrate the negative impact of the delay to the critical path for the Project Plan;
- (iv) define any cost impacts to the Project; and
- (v) provide the Contractor's proposed resolution to the concern. If any estimate submitted to the Authority exceeds previously approved estimates or the Authority's budget, the Contractor shall make appropriate recommendations to the Authority.

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

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

(e) Should the Contractor not progress in its performance of Services at a rate commensurate with the Service Term of the Contract, or fail to meet any scheduled date under the Project Plan, the Authority may,

in its sole discretion, direct the Contractor to accelerate the Services by employing additional personnel and equipment or providing overtime to existing personnel as is necessary to complete the Application by the start date, or any portion of the Application by the milestone date specified in the Project Plan. Such the Authority-ordered acceleration shall be at the cost of the Contractor.

4. ACCEPTANCE

(a) Unless otherwise defined or specified in an Exhibit to the Contract, the provisions set forth in this Section shall determine the Authority's Acceptance of the Application.

(b) Implementation of the Application shall be completed in a timely manner and appropriate tests conducted by the Contractor with the cooperation of the Authority to facilitate Acceptance of the Application as more fully set forth in the Project Plan; provided, however, that the Authority may upon written request require that the Contractor perform testing with cooperation of the Authority.

(c) When each component of the Application has been developed and tested by the Contractor as being ready for operational testing, the Contractor shall notify the Authority in writing. The Authority shall provide reasonable assistance to commence operational testing.

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

(e) The Application shall be finally accepted by the Authority when:

(i) each component of the Application is fully operational and properly configured by the Contractor, as applicable, and/or

(ii) when the instance of the Application is properly configured and made available to the Authority for production use on the Contractor's hosted environment, each in conformity with the Security Requirements and Technical Specifications outlined in the Contract ("Acceptance").

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

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

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

- (i) The foregoing Acceptance procedure shall apply with respect to the Authority's Acceptance of the overall turn-key system comprising all components of the Application (including migrated Authority Data, if applicable) in a condition ready for immediate use and operation by the Authority
 - (i) in its facilities and/or the operating environment if a component of the Application is installed, or
 - (ii) via the Contractor's hosted servers for the instance of the Application is hosted, as applicable, on or before the start date set forth in the Project Plan.
- (j) In the event that the Authority, upon final review, does not accept the Application or only makes a partial acceptance of the Application, the Authority may elect to:
 - (i) accept delivery of the Application "AS IS" at a negotiated equitable reduction in the price and payment schedule for both the Application and any Services; or
 - (ii) terminate the Project and receive a refund of all fees paid in advance to the Contractor, which in such event, the Contractor shall immediately repay all fee advances paid by the Authority under the Project Plan and the Authority may retain all holdbacks.

5. TRAINING

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

6. APPLICATION SUPPORT AND PERFORMANCE

- (a) The Contractor shall:
 - (i) promptly notify the Authority of any errors in the Application of which it learns from any source;
 - (ii) respond to user identified Application errors in no more than 4 hours after notification, and implement corrected Application copies or corrections or bypasses such that the Application performs in all material respects in accordance with the Documentation, within one (1) business day thereafter;
 - (iii) provide to all authorized users on a 24 hours per day, 7 days per week basis, all reasonably necessary telephone or web consultation requested by them in connection with their use and operation of the Application; and
 - (iv) treat any Application dumps, Authority Data, tapes or any other documentation provided from users to resolve a reported problem as Confidential Information of the Authority.
- (b) The Contractor will periodically release maintenance Updates with minimum impact and downtime to the Authority and after business hours. At no additional cost to the Authority, the Contractor will provide access to all maintenance Updates and all new features and functionalities of the Application that are provided by the Contractor to any of its other customers. In each case, the Contractor will provide the Authority with prior written notice (by as much time as practicable but in no event less than one (1) day(s) of the release by the Contractor of any Updates, and will implement such Updates (including any configuration or integration thereto) for access and use by the Authority at no additional cost to the Authority. If the Authority requests the Contractor to test such Updates, the Contractor will promptly test such update to the Authority at no additional cost. If any Update is installed, such Update will thereupon be deemed to be part of the relevant Application upon delivery subject to Acceptance by the Authority. All such Updates, where reasonably necessary, will be accompanied by updated Documentation. The Contractor covenants that each upgrade and will be backwards compatible with all parts of the Application.

(c) The Contractor will use commercially reasonable efforts to maintain the Application with a high level of quality and performance consistent with industry standards and the state-of-the-art technology.

(d) To the greatest extent possible, the Contractor will schedule maintenance during times least disruptive to the Authority's use of the Application. Scheduled maintenance is a period in which the Authority is notified in advance, during which the Contractor may suspend availability of all or part of the Application in order to carry out maintenance activities. Scheduled Maintenance will be scheduled after normal business hours ("Maintenance Window"). To the extent possible, the Contractor will perform maintenance without suspending the Application (i.e., hot) and will coordinate with the Authority by written notice to schedule maintenance requiring downtime at such hours and date least disruptive to its business.

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

7. ADDITIONAL REPRESENTATIONS AND WARRANTIES

In addition to all other representations, warranties, and covenants included in the Contract, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that:

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

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

(c) there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the contract, and the Contractor agrees not to enter into any such contract during the pendency of the Contract;

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

(e) there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the contract, and the Contractor agrees not to enter into any such contract during the pendency of the Contract;

(f) the Application will not contain any Malware at all times during which the Application is made available for access and use by the Authority's user or Customers, or any Authority Data is processed using the Application. Any patches, Updates, upgrades or error corrections to the Application provided by the Contractor likewise will not contain any Malware;

(g) the Application will not contain any security mechanisms, including, but not limited to, copy protect mechanisms, encryptions, time-activated disabling devices or other codes, instructions or devices which may disable the modules or other software or erase or corrupt data;

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

(i) With respect to the Application,

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

(ii) there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect to the Application, or any component thereof,

alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country; and

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

(j) The System will not contain or otherwise be developed using any Open Source Software (as defined below) in a manner that subjects the Authority to any license obligations of such Open Source Software. "Open Source Software" means any software licensed under terms requiring that other software combined or used or distributed with such software:

(i)

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

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

8. ADDITIONAL WARRANTY REMEDIES

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

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

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

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

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

(a) The Contractor will not:

(i) use or register any trademark, service mark or domain name that is identical to or confusingly similar to any trademark, service mark, logo or other name owned or used by the Authority, including domain names and trade dress; or

(ii) create, acquire, license or support any internet keyword or search term that contains any such marks or other Intellectual Property Rights owned or licensed by the Authority, except as expressly provided in the Project Plan and only in the performance of the Services for the benefit of the Authority. All use thereof inures solely to the benefit of the Authority and is subject to the Authority's quality control and standard guidelines.

(b) As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to any Authority Data and Authority Electronic Property, together with all improvements, derivative works or enhancements to any of the foregoing and all intellectual property rights related thereto. Except as expressly authorized in this Exhibit or the Contract in the performance of the Services solely for the benefit of the Authority or Customers, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or process any Authority Data or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is harmful to the Authority.

10. PROPRIETARY INFORMATION AND NON-DISCLOSURE

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

(b) "Confidential Information" as used herein, shall mean and include, without limitation:

- (i) Any information concerning the Authority or the Project, which is provided by the Authority or any Project team members to the Contractor, such as accounting and financial data, product, marketing, development, pricing and related business plans and budgets, and all of the information and plans related to the Project, which are not published;
- (ii) All Authority Data; and
- (iii) the Authority Electronic Property.

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

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

(e) During the Service Term, the Contractor shall not improperly use or disclose any proprietary information or trade secrets of any third party and will not bring on to the premises of the Authority any unpublished documents or any property belonging to any third party unless consented to in writing by the third party.

(f) The Contractor's obligation of confidentiality hereunder shall not apply to information that:

- (i) is already in the Contractor's possession without an obligation of confidentiality;
- (ii) is rightfully disclosed to the Contractor by a third party with no obligation of confidentiality;
or
- (iii) is required to be disclosed by court or regulatory order, provided the Contractor gives the Authority prompt notice of any such order.

(g) Upon any termination or expiration of the Contract, the Contractor agrees to deliver to the Authority any and all Confidential Information except that the Contractor may keep one file copy of any Confidential Information pertinent to its rights and obligations surviving the expiration or termination of the Contract, which copy shall be held in confidence in accordance with this Section.

11. HOSTED SERVICES

With respect to the Application and/or any Authority Data hosted or Processed by the Contractor, the following terms will apply:

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

(b) Unless otherwise approved in writing by the Authority, the Contractor must host the Application in the United States of America ("U.S.A.") at the location(s) specified by the Contractor, must provide services under the Contract with resources (e.g., hardware and software) located in the U.S.A, and must not transfer or process any Authority Data outside of the U.S.A.

(c) In the event of the expiration or termination of the Service Term, upon the Authority's written request, the Contractor will provide Termination Assistance Services for a period of time commencing on the effective date of termination or expiration of the Contract and ending on a date designated in advance by the Authority.

(d) The Contractor will promptly notify the Authority upon discovering or otherwise learning of a Security Incident. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. The Contractor will:

(i) at the Authority's direction undertake Remediation Efforts at the Contractor's sole expense and reimburse the Authority for its reasonable costs and expenses in connection with any Remediation Efforts that it elects to undertake,

(ii) ensure that such Remediation Efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident, and

(iii) reasonably cooperate with any Remediation Efforts undertaken by the Authority.

12. THE AUTHORITY'S RIGHTS TO ACCESS AND USE APPLICATION

The Contractor hereby grants to the Authority, Customers (but only in their capacity as Customers), and third-party service providers providing services to the Authority (but only in their capacity as the Authority's service providers) a non-exclusive, worldwide, royalty-free license to access and use the Application during the Service Term. Such license shall be enterprise-wide for an unlimited number of users or transactions, unless limitations on use are expressly agreed upon by the Authority in the Contract. The Authority may allow its contractors and service providers to access and use the Application in the course of performing services for the Authority, including application development services, data processing and facilities management services.

13. USE OF AUTHORITY'S NAME

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

14. SPECIFIC PERFORMANCE

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

15. INDEMNIFICATION

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

The Contractor shall, to the proportionate extent that they are responsible, indemnify, defend and hold harmless the Authority and its trustees, directors, officers, employees, Customers and agents from and against any and all Claims and Losses of any nature or kind to the extent arising out of, caused by, or resulting from:

- (a) any failure of the Application or the Services to conform with Applicable Laws or the Technical Specifications or Security Requirements set forth in the Contract;
- (b) any Security Incident; and
- (c) any actual or alleged violation, infringement or misappropriation of any Intellectual Property Rights of a third party related to the Services and the Application, regardless of whether or not any such Claim or Loss is caused in part by any indemnitee. In particular, the Contractor acknowledges that the Contractor's obligation to indemnify the Authority extends to any liability arising out of any actual negligence by the Contractor in the delivery of any products or services under the Contract. Notwithstanding the foregoing, the Contractor shall not be liable to an indemnitee for any losses incurred by such indemnitee to the extent such claim is attributable solely to that indemnitee's sole negligence.

16. APPROVAL

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

EXHIBIT K-REVISED-1
IT ACCESS AND USE AGREEMENT

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 or incorporated by reference. The applicable reference number for the Contract may be set forth in the signatory page to this Agreement.
- (f) “Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident, which may be required by Applicable Law or by the Authority’s or the Contractor’s policies or procedures or under the Security Requirements, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident.
- (g) “Security Incident” means: (i) the loss or misuse of the Authority Data and/or the Authority Electronic Property; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data and/or the Authority Electronic Property; (iii) unauthorized access to internal resources; (iv) programmatic manipulation of a system or network to attack a third party; (v) elevation of system privileges without authorization; (vi) unauthorized use of system resources; (vii) denial of service to a system or network; or (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).

(h) "Security Requirements" means security measures under Applicable Laws, industry best practices and other reasonable physical, technical and administrative safeguards, procedures, protocols, requirements and obligations related to facility and network security in order to protect the Authority Data and the Authority Electronic Property from unauthorized processing, destruction, modification, distribution and use, as approved in writing by the Authority, and all confidentiality and non-use or limited use obligations set forth in any license agreements or other third-party contracts (including interlocal agreement) applicable to the Authority Data and/or the Authority Electronic Property.

2. CONFIDENTIAL INFORMATION

The Contractor acknowledges and agrees that the Contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the term of the Contract, the Contractor may acquire certain Confidential Information from or regarding the Authority employees, agents and representatives or documents, or otherwise as a result of performing the services of the Contractor. The Contractor acknowledges and agrees that all such Confidential Information is and shall be deemed the sole, exclusive, confidential and proprietary property and trade secrets of the Authority at all times during the term of the Contract and following any expiration of termination thereof.

3. STANDARD OF CARE

The Contractor agrees to hold in confidence without disclosing or otherwise using any Confidential Information, except as such disclosure or use may be required in connection with and limited to the product and services of the Contractor. The Contractor acknowledges and agrees that the Authority would not have entered into the Contract unless the Authority were assured that all such Confidential Information would be held in confidence by the Contractor in trust for the sole benefit of the Authority.

4. EXCEPTIONS

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

5. COMPLIANCE

The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority's rules, regulations, and guidelines pertaining to the Authority Data and the Authority Electronic Property **in each case to the extent communicated to the Contractor through mandatory Authority policy documents that must be signed by each Contractor staff**, and all Applicable Laws.

6. SECURITY REQUIREMENTS

The Contractor will establish and manage all Security Requirements necessary to protect the Authority Data integrity and permit appropriate access to the Application and the Authority Electronic Property. The Contractor will cooperate with and assist the Authority and its contractors to implement security protocols (e.g., firewalls, SSI, etc.) and take appropriate actions with respect to all Authority Data and the Authority Electronic Property to the extent in the Contractor's access, possession or control, so as to enable the Contractor to prevent the loss, alteration or unauthorized access to the Authority Data or the Authority Electronic Property. The Contractor will, upon the Authority's request, for each year of the term of the Contract, provide to the Authority copies of monthly firewall logs and third party audit reports, summaries of test results and other equivalent evaluations with regard to security and confidentiality in connection with the Contractor's access and use thereof. The Contractor will use commercially reasonable efforts in accordance with the Security Requirements to secure all Authority Data and/or Authority Electronic Property stored on the Contractor's devices or network against access by parties external to the Authority or the Contractor and by unauthorized users, and against damage, disruption and other activity aimed at data availability or the services or

other trespass or illegal actions. The Contractor will employ computer anti-malware protections and other reasonable commercial means to ensure a safe computing environment. The Contractor agrees that it will, and it will cause its personnel and contractors to timely comply with the Authority's privacy policies and safety and network security policies, **as the same may be to the extent** provided to the Contractor **through mandatory Authority policy documents that must be signed by each Contractor staff**, at all times while on-site at the Authority's facilities or remotely accessing the Authority's systems or facilities (including Authority Data and/or Authority Electronic Property). The Contractor and/or its designated third party auditor(s) will perform all audits necessary to ensure the Authority Data integrity and adherence to the Security Requirements.

7. SECURITY INCIDENT

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

8. LIMITED ACCESS AND USE

The Authority authorizes the Contractor to access and use and to the extent necessary to perform the Services to install and use the Authority Data and/or Authority Electronic Property provided or made available by the Authority in its sole discretion and solely for the purposes of providing products and services for the benefit of or on behalf of the Authority under and during the term of the Contract. As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to any Authority Data and Authority Electronic Property, together with all improvements, derivative works or enhancements to any of the foregoing and all intellectual property rights related thereto. Except as expressly authorized in this Agreement in the performance of the services solely for the benefit of the Authority or its customers, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse

engineer, reproduce, display, distribute, disclose, sell or Process any Authority Data or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is harmful to the Authority. All access and use shall be subject to the Authority's platform and network security policies and procedures and other Security Requirements. Access and use shall be limited to the Contractor and the number of users or devices authorized in writing by the Authority.

9. NO OWNERSHIP

Nothing set forth in this Agreement shall give the Contractor any ownership or other license, conveyance or right, title or interest in and to any and all Confidential Information (or any intellectual property, derivatives, improvements, enhancements, feedback or suggestions related to any of the foregoing, whether conceived, reduced to practice or developed alone or jointly with others by the Authority or the Contractor), which rights shall be owned exclusively by the Authority, and the Contractor will not knowingly take any action to challenge, contest or other action inconsistent with the Authority's rights.

10. RESERVED RIGHTS

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

11. SPECIFIC PERFORMANCE

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

12. MISCELLANEOUS

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