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## REQUEST FOR PROPOSALS

**NO. 304404**

### **Data Mining and Customer Intelligence Monitoring**

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<b>RFP Issued:</b>	<b>08/03/18</b>	
<b>Pre-proposal Conference:</b>	<b>08/09/18</b>	<b>09:30 a.m.</b>
<b>Written Questions/Clarifications Due:</b>	<b>08/10/18</b>	<b>3:00 p.m.</b>
<b>Response to Written Questions/Request For Clarifications:</b>	<b>08/13/18</b>	
<b>Offers Due:</b>	<b>08/24/18</b>	<b>Prior To 3:00 p.m.</b>
<b>Point of Contact:</b>	<b>Tracee Metterle</b> <b>(512) 369-6525 (voice)</b> <a href="mailto:Tracee.metterle@capmetro.org">Tracee.metterle@capmetro.org</a>	

**NOTICE TO OFFERORS: ANY FURTHER INFORMATION OR AMENDMENTS TO THIS SOLICITATION WILL BE POSTED ON DEMANDSTAR AT [www.demandstar.com](http://www.demandstar.com), WHICH IS LINKED TO THE AUTHORITY'S WEBSITE AT [www.capmetro.org](http://www.capmetro.org). AMENDMENTS WILL NOT BE FAXED OR MAILED. IT IS THE OFFEROR'S RESPONSIBILITY TO CHECK THE WEBSITE FOR ANY SOLICITATION CHANGES DURING THE RFP RESPONSE TIME.**

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



# METRO

## NOTICE TO PROPOSER

*On the envelope submitting your proposal,  
it is imperative:*

1. That your name and address appear in the UPPER left corner.
  2. That the bottom portion of this label be filled in and pasted on the LOWER left corner.
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PROJECT NUMBER:

PROJECT TITLE:

DUE DATE/TIME:

BUYER:

# SEALED PROPOSAL

**RFP 304404**  
**DATA MINING AND CUSTOMER INTELLIGENCE MONITORING**  
**TABLE OF CONTENTS**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>RETURN WITH THE OFFER?</b>
A	PRICING SCHEDULE	YES
B	REPRESENTATIONS AND CERTIFICATIONS	YES
C	SOLICITATION INSTRUCTIONS AND CONDITIONS	NO
D	SMALL BUSINESS ENTERPRISE PROGRAM – SCHEDULE C FORMS	YES – IF APPLICABLE
E	CONTRACTUAL TERMS AND CONDITIONS	NO
F	SCOPE OF SERVICES	NO
G	PAST PERFORMANCE QUESTIONNAIRE	NO
H	PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM	NO
I	ADDITIONAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF INFORMATION TECHNOLOGY (IT) PRODUCTS AND SERVICES-HOSTED SOLUTIONS	NO

**EXHIBIT A**  
**PRICING SCHEDULE**  
**RFP 304404**

**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)			
Address			
City, State, Zip			
Phone, Fax, Email			
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)			
Signature and Date			

**2. ACKNOWLEDGEMENT OF AMENDMENTS**

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

Amendment #	Date	Amendment #	Date

**3. PROMPT PAYMENT DISCOUNT**

# of Days		Percentage	%

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

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

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

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

The Authority hereby accepts this offer.

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

**6. DOCUMENTS ENCLOSED WITH THE PROPOSAL # OF COPIES**

The offeror has enclosed one (1) original, two (2) copies, and one (1) electronic copy on a CD or external hard drive of Volume I and Volume II. Check each box below to indicate that the submittals have been included in the proposal documents. **See Exhibit C, Solicitation Instructions and Conditions, Section 4 - Proposal Preparation and Section 5 - Contents of Proposal clause for a description of the required proposal format.**

- ☐ Exhibit A – Schedule and Pricing  
☐ Exhibit B – Representations and Certifications  
☐ Exhibit D – Schedule C of Subcontractor Participation & Intent to Perform  
☐ Firm Financial Data, as described in Exhibit C, Section 5, Contents of Proposal  
☐ An original and two (2) copies, and one (1) electronic copy on a CD or external hard drive of Volume I and Volume II.

Note: Failure to submit the required submittals along with the offer may result in rejection of the offer.

**7. PRICING: BASE PERIOD - YEAR 1**

ITEM #	DESCRIPTION	Quantity	UNIT OF MEASURE	UNIT PER MONTH PRICE	EXTENDED PRICE
1	ALL INCLUSIVE DATA MINING SERVICE THAT INCLUDES ALL COSTS THE CONTRACTOR INTENDS TO RECOVER, INCLUDING BUT NOT LIMITED TO: LABOR, MATERIALS, CUSTOMIZATION, UNLIMITED LICENSES, MAINTENANCE, UPGRADES, OVERHEAD PROFIT, AS DESCRIBED IN EXHIBIT F, SCOPE OF SERVICES.	12	MONTH	\$ -	\$ -

**8. PRICING: OPTION PERIOD - YEAR 1**

Item #	Description	Quantity	Unit Price	UNIT PER MONTH PRICE	EXTENDED PRICE
1	OPTION 1 - Continuation of services defined in the Contract	12	MONTH	\$ -	\$ -

Signature of Authorized Agent: \_\_\_\_\_

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

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

9. PRICING: OPTION PERIOD - YEAR 2

Item #	Description	Quantity	Unit Price	UNIT PER MONTH PRICE	EXTENDED PRICE
1	OPTION 2 - Continuation of services defined in the Contract	12	MONTH	\$ -	\$ -

10. GRAND TOTAL

TOTAL BASE TERM YEAR 1	\$ -
TOTAL OPTION PERIOD YEAR 1	\$ -
TOTAL OPTION PERIOD YEAR 2	\$ -
<b>GRAND TOTAL BASE TERM + OPTION PERIODS</b>	<b>\$ -</b>

Pricing must be provided for each item for the Base and Option Periods. Failure to submit a price for every line item may deem proposal non-responsive and proposal may be removed from further consideration for award of a contract.

Signature of Authorized Agent: \_\_\_\_\_

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

**EXHIBIT B**

**REPRESENTATIONS AND CERTIFICATIONS**

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

**M U S T   B E   R E T U R N E D   W I T H   T H E   O F F E R**

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**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:

**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:

**3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

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

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

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

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

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

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

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

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

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

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

**4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

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

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

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

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

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



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

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

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

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

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

## 5. **COMMUNICATIONS**

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

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

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

## 6. **CONTINGENT FEE**

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

- ☐ has  
☐ has not

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

- ☐ has  
☐ has not

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

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

## **7. CODE OF CONDUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) participate in a contract or real property transaction in which he/she has a substantial interest;
- (2) solicit, accept, or agree to accept any benefit as consideration for his/her decision, vote, opinion or recommendation;
- (3) solicit, accept, or agree to accept any benefit as consideration for his/her violation of any law or duty;
- (4) solicit, accept or agree to accept any benefit from a person that is interested in any Capital Metro contract or transaction;
- (5) no Board Member or employee may receive or accept any gift or favor from a contractor or potential contractor of Capital Metro;
- (6) act as a surety for a business that has a contract with Capital Metro;
- (7) disclose or use confidential information that Capital Metro has not made public;
- (8) use his/her official position or employment or Capital Metro's facilities, equipment or supplies to obtain private gain or advantage;
- (9) engage in any transaction or activity or incur an obligation in a business, contract or real property transaction that would conflict with Capital Metro;
- (10) fail to disclose to his/her supervisor or appropriate Capital Metro staff his/her discussions of future employment with any business interested in Capital Metro transactions;
- (11) represent, for remuneration, any person in any proceeding involving Capital Metro's interests;
- (12) Capital Metro Board Members, employees, and agents shall not use their authority to unfairly influence other Board Members or other employees or agents to perform illegal, immoral or discreditable acts;

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

(14) No Board Member or employee shall:

(i) participate for a business entity in which the employee has a substantial interest if the employee participated in the recommendation, bid, proposal or solicitation in a Capital Metro contract, procurement or personal administration matter for a period of two (2) years after leaving employment; and

(ii) receive any pecuniary benefit from a Capital Metro contract or procurement through the ownership of a substantial interest, as defined in section (b), subsections (6) through (8) above, in a business entity or real property for a period of two (2) years after leaving employment.

(e) Exceptions to Prohibitions: The Prohibitions listed above do not apply to the following:

(1) A gift or other benefit conferred, independent of the Board Member's or employee's relationship with Capital Metro, that is not given or received with the intent to influence the Board Member or employee in the performance of his or her official duties. The Board Vice Chair or the Ethics Officer must be consulted for a determination as to whether a potential gift falls within this exception.

(2) Food, lodging, or transportation in consideration for legitimate services rendered by the Board Member or employee related to his or her official duties.

(f) Disclosure of Conflict of Interest Requirements:

(1) A Board Member or employee must disclose any interest in a business, a contract, or in real property that would confer a benefit by their vote or decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

**8. RESERVED**

**9. TEXAS ETHICS COMMISSION CERTIFICATION**

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

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

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

**11. CERTIFICATION REGARDING ISRAEL**

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

**12. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION**

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

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

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

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

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

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

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

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

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

Name of Offeror:

Type/Print Name of Signatory:

Signature:

Date:

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## EXHIBIT C

### SOLICITATION INSTRUCTIONS AND CONDITIONS

(REQUEST FOR PROPOSALS)

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#### 1. INTRODUCTION

(a) Capital Metropolitan Transportation Authority ("Capital Metro" or "the Authority") is a public agency responsible for providing mass transit service within the City of Austin and the surrounding communities of Leander, Lago Vista, Jonestown, Manor, San Leanna, and Point Venture, as well as the unincorporated area of Travis County within Commissioner Precinct 2 and the Anderson Mill area of Williamson County.

(b) Capital Metro began in January 1985, and assumed operation of the transit services provided by the city-owned Austin Transit System which served only within Austin's city limits. The Authority's current service area encompasses a total of approximately 500 square miles with operating and capital expenses funded through a one-cent local sales tax, federal and state grants and fare box and other revenue.

(c) The Authority is seeking proposals from qualified and experienced firms to provide **Data Mining and Customer Intelligence Monitoring Service**, as described in Exhibit F, Scope of Services, in this solicitation.

#### 2. SOLICITATION SCHEDULE

(a) The following schedule applies to this solicitation:

Solicitation Issued	8/3/18
Pre-Proposal Conference	8/9/18 at 9:30 a.m.
Written Questions Due by	8/10/18 by 3:00 p.m.
Response to Written Questions	8/13/18
Proposals Due by	8/24/18 prior to 3:00 p.m.
Oral Discussions (if requested)	8/30/18
Final Proposal Revision Due (if requested)	9/4/16 by 3:00 p.m.
Anticipated Award of Contract	September 2018

(b) The Authority reserves the right to make changes to the above-mentioned schedule. All such changes shall be made by an amendment to the solicitation or a letter to the firms. Firms should frequently check the DemandStar website, [www.demandstar.com](http://www.demandstar.com), which is linked to the Capital Metro website, [www.capmetro.org](http://www.capmetro.org), for information concerning this solicitation, including amendments.

(c) References to time of day shall be prevailing local time, Austin, Texas.

(d) The dates and times set for receipt of proposals and final proposal revisions are firm. Late offers will not be considered, except as described in paragraph 9, below.

#### 3. PRE-PROPOSAL CONFERENCE

(a) A pre-proposal conference to discuss the requirements of this solicitation shall be held for all interested parties on **August 9, 2018 at 9:30 a.m.** Attendance is highly recommended but is not mandatory.

(b) The location of the pre-proposal conference is 2910 E. 5<sup>th</sup> Street, Austin, Texas 78702 (intersection of 5<sup>th</sup> Street and Pleasant Valley Road).

(c) Questions relating to the Request for Proposals and requests for clarification may be submitted in writing or e-mail to [tracee.metterle@capmetro.org](mailto:tracee.metterle@capmetro.org), at least three (3) days in advance of the conference to allow adequate time for answers to be considered and prepared by the Authority for the conference.

#### **4. PROPOSAL PREPARATION**

Offerors must ensure that no pricing information is presented in any volume except in Volume 1, the Price Proposal. A complete proposal consists of two (2) separate volumes. All written documentation shall be submitted in the appropriate volume marked with the respective tabs as described below.

##### **(a) Volume 1: Price Proposal/Contract Forms (Information in this volume is not subject to the forty (40) page limit)**

Volume 1 shall be submitted in a separate folder from Volume 2 in one (1) ORIGINAL and two (2) copies, plus one (1) electronic copy. The electronic copy shall include Exhibit A in the Excel format provided. Volume 1 should be structured as follows:

Tab A – Exhibit A, Pricing Schedule in Excel format

Tab B – Exceptions and Assumptions in Price Proposal

Tab C – Exhibit B, Representations and Certifications

Tab D – Exhibit D, Disadvantaged Business Enterprises Program Forms – Schedule C, and Intent to Perform form

Tab E – Firm Financial Data

Tab F – W-9

##### **(b) Volume 2: Technical Proposal**

The technical proposal shall be organized as described below and submitted in a separate binder from Volume 1 in one (1) ORIGINAL and two (2) copies, plus one (1) electronic copy.

Tab A – Introduction of the Offeror

Tab B – Qualifications of the Firm

Tab C – Qualifications of Staff

Tab D – Work Plan

Tab E – Exceptions and Assumptions in Technical Proposal

##### **(c) Formatting**

(1) Text: Type size will not be smaller than Microsoft Word Times New Roman 11 point font, normal proportional spacing. Text lines will be single-spaced.

(2) Illustrations and Tables: Foldout pages up to 17 x 11 inches will be allowed. For page count purposes, foldout pages will count as two 8.5 x 11 inch pages. Foldouts of charts, tables, or diagrams shall not exceed 11 x 17 inches. All information (except for document numbers, page numbers, etc.) shall be provided within an image area of 9 x 15½ inches. For page count purposes, each printed side of a foldout page shall count as two pages. Figure call-outs shall be legible and shall be at least six (6) points in height after final reduction. Figure call-outs may be single-spaced. Photo-reduced foldout pages will not be used to circumvent the stated page limitations.

(3) Binding: Each volume of the proposal will be separately bound. The number of copies for each volume is specified below. Elaborate format and binding are neither necessary nor desirable. The cover will clearly identify the offeror's name, volume number, RFP number, RFP title and copy number (e.g. copy 1 of 2). The original for each volume will be clearly identified on the cover.

(4) Indexing: Each volume will contain a "Table of Contents" for that volume of the proposal. The "Table of Contents" will identify major areas, paragraphs and subparagraphs by number and title as well as by page number and volume locations. Tab indexing will be used to identify sections as appropriate.

(5) Copies/Page Limit: Offerors shall submit an Original, two (2) copies, and one (1) electronic copy of Volume 1, Price Proposal and an Original, two (2) copies, and one electronic copy of Volume 2, Technical Proposal. The forty (40) page limit shall apply to Volume 2, Technical Proposal. The Past Performance Questionnaire submitted directly to the Authority by the offeror's clients is not included in the page limitation. Cross-references should be utilized to preclude unnecessary duplication of data between sections.



## 5. CONTENTS OF PROPOSAL

(a) Offerors shall submit an original proposal in two volumes, with original signatures, plus two (2) copies and one (1) electronic copy in a sealed envelope or carton. Unnecessarily elaborate proposals and/or lengthy presentations are not desired.

(b) Proposals shall be sectionalized as described below. At a minimum, the items described in each section below should be addressed. Proposal sections are as follows:

(1) **Volume 1: Price Proposal/Contract Forms.** Exhibits A and B forms are included in this solicitation and must be returned with the offeror's proposal in order to be deemed responsive. The offeror shall not re-format these required forms. Any reformatted forms submitted with the proposal may cause the proposal to be deemed non-responsive.

(Tab A) Exhibit A, Pricing Schedule. This section shall contain the offeror's fee (price) proposal utilizing the format provided in Exhibit A. Offerors must provide pricing for all items to be considered for award of the contract.

(Tab B) Exceptions and Assumptions to Solicitation Provisions, Pricing Proposal. The Offeror shall provide all exceptions taken to the pricing portion of the solicitation in this section. If the Offeror does not take exception to the solicitation provisions, an affirmative statement to that effect shall be provided in this section.

(Tab C) Exhibit B, Representations and Certifications

(Tab D) Exhibit D Forms Schedule C of Subcontractor Participation and Intent to Perform as a DBE Contractor/ DBE Subcontractor.

(Tab E) Firm Financial Data. Offeror shall submit the Firm's bank reference, including the name, address and phone number of a contact person, or a letter of reference from the bank where the Firm holds a corporate account. Offeror also shall submit the Firm's most recent financial statement covering the past three years of operation, or the most recent audited annual report.

(Tab F) W-9 Form

(2) **Volume 2: Technical Proposal:** The combined length of the technical proposal should not exceed forty (40) pages in length.

(Tab A) Introduction of the Offeror. Include an introduction of the firm. If a joint venture is proposed, introduce all joint venture members. Discuss primary business experience, the overall mission, length of time in business, ownership, location of offices, telephone numbers and other matters offerors deem pertinent and introductory in nature.

(Tab B) Qualifications of the Firm:

(i) The offeror's experience and history relevant to the Authority's needs should be discussed, including a description of the offeror's direct experience on at least three (3) projects of similar size, scope and complexity completed in the past five years. Offeror shall provide the name, address, Email address and telephone numbers of persons who may be contacted as references. Offeror shall also include dates, locations, character, costs, and project managers for these previous projects. Offerors shall similarly discuss the qualifications of all other firms proposed to be utilized in the performance of the work if joint venture partners are proposed or if subcontractors are to be used for substantial portions of the work.

(ii) The offeror shall send the Past Performance Questionnaire in Exhibit G to at least three (3), but no more than ten (10) current or past customers for which they have provided similar services within the past five (5) years. **Offerors are responsible for completing the information in Section A of the questionnaire prior to mailing the questionnaire to references.** The references are required to submit the questionnaires directly to the Authority, not back to the offeror. The offeror is responsible for ensuring the information in Section A is current.

(iii) Offerors shall submit contact names and firm names to which the Past Performance Questionnaires were sent.

(Tab C) Qualifications of Staff: This section shall contain the offeror's staffing plan, and shall identify at a minimum:

(i) the project manager who will be assigned to the project. Discuss the direct qualifications and experience of the project manager as they relate to this project, and include at least one reference with name, address, email address, telephone number and contact person.

(ii) the resumes of key team members.

(iii) the methodology that will be used to provide supplementary staff to replace any staff originally assigned to the project.

(iv) Staff Guarantee. Offeror shall submit a letter from the offeror's chief executive officer guaranteeing the key personnel named in the staffing plan will be assigned to the project unless their employment is terminated. If substitutes or "backup" personnel are planned on a contingency basis, such personnel shall also be reflected in the aforementioned staffing plan.

(Tab D) Work Plan: This section shall contain a description of how the offeror would organize and perform the work. This section should include a description of the firm's technical approach and how the firm proposes to accomplish the tasks described in Exhibit F, the Scope of Services, including but not limited to:

(i) examples of reports and graphs to demonstrate similar and/or relevant work completed, especially as it may relate to the same type of work completed for other transit authorities;

(ii) equipment that will be used by on-site staff to perform the work;

(iii) implementation plan;

(iv) ability to meet project timelines;

(v) portions of work to be subcontracted and by whom;

(vi) identification of critical or problem areas; and

(vii) identification of tasks, if any, which must be accomplished by the Authority during contract performance or prior to contract award for the offeror to perform the work.

(Tab E) Exceptions to Solicitation Provisions, Technical Proposal. The Offeror shall provide all exceptions taken to the technical or contractual terms portion of the solicitation in this section. If the Offeror does not take exception to the solicitation provisions, an affirmative statement to that effect shall be provided in this section.

## **6. EXPLANATION TO OFFERORS**

(a) Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, drawings, or specifications, must be requested in writing and submitted with sufficient time allowed for a reply to reach offerors before the submission of offers. Oral explanations or instructions given before the award of any contract, at any pre-proposal conferences or otherwise, will not be binding on the Authority. Any information given to an offeror concerning an interpretation of the solicitation will be furnished to all offerors if such information is necessary or if the lack of such information would be prejudicial to uninformed offerors.

(b) Questions shall be submitted in writing by no later than **August 10, 2018, 3:00 p.m.**, to allow adequate time for answers to be considered and prepared by the Authority.

**7. ACKNOWLEDGMENT OF AMENDMENTS**

- (a) If this solicitation is amended, then all terms and conditions, which are not modified, remain unchanged.
- (b) It is the responsibility of the offeror to check the DemandStar web site at [www.DemandStar.com](http://www.DemandStar.com) for any amendments to the solicitation. Amendments will not be mailed, emailed or faxed.
- (c) Offerors shall acknowledge receipt of any amendment to this solicitation: (1) by signing and returning the amendment; or (2) by identifying the amendment number and date in the space provided for this purpose on Exhibit A - Pricing Schedule; or (3) by letter or email signed by an authorized agent of the offeror. The Authority must receive the acknowledgment by the time and at the place specified for receipt of offers.

**8. SUBMISSION OF OFFERS**

- (a) Offers shall be enclosed in sealed envelopes or sealed cartons and shall be submitted to the attention of:

Tracee Metterle  
Procurement Department  
Capital Metropolitan Transportation Authority  
2910 E. 5th Street  
Austin, Texas 78702

(to be received) no later than **August 24, 2018, prior to 3:00 p.m.**

- (b) The offer shall show the hour and date specified in the solicitation for receipt of offers, the solicitation number, and the offeror's name, address, email address and telephone number on the face of the envelope or carton.
- (c) Offers are time-date stamped when received in the Procurement Department. Due to heightened security concerns all deliveries in the Authority's lobby are processed through a security guard, and time should be allowed for any processing delays.
- (d) Facsimile or email offers will not be considered.
- (e) Samples of items, when required, must be submitted within the time specified and, unless otherwise specified in the solicitation, at no expense to the Authority. If not destroyed by testing, samples will be returned at the offeror's request and expense, unless otherwise specified in the solicitation.
- (f) If this solicitation contains the submission of a past performance questionnaire and the proposal due date is changed, the due date of the past performance questionnaire also will change and become the same as the proposal due date.

**9. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS**

- (a) Any offer, modification, or withdrawal of an offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, unless:
  - (1) late receipt is due solely to mishandling by the Authority after receipt in the Authority's offices; or,
  - (2) the offer is the only offer received.
- (b) Notwithstanding (a) of this provision, a late modification of an otherwise successful offer which makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
- (c) Offers may be withdrawn by written notice received at any time prior to deadline stipulated for receipt of offers. An offer may be withdrawn in person by an offeror or the offeror's authorized representative; provided the identity of the person requesting the withdrawal is established and the person signs a receipt for the offer prior to the exact time set for receipt of offers.

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## 10. EVALUATION FACTORS

(a) The Authority will select a firm based on how well the offeror's proposal conforms to the solicitation and represents the best value to the Authority. If the Authority does not choose to make a selection based on initial proposals, the Authority may conduct discussions with those offerors it determines to be within the competitive range, and to allow all such offerors to submit Final Proposal Revisions.

(b) The Authority will make the award to the responsible offeror whose offer conforms to the solicitation and represents the best value to the Authority, cost or price and technical factors listed below considered. **For this solicitation, the factors other than cost or price are significantly more important than cost or price. As proposals become more equal in their technical merit, the evaluated cost or price becomes more important.**

(c) The evaluation factors listed below are in descending order of importance. All proposals shall be evaluated and ranked on the basis of the following factors:

(1) The offeror's demonstrated, relevant work experience and capabilities of the firm as a whole and of the proposed project personnel on projects of a similar size, scope, complexity and nature with special emphasis on the following:

- (i) Experience relevant to the performance of the work required under this solicitation and resulting contract.
- (ii) Experience relevant to the performance of work within the transit and/or transportation industries.
- (iii) Experience relevant to the performance of work for federal, state or local agencies.
- (iv) Previous work performance and quality of completed work.

(2) The offeror's demonstrated technical background, past performance and experience on projects of a similar size, scope, complexity and nature; and capabilities of the proposed project personnel.

- (i) Qualifications of project manager and key personnel. Submit, at a minimum, resumes for the project manager(s) and key personnel (inclusive of all joint venture and subcontractor personnel) who will be assigned to the project. Resumes should be complete and concise, featuring experience that is most directly relevant to the task responsibility to which the individual will be assigned. Resumes must be dated (e.g. dates of education, experience, employment, etc.) and should state the function(s) to be performed on the project by each of the key personnel.
- (ii) Proposed allocation of time to the performance of work under this solicitation and resulting contract by the project manager (s) and key personnel. Discuss the percentage (%) of time to be committed to the project by the project manager(s) and each of the key personnel.
- (iii) Positive results of references for each of the designated key personnel. Submit, at a minimum, two (2) references with names, addresses, telephone numbers and contact persons for each of the designated key personnel.
- (iv) Organization of the workforce and personnel utilization. Submit, at minimum, an organization chart, complete with a listing of all job classifications and the number of full and part-time employees in each job classification to be used in the work performance. Also, identify which job classifications relate to subcontractor personnel.

(3) The offeror's demonstrated understanding of the project undertaking, the proposed plan for the performance of the work and the technical approach proposed by the offeror. This should, at minimum, include the following:

- (ii) Proposed method of accomplishing the work required for this project.
- (iii) Proposed approach to managing the work and ensuring program and cost control.

- (iv) Proposed work to be accomplished by each of the subcontractors
  - (v) Potential impediments, obstacles or problems that could negatively impact upon work performance and proposed solutions.
  - (vi) Specific tasks that the offeror requires CMTA to accomplish during the contract performance.
  - (vii) Quality Control Plan. At a minimum, explain the Quality Control Plan for the performance of work, addressing all requirements of the Statement of Work. Discuss proposed approach to review and inspection of work and for acceptance or rejection, documentation and resolution of deficiencies.
- (d) Each of the evaluation factors will be given one of the following ratings:
- (1) Excellent: Exceeds evaluation standard in a beneficial way to the Authority, and has a high probability of satisfying the requirements in the scope of services; has no significant weaknesses.
  - (2) Acceptable: Meets evaluation standards; has good probability of satisfying the requirements in the scope of services, any weaknesses can be readily corrected.
  - (3) Marginal: Fails to meet evaluation standards; has low probability of satisfying the requirements in the scope of services; has significant deficiencies.
  - (4) Unacceptable: Fails to meet minimum requirements in the scope of services; deficiency requires a major revision to the proposal to make it acceptable.
- (e) In establishing the final rating for an offeror, the Authority may take into consideration information provided during oral discussions and any final proposal revisions.
- (f) Oral discussions may be required; however, the most qualified firm may be selected on the basis of the initial proposal only. If necessary, oral discussions are tentatively scheduled for **August 30, 2018**. Offerors are advised of these dates and should plan accordingly.
- (g) The Authority reserves the right to award the contract based on the initial proposal without further discussions.
- (h) The Authority reserves the right to investigate the qualifications of all firms under consideration and to confirm any part of the information furnished by the firm, and/or to require other evidence of the managerial, financial or technical capabilities of the firm.

## **11. DISCOUNTS**

Prompt payment discounts will not be considered in evaluating offers for award.

## **12. SMALL BUSINESS ENTERPRISE (SBE) PARTICIPATION**

- (a) This solicitation does not have an established Small Business Enterprise Goal (SBE). However, vendors are encouraged to use SBEs. If using SBEs, these may be listed in the Subcontractor Participation form found in Exhibit D. Offerors may access the City of Austin Small Business Directory online at:  
[https://www.austintexas.gov/financeonline/vendor\\_connection/search/vendors/certvendor.cfm](https://www.austintexas.gov/financeonline/vendor_connection/search/vendors/certvendor.cfm).
- (b) As defined by the Small Business Administration (SBA), a small business is any business whose annual gross annual gross income averaged over the past three (3) years does not exceed the SBA size standards as set forth in 13 CFR, Part 121. For size standards, please refer to the Subcontractor Participation form in this packet.

### **13. AWARD OF CONTRACT**

- (a) Before awarding any contract, the Authority will verify, using the [Federal System for Award Management \(SAM\)](#) and the [Texas Comptroller's Debarred Vendor List](#), that the offeror recommended for contract award has no unsatisfactory performance history that would prohibit awarding them a contract.
- (b) One contract award contract awards shall be made.
- (c) The contract will be awarded to that responsible offeror(s) whose offer, conforming to the solicitation, will be most advantageous to the Authority, price and other factors considered. A responsible offeror is one who affirmatively demonstrates to the Authority that the offeror has adequate financial resources and the requisite capacity, capability, and facilities to perform the contract within the delivery period or period of performance, has a satisfactory record of performance on other comparable projects, has a satisfactory record of integrity and business ethics, and is otherwise qualified and eligible to receive award under the solicitation and laws or regulations applicable to this procurement.
- (d) The Authority reserves the right to accept other than the lowest offer, reject any or all offers in part or in total for any reason, to accept any offer if considered best for its interest, and to waive informalities and minor irregularities in offers received.
- (e) The Authority may accept any item or group of items of any offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in Exhibit A - Pricing Schedule, offers may not be submitted for any quantities less than those specified, and the Authority reserves the right to make an award on any item for a unit quantity less than the quantity offered at the unit prices offered unless the offeror specifies otherwise in the offer.
- (f) The Authority's execution of the Contract shall be deemed to result in a binding contract without further action by the offeror.
- (g) The Authority may, within the time specified therein, accept any offer or part thereof, as provided in (c) above, whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the Authority prior to award.
- (h) The Authority may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint, which the offeror can submit to the Authority.
- (i) Any financial data submitted with any offer hereunder will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.

### **14. AUDIT**

The Authority reserves the right to make a pre-award audit of the firm's proposed fees, rates and costs to determine if they are fair and reasonable.

### **15. RELEASE OF INFORMATION**

Information submitted in response to this solicitation shall not be released by the Authority during the proposal evaluation process or prior to contract award. Offerors are advised that the Authority may be required to release proposal information after contract award in accordance with the Texas Public Information Act.

### **16. COST INCURRED IN RESPONDING**

All costs directly or indirectly related to preparation of a response to this solicitation or any oral presentation to supplement and/or clarify a proposal which may be required by the Authority shall be the sole responsibility of and shall be borne by the offeror.

**17. INQUIRIES**

Inquiries must be submitted in writing. Material information provided to one potential offeror shall be provided equally to all offerors on the DemandStar website at [www.DemandStar.com](http://www.DemandStar.com). Offerors rely on oral information at their own peril. Failure to adhere to this requirement for relying only on written explanations could render a firm non-responsive. All inquiries shall be directed to Tracee Metterle, Procurement Department by e-mail at [tracee.metterle@cap-metro.org](mailto:tracee.metterle@cap-metro.org).

**18. PROPOSAL ACCEPTANCE PERIOD**

No proposal may be withdrawn for a period of one hundred twenty (120) days subsequent to the deadline established for receipt of offers. Any submission of a Final Proposal Revision (FPR) will extend this acceptance period by an additional sixty (60) days.

**19. PROPOSAL INCORPORATION**

The contents of the successful proposal, including any Final Proposal Revision (FPR), shall become a part of any resultant contract. The terms and conditions specified in this solicitation shall be used as a basis for a contemplated contract. Failure of an offeror to accept these obligations may result in proposal rejection. Any damages accruing to Capital Metro as a result of an offeror's failure or refusal to execute a contract may be recovered from the offeror.

**20. AUTHORITY FURNISHED PROPERTY**

No material, labor, or facilities will be furnished by the Authority unless otherwise provided for in the solicitation.

**21. 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.

**22. CONFIDENTIAL DATA**

Each offeror may clearly mark each page of the offer that contains trade secrets or other confidential commercial or financial information, which the offeror believes should not be disclosed outside the Authority. Disclosure of requested information will be determined in accordance with the Texas Public Information Act.

**23. CANCELLATION OF SOLICITATION**

This solicitation may be cancelled by the Authority before or after receipt of offers.

**24. PROTEST PROCEDURES**

(a) Any interested party who is aggrieved or adversely affected in connection with the solicitation, evaluation, or award of a contract may file a protest with the Director of Procurement of Capital Metro (hereinafter called Director) and appeal any adverse decision to the President/CEO of Capital Metro (hereinafter called President/CEO). Such protest must be in writing and received in the office of the Director addressed as follows: Capital Metro, Attn: Director of Procurement, 2910 East 5th Street, Austin, Texas, 78702.

(b) Protests directed to the terms, conditions or proposed form of procurement action must be received by the Director within five (5) business days prior to the date established for the opening of bids or receipt of proposals. Protests concerning award decisions, including bid evaluations, must be received by the Director within five (5) business days after such aggrieved person knows, or should have known, of the grounds of the protest. Untimely or late protests will not be considered, unless the Director concludes that the issue(s) raised by the protest involves fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement system.

(c) Interested Parties: For the purposes of this procedure, "interested parties" shall be defined as follows:

(1) With respect to complaints concerning the terms, conditions or form of a proposed procurement action, any prospective offeror whose direct economic interest would be affected by the award, or failure to award a contract.

(2) With respect to complaints concerning award decisions, only those actual offerors who have submitted a bid or offer in response to a Capital Metro solicitation and who, if their complaint is deemed by Capital Metro to be meritorious, would be eligible for selection as the successful vendor for award of the contract.

(d) Copies of the protest must be mailed or delivered by the protesting party to all interested parties.

(e) All formal protests must be sworn and reference the following:

(1) name, address and telephone number of the interested party.

(2) solicitation number and title.

(3) specific statutory or regulatory provision(s) that the action under protest is alleged to have violated.

(4) specific description of each act alleged to have violated the statutory or regulatory provision(s) identified above.

(5) precise statement of facts.

(6) identification of the issue(s) to be resolved.

(7) argument and authorities in support of the protest.

(8) a statement that copies of the protest have been mailed or delivered to all interested parties.

(f) The Director shall have the authority, prior to any appeal to the President/CEO, to settle any dispute and resolve the protest. The Director may solicit written responses regarding the protest from other interested parties.

(g) If the protest is not resolved by mutual agreement, the Director will issue a written determination on the protest.

(1) If the Director determines that no violation of rules or statutes has occurred, he/she shall so inform the protesting party, and at his/her discretion, other interested parties by letter which sets forth the reasons for the determination.

(2) If the Director determines that a violation of the rules or statutes has occurred and a contract has not yet been awarded, he/she shall so inform the protesting party, and at his/her discretion, other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Director determines that a violation of the rules or statutes has occurred and a contract has been awarded, he/she shall so inform the protesting party, and at his/her discretion, other interested parties by letter which sets forth the reasons for the determination which may include declaring the contract void.

(h) Appeals: The Director's determination on a protest may be appealed to the President/CEO. An appeal to the President/CEO must be received no later than ten (10) business days after the date of the written determination issued by the Director, and be addressed to the attention of the President/CEO, at the address listed in Subsection (a). The appeal shall be limited to a review of the determination made by the Director. Copies of the appeal must be mailed or delivered by the protesting party to all interested parties consistent with the mailing or delivering of the original protest, and where applicable, Capital Metro must be provided with an affidavit that such copies were distributed.

(i) The Chief Counsel for Capital Metro will review the protest, the Director's determination, any responses from interested parties, and the appeal, and prepare a written opinion with recommendation to the President/CEO who will issue a written response to the protesting party.



- (j) The President/CEO's response shall be the final administrative action taken by Capital Metro.
- (k) Any protest submitted must follow these procedures or it will be returned without action.

**EXHIBIT D**  
**SMALL BUSINESS ENTERPRISE (SBE) PROGRAM**  
**FOR LOCALLY FUNDED SOLICITATIONS**

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**1. PROGRAM BACKGROUND**

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

**2. DEFINITION**

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

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

**3. SUBMISSION OF SBE FORMS**

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

**4. CREDIT TOWARDS GOALS**

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

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

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

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

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

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

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

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

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

## **5. DEMONSTRATION OF GOOD FAITH EFFORT**

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

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

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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

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

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

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

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

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

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

### **6. CERTIFICATION OF SBEs**

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

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

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

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

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

#### **7. SBE MODIFICATION OR SUBSTITUTION**

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

#### **8. PAYMENT DOCUMENTATION**

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

#### **9. SANCTIONS FOR NONCOMPLIANCE WITH THE AUTHORITY'S SBE PROGRAM PROVISIONS**

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

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

**REQUIRED SUBMITTAL IF SUBCONTRACTORS ARE UTILIZED  
CAPITAL METRO  
Schedule C, Subcontractor Participation (Local Funds)**

Instructions: The Offeror shall complete this form by listing 1) Names of all proposed subcontractors. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Age of the firm, 5) Number of employees, 6) % or \$ amount of Total Contract.

*NOTE: AS DEFINED BY THE SMALL BUSINESS ADMINISTRATION; A SMALL BUSINESS IS ANY BUSINESS WHOSE ANNUAL GROSS INCOME AVERAGED OVER THE PAST THREE (3) YEARS DOES NOT EXCEED THE SMALL BUSINESS ADMINISTRATION'S (SBA) SIZE STANDARDS AS SET FORTH IN 13 C.F.R., PART 121.*

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

**Name of Prime Contractor (Offeror):** \_\_\_\_\_

**Project Name:** Data Mining and Customer Intelligence Monitoring

**Solicitation Number:** RFP 304404

1) Name of Subcontractor	2) Address, Telephone # of Sub Firm (Including name of contact person)	3) Description of Work, Services Provided. Where applicable, specify "supply" or "Install" or both.	4) SBE or non-SBE	5) Age of Firm	6) Number of employees	7) Sub % or \$ amount of Total Contract

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

The undersigned will enter into a formal agreement with Sub contractors for work listed in this form upon execution of a contract with Capital Metro.

\_\_\_\_\_  
**Signature of Authorized Representative of Offeror**

\_\_\_\_\_  
**Date Signed**

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

REQUIRED SUBMITTAL

**CAPITAL METRO**  
**(Local) Intent to Perform as a SBE Contractor/SBE Subcontractor**  
**RFP # 304404**

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

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

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

\_\_\_\_\_

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

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

\_\_\_\_\_  
(Name of SBE Firm)

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Name of Offeror/Prime Contractor)

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Date Signed)

**EXHIBIT E**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**(SERVICES CONTRACT)**

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**1. DEFINITIONS**

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

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



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

## **2. FIXED PRICE CONTRACT**

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

## **3. TERM**

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

**4. OPTION TO EXTEND CONTRACT TERM**

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

**5. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE**

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

**6. INVOICING AND PAYMENT**

(a) Invoices may be submitted once per month, and marked "Original" to:

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

Or via e-mail to: [ap\\_invoices@capmetro.org](mailto:ap_invoices@capmetro.org)

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

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

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

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

(d) In the event an overpayment is made to the Contractor under this Contract or the Authority discovers that the Authority has paid any invoices or charges not authorized under this Contract, the Authority 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. RESERVED**

## 8. ACCEPTANCE CRITERIA

A review of the Contractor's Services will be performed by the Authority upon delivery. If any Services performed under this Contract are deemed incomplete or unacceptable in any way, per Requirements referenced in Exhibit F, Paragraph 2, the Authority will require the Contractor to take corrective measures at no additional cost to the Authority.

## 9. INSURANCE

(a) The Contractor shall furnish proof of Capital Metro-stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Authority and shall contain a contract waiver of subrogation in favor of the Authority. The Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Authority showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority and the Authority shall be named as an Additional Insured under each policy, Professional Liability insurance if required by this Contract. All insurance policies shall be written by reputable insurance company or companies acceptable to the Authority with a current Best's Insurance Guide Rating of A+ and Class XIII or better. All insurance companies shall be authorized to transact business in the State of Texas. The Contractor shall notify the Authority in writing of any material alteration of such policies, including any change in the retroactive date in any "claims-made" policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto. The below requirements only represent the minimum coverage acceptable to the Authority and these requirements are not intended to represent the maximum risk or the maximum liability of the Contractor. The Contractor shall be responsible for setting its own insurance requirements, if any, for the kind and amounts of insurance to be carried by its Subcontractors in excess of the insurance required by the Authority.

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

### CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS

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

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

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

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

(4) **Technology Error's & Omissions Insurance** Combined Technology & Omissions Policy with a minimum One Million and No/100 Dollars (\$1,000,000) claim limit, including (a) Professional Liability Insurance covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated (such coverage to be maintained for at least two (2) years after termination of this contract, which obligation shall expressly survive termination of this contract; and (b) Privacy, Security and Media Liability Insurance providing liability for unauthorized access or disclosure, security breaches or system attacks, as well as infringement of copyright and trademark that might result from this contract.

(5) **Cyber endorsement** in favor of CMTA on Policy: \$1,000,000.

(6) **Third Party extension** in favor of CMTA endorsement on Privacy, Security and Media Policy: \$1,000,000.

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

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

(d) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-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. ALL REQUIRED ENDORSEMENTS SHALL BE EVIDENCED ON THE CERTIFICATE OF INSURANCE, WHICH SHALL BE EVIDENCED ON THE CERTIFICATE OF INSURANCE. PROOF THAT INSURANCE COVERAGE EXISTS SHALL BE FURNISHED TO THE AUTHORITY BY WAY OF A CERTIFICATE OF INSURANCE BEFORE ANY PART OF THE CONTRACT WORK IS STARTED.**

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

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

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

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

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

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

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

**11. REMOVAL OF ASSIGNED PERSONNEL**

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

**12. REPRESENTATIONS AND WARRANTIES**

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

**13. INDEPENDENT CONTRACTOR**

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

**14. COMPOSITION OF CONTRACTOR**

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

**15. SUBCONTRACTORS AND OUTSIDE CONSULTANTS**

Any Subcontractors and outside associates or consultants required by the Contractor in connection with the Services covered by the Contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this Contract. Any substitution in such Subcontractors, associates, or consultants will be subject to the prior approval of the Authority.

**16. EQUITABLE ADJUSTMENTS**

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

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

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

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

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

## **17. PERSONNEL ASSIGNMENTS**

(a) 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 six (6) month period. Thereafter during the Term, the Contractor shall submit quarterly report containing a list of all persons (including Subcontractors) assigned to perform Services under the Contract and a certification that each named person has undergone a criminal background check as required by this Contract. The Authority shall have the right to audit the Contractor's records for compliance with the provisions of this Section. Criminal background checks shall include the following:

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

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

(3) National Sex Offender Registry

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

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

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

<b>Offense Type</b>	<b>Action Required</b>
<b>Crimes Against the Person (other than sex crimes)</b>	
Felony	Submit to Capital Metro for review if less than 10 years from date of <b>release from confinement</b>
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of <b>conviction</b>
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of <b>conviction</b>
<b>Crimes Against the Person - Sex Crimes/Registered Sex Offenders</b>	
ALL	Submit to Capital Metro for review

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

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

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

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

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

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

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

- (14) Employment or character references and any other information regarding fitness for the particular position;
- (15) Whether the person is bonded or licensed under any federal, state or local program or any licensing authority;
- (16) The person's statement of the circumstances surrounding the offense and conviction and relevant factors is consistent with publicly available record related to the crime and conviction; and
- (17) Any other factors deemed relevant in the consideration of a particular assessment.

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

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

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

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

## **18. BADGES AND ACCESS CONTROL DEVICES**

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

(b) Access Control Devices will be issued to employees of the Contractor and to each Subcontractor of any tier and any worker working on behalf of Subcontractor as necessary to perform the Contract. Access Control Devices are not transferable between the Contractor employees or workers working on behalf of the Subcontractor. The Contractor employees and workers on behalf of the Subcontractor are prohibited from loaning Access Control Devices or providing access to an unauthorized person into restricted areas without prior arrangements with the Project Manager. All requests for new and replacement Access Control Devices must be submitted in writing to the Project Manager. Lost



Access Control Devices must be reported to the Project Manager immediately upon discovery. All Access Control Devices should be returned to the Project Manager. The misuse of an Access Control Device(s) may result in termination of the Contract. The Contractor shall return all Access Control Devices once an assigned employee or worker is no longer working on the Contract or upon termination of the Contract. In the event the Contractor fails to do so, then the Contractor shall be responsible for the replacement cost of an Access Control Device which shall be deducted from any amounts due and owing to the Contractor or payable on demand if the Contract has terminated. The replacement cost will be calculated at current market value to include labor and materials.

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

## **19. CHANGES**

(a) The Authority may, at any time, by written order, make changes within the general scope of the Contract in the Services to be performed. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any Services under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this paragraph must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the Contract.

(b) No Services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Authority.

(c) Any other written order (which, as used in this paragraph (c), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change in the Contractor's obligations shall be treated as a Change Order under this paragraph; provided that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a Change Order.

(d) Except as provided in this paragraph, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this paragraph or entitle the Contractor to an equitable adjustment.

(e) If any change under this paragraph causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Services under this Contract, whether or not changed by any such order, the Contracting Officer may make an equitable adjustment and modify the Contract in writing in accordance with the provisions in paragraph entitled, "Equitable Adjustments" contained in Exhibit E.

## **20. TERMINATION FOR DEFAULT**

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

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

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

(b) In the event the Authority terminates this Contract in whole or in part as provided in subparagraph (a) of this paragraph, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent, if any, it has not been terminated under the provisions of this paragraph.

(c) Except with respect to the defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to Force Majeure Events; provided, however, in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor and if such default arises out of causes beyond the control of both the

Contractor and Subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority any Manufacturing Materials as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed Manufacturing Materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

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

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

## **21. TERMINATION FOR CONVENIENCE**

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

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

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

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

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

(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.

## **22. CONTRACTOR CERTIFICATION**

The Contractor certifies that the fees in this Agreement have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

## **23. INTELLECTUAL PROPERTY PROVISIONS**

(a) As between the Contractor and the Authority, the Works and Intellectual Property Rights therein are and shall be owned exclusively by Capital Metro, 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) To the extent that any pre-existing rights and/or third party rights or limitations are embodied, contained, reserved or reflected in the Works, the Contractor shall either:

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

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

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

(2) where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Authority of such pre-existing or third party rights or limitations, request the Authority's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated, and obtain the Authority's written approval of such pre-existing or third party rights and the limited use of same. The Contractor shall provide the Authority with documentation indicating a third party's written approval for the Contractor to use any pre-existing or third-party rights that may be embodied, contained, reserved or

reflected in the Works. **THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, REGULATORY PROCEEDINGS AND/OR CAUSES OF ACTION, AND ALL LOSSES, DAMAGES, AND COSTS (INCLUDING ATTORNEYS' FEES AND SETTLEMENT COSTS) ARISING FROM OR RELATING TO, DIRECTLY OR INDIRECTLY, ANY CLAIM OR ASSERTION BY ANY THIRD PARTY THAT THE WORKS INFRINGE ANY THIRD-PARTY RIGHTS.** The foregoing indemnity obligation shall not apply to instances in which the Authority either:

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

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

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

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

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

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

## **24. STANDARDS OF PERFORMANCE**

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

## **25. INSPECTIONS AND APPROVALS**

- (a) All Services performed by the Contractor or its Subcontractors or consultants shall be subject to the inspection and approval of the Authority at all times, but such approval shall not relieve the Contractor of responsibility for the proper performance of the Services. The Contractor shall provide sufficient, safe, and proper facilities at all times for such inspection of the Services and shall furnish all information concerning the Services and give the Authority or its representatives free access at all reasonable times to the facilities where the Services are performed.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the Services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during Contract performance and for as long afterwards and the Contract requires.
- (c) The Authority has the right to inspect and test all Services called for by this Contract, to the extent practicable, at all times and places during the term of the Contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the Services.
- (d) If any of the Services do not conform with Contract requirements, the Authority may require the Contractor to perform the Services again in conformity with the Contract requirements, at no increase in the Contract Sum. When the defects in services cannot be corrected by performance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce the Contract Sum to reflect the reduced value of the Services performed.
- (e) If the Contractor fails promptly to perform the Services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the Authority may (1) by contract or otherwise, perform the Services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of such service or (2) terminate the Contract for default.

## **26. SUSPENSION OF SERVICES**

- (a) The Authority may order the Contractor in writing to suspend all or any part of the Services for such period of time as the Authority determines to be appropriate for the convenience of the Authority.
- (b) If the performance of all or any part of the Services is, 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 paragraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

## **27. PAYMENT TO SUBCONTRACTORS**

- (a) Payments by contractors to subcontractors associated with Authority contracts are subject to the time periods established in the Texas Prompt Payment Act, Tex. Gov't. Code § 2251.
- (b) A false certification to the Authority under the provisions of the paragraph entitled "Invoicing and Payment" hereof may be a criminal offense in violation of Tex. Penal Code § 10.

**28. FEDERAL, STATE AND LOCAL TAXES**

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

**29. EQUAL OPPORTUNITY**

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

**30. CONFLICT OF INTEREST**

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

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

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

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

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

**31. GRATUITIES**

The Authority may cancel this Contract, without liability to the Contractor, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any Authority official or employee with a view toward securing favorable treatment with respect to the performance of this Contract. In the event this Contract is canceled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

**32. PUBLICATIONS**

All published material and written reports submitted under this Contract must be originally developed material unless otherwise specifically provided in the Contract document. When material, not originally developed, is included in a

report, it shall have the source identified. This provision is applicable when the material is in a verbatim or extensive paraphrased format.

**33. REQUEST FOR INFORMATION**

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

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

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

**34. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

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

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

**35. LIMITATION OF LIABILITY**

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

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

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

**37. CLAIMS**

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor arising out of this Contract, the Contractor shall give written notice thereof, to the Authority within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Capital Metropolitan Transportation Authority, 2910 East 5th Street, Austin, Texas 78702.

**38. LICENSES AND PERMITS**

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the Services to be provided under this Contract including, but not limited to, any laws or regulations requiring the use of licensed Subcontractors to perform parts of the work.

**39. NOTICE OF LABOR DISPUTES**

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information, to the Authority.

(b) The Contractor agrees to insert the substance of this paragraph, including this subparagraph (b), in any Subcontract under which a labor dispute may delay the timely performance of this Contract; except that each Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

**40. PUBLICITY RELEASES**

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

**41. INTEREST OF PUBLIC OFFICIALS**

The Contractor represents and warrants that no employee, official, or member of the Board of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this Contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any employee, official, or member of the Board of the Authority with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this Contract. For breach of any representation or warranty in this paragraph, the Authority shall have the right to terminate this Contract without liability and/or have recourse to any other remedy it may have at law or in equity.

**42. INDEMNIFICATION**

(a) **THE CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "INDEMNIFIED PARTY") HARMLESS FROM AND AGAINST 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.

#### **43. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS**

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

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

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this Contract or if the Contractor's cost of performance is relevant to any change or modification to this Contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such Contract, change, or modification for the purpose of evaluating the

costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

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

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

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

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

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

#### **44. EXCUSABLE DELAYS**

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

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

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

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

#### **45. LOSS OR DAMAGE TO PROPERTY**

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

#### **46. CONTRACTOR CONTACT/AUTHORITY DESIGNEE**

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

**47. QUALITY ASSURANCE**

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

**48. INTERPRETATION OF CONTRACT – DISPUTES**

All questions concerning interpretation or clarification of this Contract or the acceptable fulfillment of this Contract by the Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the Capital Metro President/CEO within two (2) weeks after the Authority notifies the Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two (2) weeks of the protest filing of his or her final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, the Contractor shall proceed with the Services in accordance with the determinations, instructions, and clarifications of the President/CEO. The Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses arising from its failure to do so. The Contractor's failure to protest the Contracting Officer's determinations, instructions, or clarifications within the two-week period shall constitute a waiver by the Contractor of all of its rights to further protest.

**49. TOBACCO-FREE WORKPLACE**

- (a) Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.
- (b) The tobacco free workplace policy refers to all Capital Metro owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.
- (c) Tobacco use is not permitted at any time on Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.
- (d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

**50. ORDER OF PRECEDENCE**

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

- 1. Exhibit A – Pricing Schedule
- 2. Exhibit E – Contractual Terms and Conditions
- 3. Exhibit F – Scope of Services
- 4. Exhibit B – Representations and Certifications
- 5. Exhibit D – Small Business Enterprise Program/SBE

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

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

cable Anti-Corruption and Bribery Laws. The Authority shall not be liable to the Contractor for any claim, losses, or damages related to its decision to exercise its rights under this provision.

## **52. VARIATION IN ESTIMATED QUANTITY**

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

## **53. 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.

## **54. MISCELLANEOUS**

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

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

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

**If to the Authority:** Capital Metropolitan Transportation Authority  
**Attn: Director of Procurement**  
2910 E. 5th Street  
Austin, Texas 78702

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

(c) In the event the Authority finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants or conditions herein, the Contractor shall pay to the Authority its reasonable attorneys' fees and expenses, regardless of whether suit is filed.

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

**55. FUNDING AVAILABILITY**

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

**EXHIBIT F  
SERVICES  
SCOPE OF SERVICES**

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**1. GENERAL SCOPE**

Capital Metropolitan Transit Authority (CMTA) is seeking the services of a firm to monitor public opinion by real-time processing of social media content using natural language processing, machine learning, and social network analysis. This information should be appendable to external customer/stakeholder structured databases as needed. The Contractor shall identify trends, developing issues, and customer/stakeholder sentiment as expressed in online conversations. The Contractor shall provide reports and analytics weekly. However, there will be times that reports, and analytics will be required daily. The Contractor shall generate reports offering strategic messaging counsel to Capital Metro. This intelligence will be used to guide agency community engagement and general communication strategies and tactics.

**2. REQUIREMENTS**

Monitoring content will be provided via an all-inclusive web-based system. Contractor is responsible for all maintenance and upgrades to the data mining tool(s) throughout the contract term and shall be included in the monthly fee.

The Contractor shall develop an agreed-upon schedule reporting on online activities. These regular reports will offer customer/stakeholder insights to inform agency strategy. The Contractor shall generate specific topic reports as needed. Contractor shall provide these reports within one day of written request. These are in addition to reports scheduled between Capital Metro and the Contractor. The Contractor shall develop and support a “dashboard” of online activity connected to agency goals and objectives available for management review. In addition to printed reports, the Contractor shall make senior staff available to Capital Metro management by phone as needed and in person at least every six months to ensure project alignment.

The Contractor shall provide a monitoring solution that should, at a minimum:

- (a) Automatically detect spikes in existing discussions along with new topics for discussion.
- (b) Identify causes of changes in conversation intensity and tone.
- (c) Track how often social media mentions CMTA, both in aggregate and by pertinent discussion topic.
- (d) Track individualized and aggregate sentiment in CMTA mentions.
- (e) Display common threads in public opinion across searchable date ranges.
- (f) Identify the entities most effective at disseminating messages.
- (g) Auto detection of new conversation threads within CMTA conversation networks and across targeted markets
- (h) Capital Metro and transit industry-specific forecasting establishing best practices and event-driven variations that maximize community engagement.
- (i) A security incident response plan. This plan should include a process to handle security incidents including but not limited to:

possible compromises of passwords, confidential information leaks, threats against the organization, data breaches, viruses/malware, misuse of the enterprise brand. The plan should include a notification process and timeframe to report incidents to CMTA.

**EXHIBIT G**  
**PAST PERFORMANCE QUESTIONNAIRE**

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**INSTRUCTIONS TO DATA MINING AND CUSTOMER INTELLIGENCE  
MONITORING OFFEROR:**

**FILL IN INFORMATION ABOUT YOUR FIRM IN SECTION A OF THE  
QUESTIONNAIRE BEFORE MAILING TO YOUR CLIENTS**





## MEMORANDUM

### FOR PAST PERFORMANCE REFERENCES

FROM: Procurement Department  
Capital Metropolitan Transportation Authority  
2910 East 5<sup>th</sup> Street  
Austin, TX 78702

RE: Request for Past Performance Information for RFP 304404, Data Mining and Customer Intelligence Monitoring

Capital Metropolitan Transit Authority (CMTA) is seeking the services of a firm to monitor public opinion by real-time processing of social media content using natural language processing, machine learning, and social network analysis. This information should be appendable to external customer/stakeholder structured databases as needed. The Contractor shall identify trends, developing issues, and customer/stakeholder sentiment as expressed in online conversations. The Contractor shall provide reports and analytics weekly. However, there will be times that reports, and analytics will be required daily. The Contractor shall generate reports offering strategic messaging counsel to Capital Metro. This intelligence will be used to guide agency community engagement and general communication strategies and tactics.

In the Instructions to Offerors portion of our request for proposals, we request that this letter and the Past Performance Questionnaire be forwarded to points of contact for similar type services performed by the offeror, or currently in progress. The information contained in your completed questionnaire will be one of the evaluation criteria to base a decision about the relative qualifications of the offeror.

Please have the questionnaire completed by the person(s) most familiar with the contractor's performance on the subject contract. Evaluations should reflect an honest, straightforward, and objective evaluation of the contractor's performance. Evaluations must be based on objective facts supported by program/project and contract management data and reports.

Your knowledge is crucial to our evaluation of the company's past performance, and we request that you provide responses to all questions. A simple "unknown" answer may be appropriate when no evidence is available to you in a particular area. We ask that you indicate based on the definitions provided in the questionnaire, the contractor's performance on the identified contract. Please provide narrative rationales for your answers that are marked other than acceptable or areas where the contractor clearly exceeded contract requirements. Hand written responses, printed clearly, are sufficient.

Please submit your past performance questionnaire directly to the Authority **(not to the company)** no later than **August 24, 2018, prior to 3:00 p.m.** It may be necessary to call you to discuss questionnaire responses.

If you have any questions concerning this questionnaire please call Tracee Metterle, at (512) 369-6525. Responses may be submitted to this office as indicated on the cover of the questionnaire. Your time is greatly appreciated, and we thank you for your participation.

Sincerely,

Tracee Metterle  
Contracts Administrator

Enclosure:  
Past Performance Questionnaire

**THE QUESTIONNAIRE MAY BE SUBMITTED BY MAIL OR DELIVERY TO:**

Procurement Department  
ATTN: Tracee Metterlee  
Capital Metropolitan Transportation Authority  
2910 East 5<sup>th</sup> Street  
Austin, TX 78702

**OR**

FAX: (512) 389-7594  
(Attention: Tracee Metterle – RFP 304404)  
**OR**  
Email: [procure-help@capmetro.org](mailto:procure-help@capmetro.org)

**SECTION A. THIS SECTION ONLY TO BE FILLED IN BY THE OFFEROR:**

Offeror (Proposing Firm) Contract Number:	
Offeror (Proposing Firm):	
Type of Contract:	
Contract Amount:	
Status:	Active <input type="checkbox"/> Completed: <input type="checkbox"/>
Date of Award:	
Contract Completion Date (Including Extensions):	
Product Description and/or service provided:	
Type and Extent of Subcontracting:	

**SECTION B. TO BE FILLED IN BY RESPONDENT:**

**Please provide information for the primary individual completing this questionnaire.**

Name:	
Firm:	
Telephone Number:	
Mailing Address:	
E-Mail Address:	

**SECTION C. RATING GUIDELINES:**

**Use the following descriptions as guidance in providing element ratings. Ratings should only reflect the performance of the contractor in question. For each question, please place an "X" in the box corresponding to the rating.**

Exceptional	1
Very Good	2
Satisfactory	3
Marginal	4
Unsatisfactory	5
Unknown	6

**SECTION D. CONTRACT/PAST PERFORMANCE INFORMATION:**

Place an X in the appropriate box and provide narrative, if applicable.

**1= Exceptional, 2= Very Good, 3= Satisfactory, 4= Marginal, 5= Unsatisfactory, 6= Unknown.**

	Question:	1	2	3	4	5	6
1	Did the contractor initiate and support startup and management control?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	Timeliness in achieving schedule elements (delivery/performance), taking into account all excusable delays.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Did the contractor accurately and timely attend to and communicate the project status via required reports, inspections etc?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Did the contractor provide qualified management and key personnel throughout the contract performance period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Did the contractor provide adequate, competent and qualified technical personnel capable of meeting contract requirements throughout the performance period of the contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Was the contractor's top management involved and committed to project success?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Rate the contractor's ability to manage and coordinate subcontractors, and please note any subcontracting issues (positive or negative) that impacted the performance of your contract.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	How timely and sufficient were the contractor's resources (manning levels, skill mix, equipment, etc.) to meet contract requirements (technical, management, and contractual)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	How well did the contractor work independent of your guidance, oversight and assistance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	Rate the effectiveness of the contractor's program to ensure compliance with federal, state and local regulations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	How timely and effective were the contractor's responses to and resolution of technical problems?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	How innovative was the contractor in performing the technical aspects of this contract and resolving problems?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	How well did the contractor respond to and act on customer feedback?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	How well did the contractor perform the terms of the contract (schedule, scope and budget)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	How would you rate the contractor's overall performance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16	What were the contractor's top documented strengths, if any, in performing the contract requirements?						
17	What were the contractor's top documented weaknesses, if any, in performing the contract requirements?						
18	Were there any contract concessions/changes/terminations made due to the contractor's inability to meet contract requirements (Cost schedule/performance)?						
19	Have there been any indications that the contractor has financial concerns that would jeopardize contract performance?						
20	Please provide any additional information you feel is important not covered elsewhere:						

## EXHIBIT H

### PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM

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

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

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

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

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

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

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

**“Remediation Efforts”** means, with respect to any Security Incident, activities designed to remedy a Security Incident which may be required by a Data Law or by the Authority’s or the Contractor’s policies or procedures, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident. Remediation Efforts may include: (i) development and delivery of legal notices to affected individuals or other third parties; (ii) establishment and operation of toll-free telephone numbers for affected individuals to receive specific information and assistance; (iii)

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

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

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

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

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

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

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

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

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

6. Prohibited Internet Practices. The Contractor will not, and will not authorize or encourage any third party to, directly or indirectly: (i) use any automated, deceptive or fraudulent means to generate impressions, click-throughs, or any other actions in relation to advertisements or Internet promotions on

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

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

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

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

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

11. Security Incidents. The Contractor will promptly notify the Authority upon discovering or otherwise learning of a Security Incident. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. The Contractor will (i) at the Authority's direction undertake Remediation Efforts at the Contractor's sole expense and reimburse the Authority for its reasonable costs and expenses in connection with any Remediation Efforts it elects to undertake, (ii) ensure that such Remediation Efforts provide for, without limitation, prevention of

the recurrence of the same type of Security Incident, and (iii) reasonably cooperate with any Remediation Efforts undertaken by the Authority.

**12. LIABILITY FOR SECURITY INCIDENTS AND/OR DATA MISUSE. THE CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND CONTRACTORS (EACH AN "AUTHORITY INDEMNITEE") FROM AND AGAINST ANY LOSSES INCURRED BY SUCH AUTHORITY INDEMNITEE AS A RESULT OF ANY CLAIM, DEMAND, SUIT, ACTION, INVESTIGATION, ALLEGATION OR ANY OTHER PROCEEDING (COLLECTIVELY, "CLAIMS") ARISING OUT OF OR RELATING TO: (I) ANY SECURITY INCIDENT AND/OR (II) THE CONTRACTOR'S OR ITS EMPLOYEES', AGENTS' OR CONTRACTORS' BREACH OF ANY OF THE TERMS, CONDITIONS OR OBLIGATIONS RELATING TO DATA SECURITY, PRIVACY, OR AUTHORITY DATA SET FORTH IN THE AGREEMENT OR THIS ADDENDUM. HOWEVER, IF THE CONTRACTOR CAN DEMONSTRATE THROUGH CLEAR AND CONVINCING EVIDENCE THAT THE AUTHORITY WAS THE SOLE CAUSE OF A SECURITY INCIDENT AND THE CONTRACTOR WAS FULLY COMPLIANT WITH ITS OBLIGATIONS, THEN THIS SECTION WILL NOT APPLY TO SUCH SECURITY INCIDENT. FOR THE PURPOSES OF THIS SECTION, LOSSES WILL INCLUDE, WITHOUT LIMITATION, THE COST OF REMEDIATION EFFORTS. THE CONTRACTOR'S OBLIGATIONS IN THIS SECTION ARE IN ADDITION TO ANY INDEMNIFICATION OR SIMILAR OBLIGATIONS THAT THE CONTRACTOR MAY HAVE UNDER THE AGREEMENT. THE RIGHTS AND REMEDIES OF THE AUTHORITY UNDER THIS ADDENDUM WILL NOT BE SUBJECT TO ANY LIMITATION OR EXCLUSION OF ACTIONS OR REMEDIES OR ANY OTHER SIMILAR LIMITING PROVISIONS STATED IN THE AGREEMENT. WITHOUT LIMITING THE FOREGOING: (A) THERE WILL BE NO LIMITATIONS OR EXCLUSIONS ON THE CONTRACTOR'S LIABILITY ARISING UNDER THIS ADDENDUM, THE AGREEMENT OR OTHERWISE RELATING TO CLAIMS PERTAINING TO PRIVACY, SECURITY, OR CONFIDENTIALITY OR RELATING TO UNAUTHORIZED USE OF AUTHORITY DATA, AND (B) THE CONTRACTOR WILL BE LIABLE FOR ALL OBLIGATIONS UNDER THIS SECTION AND FOR REIMBURSEMENT OF LOSSES FOR REMEDIATION EFFORTS REGARDLESS OF WHETHER SUCH AMOUNTS ARE CHARACTERIZED BY ANY PERSON, COURT OR OTHER THIRD PARTY AS DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.**

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

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

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

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- 1.1 Definitions. Unless otherwise specified in this contract (or an Exhibit or Exhibit hereto), the following definitions shall apply, if applicable:
- 1.1.1 “Acceptance” shall have the meaning set forth in Section 1.4.5 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 “Application” means the technical system, platform, application and/or subscription services to be provided by the Contractor, as may be further described in the Technical Specifications.
  - 1.1.4 “Authority Data” means all data, content and information (i) submitted by or on behalf of the Authority or Customers to the Contractor or loaded into the System, (ii) obtained, developed, produced or processed by the Contractor or by the Application or System in connection with this contract, or (iii) to which the Contractor has access in connection with this contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
  - 1.1.5 “Authority Electronic Property” means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any interfaces to the Authority’s information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by Customers.
  - 1.1.6 “Confidential Information” shall have the meaning set forth in Section 2.2 of this Exhibit.
  - 1.1.7 “Contractor’s Certification” shall have the meaning set forth in Section 1.4.4 of this Exhibit.
  - 1.1.8 “Contractor Technology” means (i) the System, (ii) the Application, and (ii) any technology, information, content and data, together with Intellectual Property Rights related thereto, owned or used by the Contractor in the performance of the Services.
  - 1.1.9 “Customer” means any purchaser of products or services from the Authority.
  - 1.1.10 “Deliverables” means all information, data, materials, devices (including equipment and hardware), software (including the Application) and other items to be delivered by the Contractor to the Authority, as specified in the Project Plan.
  - 1.1.11 “Documentation” means the documentation provided to the Authority, including user manuals and operator instructions related to the Application furnished by the Contractor to the Authority in any format, including paper and electronic.
  - 1.1.12 “Intellectual Property Rights” means any and all intellectual property rights, including without limitation, invention, patents, patent and patent applications (including all reissues, divisions, renewals, continuations, continuations-in-part, extensions, provisionals, and reexaminations) and all rights therein provided by international treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application, trademarks, service marks, trade dress, logos, slogans, configurations, trade names, corporate names, and business names, whether or not registered, including all common law rights, and registrations and applications for registration thereof, and all rights



therein provided by international treaties or conventions, works of authorship and copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, all internet uniform resource locators, and domain names, including any domain name application or registration, all industrial designs and any registration or application thereof anywhere in the world, data and database rights, trade secrets, proprietary know-how and show-how, whether or not reduced, all rights to obtain and rights to apply for patents, and to register trademarks and copyrights, and any similar or equivalent rights to any of the foregoing anywhere in the world.

- 1.1.13 “Malware” means any malicious data, code script, active content program, or other malicious software that could damage, destroy, alter or disrupt any computer program, data, firmware or hardware.
- 1.1.14 “Process” or “Processing” means, with respect to any Authority Data, to migrate, collect, access, use, process, modify, copy, analyze, disclose, transmit, transfer, sell, rent, store, or retain or destroy such data in any form. For the avoidance of doubt, “Process” includes the compilation or correlation of any Authority Data with information from other sources and the application of algorithmic analysis to create new or derivative data sets from any Authority Data.
- 1.1.15 “Project” means the project related to the Application and the Authority’s information technology systems as described in more detail in this Exhibit.
- 1.1.16 “Project Plan” means the project plan for the implementation, customization, configuration and/or installation or hosting of the Application and the Services and Deliverables required for the Project, as approved by the Authority in writing.
- 1.1.17 “Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident which may be required by Applicable Law or by the Authority’s or the Contractor’s policies or procedures or under the Security Requirements, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident.
- 1.1.18 “Security Incident” means: (i) the loss or misuse of Authority Data; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data; (iii) unauthorized access to internal resources; (iv) programmatic manipulation of a system or network to attack a third party; (v) elevation of system privileges without authorization; (vi) unauthorized use of system resources; (vii) denial of service to a system or network; or (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).
- 1.1.19 “Service Levels” shall have the meaning set forth in Section 3.1 of this Exhibit.
- 1.1.20 “Security Requirements” means industry best practices and other reasonable physical, technical and administrative safeguards, procedures, protocols, requirements and obligations related to facility and network security in order to protect Authority Data and the Authority’s information technology systems from unauthorized processing, destruction, modification, distribution and use, as approved in writing by the Authority.
- 1.1.21 “Service Term” means (i) the term of the contract as set forth in Exhibit A to the contract, or (ii) with respect to any hosted service related to the Application, the specific term or period for subscription services set forth in Exhibit A of this contract.
- 1.1.22 “Services” means all services to be performed by the Contractor for or on behalf of the Authority or Customers, as described in the Project Plan and this Exhibit.
- 1.1.23 “System” means an application, network, database or system provided or used to perform the Services by the Contractor.

- 1.1.24 "Technical Specifications" means the technical specifications, functional specifications, descriptions, designs, standards, instructions, and business requirements of the Authority related to the Application and the Authority's information technology systems, as may be further described in this contract. Unless otherwise agreed upon in writing by the Authority, the Technical Specifications shall be outlined in detail in Exhibit H to this contract.
- 1.1.25 "Termination Assistance Services" means the Contractor's cooperation with the Authority in order to assist in the transfer of Authority Data to the Authority and to facilitate the transition to an alternative software or service for the Application at such time when the Authority may obtain authorization and/or funding for such replacement.
- 1.1.26 "Updates" means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of the Application 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 full access and use of the Application and the timely performance of the Services and the Deliverables. The Contractor may use any means necessary and appropriate to perform the Services and the Deliverables under this contract; provided, however, that in no event shall the Contractor take any action that may subject either it or the Authority to civil or criminal liability.
- 1.2.2 The Contractor will establish and manage all Security Requirements necessary to protect Authority Data integrity and permit appropriate access to the Application and the Authority Electronic Property. The Contractor will enable and stop access as users enter and leave the Application. The Contractor will cooperate with and assist the Authority and its other Project contractors to implement security protocols (e.g., firewalls, SSI, etc.) and take appropriate actions with respect to the Application and all Authority Data stored therein and the Authority Electronic Property so as to enable the Contractor to satisfy its obligations under this contract and to help prevent the loss, alteration or unauthorized access to the Application and all Authority Data stored therein, or the Authority Electronic Property, to the extent within the Contractor's control. The Contractor will, upon the Authority's request, for each year of the Term of this contract under the Project Plan, provide to the Authority copies of monthly firewall logs and third party audit reports, summaries of test results and other equivalent evaluations with regard to security and confidentiality in connection with the Services that the Contractor provides to the Authority. The Contractor will use commercially reasonable efforts in accordance with the Security Requirements to secure the Application and all Authority Data stored therein against access by parties external to the Project and by unauthorized users, and against damage, disruption and other activity aimed at data availability or the services or other trespass or illegal actions. The Contractor will employ computer anti- Malware protections and other reasonable commercial means to ensure a safe computing environment. The Contractor agrees that it will, and it will cause its personnel and contractors to timely comply with the Authority's privacy policies and safety and network security policies, as the same may be provided to the Contractor, at all times while on-site at the Authority's facilities or remotely accessing the Authority's systems or facilities (including Authority Electronic Property). The Contractor and/or its designated third-party auditor(s) will perform all audits necessary to ensure the Authority's Data integrity and adherence to the Security Requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority or its Project Contractors.
- 1.2.3 The Contractor shall adopt and implement all facility and network security, disaster recovery plans and back-up plans as to protect against data loss, theft and unauthorized access, disclosure and use of the Application, Authority Data, Authority Electronic Property and the Authority's Confidential Information and to ensure the integrity and continuity of the performance of Services and the Project under this contract. The Contractor will use best efforts in accordance with industry best practices and standards for this requirement

and consult and cooperate with the Authority and its other contractors who operate or access the Authority's data center and network systems (including Authority Electronic Property) in the performance of the Services.

- 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, as well as its agents, representatives, and employees, shall comply with all of the Authority's rules, regulations, and guidelines then in effect when on-site at the Authority and all Applicable Laws.
- 1.2.6 The Contractor will promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding remediation Efforts that may be necessary and reasonable.
- 1.2.7 Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact Customers or employees of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal authority to notify such Customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

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

- 1.3.3 If, using reasonable project monitoring techniques, the Authority determines, in its sole discretion, that it is unlikely or fails to meet a completion date or a cost estimate due under the Project Plan for any reason regardless of which party is at fault, in addition to any other rights and remedies that may be available to the Authority, at no additional cost to the Authority and at the Authority's option, the Contractor shall provide all necessary additional personnel at its own cost to accelerate performance as may be required or necessary to complete the activities required under the Project Plan within a re-adjusted time frame agreed to by both parties in a change order. The completion date shall be considered met if completed in accordance with the terms of this contract within ten (10) working days of the originally estimated completion date. The Contractor will provide the Authority with prior written notice for any delays impacting Application module/track delivery or other Services completion under the Project Plan in the form of a proposed change order.
- 1.3.4 The Contractor shall use its best efforts after obtaining explicit consent from the Authority to re-sequence the Services to overcome and/or mitigate, to the greatest practicable extent, the effect of any delays regardless of the cause of such delays. Without limiting the foregoing, the Contractor shall diligently prosecute its Services in order to meet the proposed start date for the Application despite a dispute with the Authority relating in any way to this contract, including without limitation any and all the Contractor's claims for modifications to the payments due to the Contractor. The Contractor and the Authority shall cooperate to resolve all disputes and to adjust the Project Plan accordingly by Contract modification in a timely manner (not to exceed two (2) weeks from the date of notice).
- 1.3.5 Should the Contractor not progress in its performance of Services at a rate commensurate with the Service Term of this contract, or fail to meet any scheduled date under the Project Plan, the Authority may, in its sole discretion, direct the Contractor to accelerate the Services by employing additional personnel and equipment or providing overtime to existing personnel as is necessary to complete the Application by the start date, or any portion of the Application by the milestone date specified in the Project Plan. Such the Authority-ordered acceleration shall be at the cost of the Contractor.

1.4 Acceptance.

- 1.4.1 Unless otherwise defined or specified in an Exhibit to this contract, the provisions set forth in this Section 1.4 shall determine the Authority's Acceptance of the Application.
- 1.4.2 Implementation of the Application shall be completed in a timely manner and appropriate tests conducted by the Contractor with the cooperation of the Authority to facilitate Acceptance of the Application as more fully set forth in the Project Plan; provided, however, that the Authority may upon written request require that the Contractor perform testing with cooperation of the Authority.
- 1.4.3 When each component of the Application has been developed and tested by the Contractor as being ready for operational testing, the Contractor shall notify the Authority in writing. The Authority shall provide reasonable assistance to commence operational testing.
- 1.4.4 Unless otherwise specified in the Project Plan, within thirty (30) days after operational testing, the Contractor shall certify in writing that the Application component conforms to the Technical Specifications and is capable of being put into full commercial productive use in accordance with the Technical Specifications and otherwise meets the functional and business requirements set forth in this contract ("the Contractor's Certification"). The Contractor Certification shall not be issued by the Contractor unless the Contractor has completed all tasks required for the installation, configuration, deployment (including data migration) and hosting or operational testing of the Application and such instance is ready for final testing and launch for production use by the Authority and Customers.
- 1.4.5 The Application shall be finally accepted by the Authority when (i) each component of the Application is fully operational and properly configured by the Contractor, as applicable, and/or (ii) when the instance of the Application is properly configured and made available

to the Authority for production use on the Contractor's hosted environment, each in conformity with the Security Requirements and Technical Specifications outlined in this contract ("Acceptance").

- 1.4.6 If there is any objection to Acceptance, the Authority will provide the Contractor with a written notice (the "Defect Notice") reasonably identifying any claimed discrepancies between the actual performance of the Application component and the requirements set forth in this contract within thirty (30) days after the issuance of the Contractor's Certification.
- 1.4.7 Upon receiving a Defect Notice from the Authority, the Contractor shall confer with the Authority and jointly review each asserted discrepancy to determine if the claimed discrepancy is valid. The Contractor shall either promptly correct the discrepancy and resubmit the Application component for acceptance by the Authority on the same basis as initially submitted or terminate this contract. If, in the reasonable professional judgment of the Contractor such discrepancy is not valid, the Contractor shall so notify the Authority in writing.
- 1.4.8 The written explanation of the Contractor set forth herein shall be deemed accepted by the Authority within thirty (30) days after the Authority's receipt of the written explanation and Acceptance shall be deemed to have occurred unless the Contractor receives from the Authority written notice rejecting such explanation and detailing exactly how the Application component does not conform with the Technical Specifications and/or Security Requirements. If the Application is not accepted by the Authority following two (2) attempts by the Contractor to provide an undisputed the Contractor's Certification, the Authority may terminate this Contract with respect to that particular component or the entire Application, at its sole discretion.
- 1.4.9 The foregoing Acceptance procedure shall apply with respect to the Authority's Acceptance of the overall turn-key system comprising all components of the Application (including migrated Authority Data, if applicable) in a condition ready for immediate use and operation by the Authority (i) in its facilities and/or the operating environment if a component of the Application is installed, or (ii) via the Contractor's hosted servers for the instance of the Application is hosted, as applicable, on or before the start date set forth in the Project Plan.
- 1.4.10 In the event that the Authority, upon final review, does not accept the Application or only makes a partial acceptance of the Application, the Authority may elect to: (i) accept delivery of the Application "AS IS" at a negotiated equitable reduction in the price and payment schedule for both the Application and any Services; or (ii) terminate the Project and receive a refund of all fees paid in advance to the Contractor, which in such event, the Contractor shall immediately repay all fee advances paid by the Authority under the Project Plan and the Authority may retain all holdbacks.
- 1.5 Training. The Contractor will perform all training required for access and use of the Application upon initial deployment and during the Service Term, as reasonably requested by the Authority. The Contractor will at a minimum provide the Authority with sufficient training and instruction on the use and operation of the Application. Such training will be performed at the Authority's facilities (unless otherwise agreed upon by the parties in the Project Plan).
- 1.6 Application Support and Performance.
  - 1.6.1 The Contractor shall (i) promptly notify the Authority of any errors in the Application of which it learns from any source; (ii) respond to user identified Application errors in no more than 4 hours after notification, and implement corrected Application copies or corrections or bypasses such that the Application performs in all material respects in accordance with the Documentation, within 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.

- 1.6.2 The Contractor will periodically release maintenance Updates with minimum impact and downtime to the Authority and after business hours. At no additional cost to the Authority, the Contractor will provide access to all maintenance Updates and all new features and functionalities of the Application that are provided by the Contractor to any of its other customers. In each case, the Contractor will provide the Authority with prior written notice (by as much time as practicable but in no event less than one (1) day(s) of the release by the Contractor of any Updates and will implement such Updates (including any configuration or integration thereto) for access and use by the Authority at no additional cost to the Authority. If the Authority requests the Contractor to test such Updates, the Contractor will promptly test such update to the Authority at no additional cost. If any Update is installed, such Update will thereupon be deemed to be part of the relevant Application upon delivery subject to Acceptance by the Authority. All such Updates, where reasonably necessary, will be accompanied by updated Documentation. The Contractor covenants that each upgrade and will be backwards compatible with all parts of the Application.
- 1.6.3 The Contractor will use commercially reasonable efforts to maintain the Application with a high level of quality and performance consistent with industry standards and the state of the art technology.
- 1.6.4 To the greatest extent possible, the Contractor will schedule maintenance during times least disruptive to the Authority's use of the Application. Scheduled maintenance is a period in which the Authority is notified in advance, during which the Contractor may suspend availability of all or part of the Application in order to carry out maintenance activities. Scheduled Maintenance will be scheduled after normal business hours ("Maintenance Window"). To the extent possible, the Contractor will perform maintenance without suspending the Application (i.e., hot) and will coordinate with the Authority by written notice to schedule maintenance requiring downtime at such hours and date least disruptive to its business.
- 1.6.5 The Authority will be notified by e-mail not less than three (3) calendar days in advance of any period of Scheduled Maintenance that will require suspension of all or the majority of the Application for a period of one (1) hour or more. The Authority will be notified by email not less than seven (7) calendar days in advance of any period of Scheduled Maintenance that will require suspension of all or the majority of the Application for a period of more than one (1) hour. The Contractor will schedule any period of Scheduled Maintenance that requires suspension of all or a major part of the Application for more than three (3) hours during a Maintenance Window on a Friday night, or Saturday or Sunday morning.
- 1.7 Additional Representations and Warranties. In addition to all other representations, warranties, and covenants included in this contract, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that:
  - 1.7.1 it is not contractually prohibited from engaging in the Services or providing the Deliverables, and that it is not a party to any contract or under any obligation which conflicts with the terms of this Contract or which prohibits Contractor from carrying out its responsibilities under this contract;
  - 1.7.2 it is fully able to furnish the Services as contemplated by this contract;
  - 1.7.3 there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the contract, and the Contractor agrees not to enter into any such contract during the pendency of this contract;
  - 1.7.4 it is experienced in the type of software engineering necessary for completion of the Project, and it understands the complexity involved in this type of project and the necessity of coordination of its Services with stakeholders within which the Project will be performed;

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- 1.7.5 there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the contract, and the Contractor agrees not to enter into any such contract during the pendency of this contract;
- 1.7.6 the Application will not contain any 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;
- 1.7.7 the Application will not contain any security mechanisms, including, but not limited to, copy protect mechanisms, encryptions, time-activated disabling devices or other codes, instructions or devices which may disable the modules or other software or erase or corrupt data;
- 1.7.8 the Application will comply with all Applicable Laws at all times from the date of Acceptance to the expiration of the applicable Warranty Period;
- 1.7.9 With respect to the Application, (i) all modules and other materials (other than third party software and hardware approved by the Authority) will be original; (ii) there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect to the Application, or any component thereof, alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country; and (iii) the Application, and any use thereof, shall not infringe upon any Intellectual Property Right of any third party in any country; and
- 1.7.10 The System will not contain or otherwise be developed using any Open Source Software (as defined below) in a manner that subjects the Authority to any license obligations of such Open Source Software. "Open Source Software" means any software licensed under terms requiring that other software combined or used or distributed with such software: (i) be disclosed or distributed in source code form, or (ii) be licensed on terms inconsistent with the terms of this Contract.
- 1.8 Additional Warranty Remedies. The Authority is entitled to all warranties implied by law or regulation. These warranties shall survive any Acceptance and payment by the Authority for the Services and are in addition to and shall not be construed as restricting or limiting the warranties of the Contractor, express or implied, that are provided by law or exist by operation of law. For any breach of the warranties contained in this Section, the Authority's remedy, in addition to all remedies available at law or in equity, shall be:
- 1.8.1.1 For Application. The correction of errors that cause breach of the warranty. If the Contractor is unable to provide such error corrections or otherwise make the Application operate as warranted within the periods specified in this contract, the Authority shall be entitled to terminate this contract with respect to the affected module/track and recover a prorated amount paid to the Contractor based on each module, which prorated amount will be calculated based on a useful life of five years from the date of final Acceptance. If, however, the loss of functionality cause by such error impacts the overall turn-key system performance of the Application, then the Authority shall be entitled to terminate this contract with respect to all modules/tracks and recover all amounts paid to the Contractor by the Authority. The Contractor shall not be responsible or liable for any errors that are determined to be attributable to the Authority's failure to comply with any user requirements under the applicable Technical Specifications, or any Force Majeure event.
- 1.8.1.2 For Deliverables. The correction of errors that cause breach of the warranty by re-performing the Services necessary to create the Deliverables and by providing Deliverables conforming with the Technical Requirements at no cost to the Authority.
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- 1.8.1.3 For Services. The re-performance of any Services not conforming to the warranty at no cost to the Authority.

2. Intellectual Property Rights.

- 2.1 The Contractor will not (i) use or register any trademark, service mark or domain name that is identical to or confusingly similar to any trademark, service mark, logo or other name owned or used by the Authority, including domain names and trade dress; or (ii) create, acquire, license or support any internet keyword or search term that contains any such marks or other Intellectual Property Rights owned or licensed by the Authority, except as expressly provided in the Project Plan and only in the performance of the Services for the benefit of the Authority. All use thereof inures solely to the benefit of the Authority and is subject to the Authority's quality control and standard guidelines.
- 2.2 As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to any Authority Data and Authority Electronic Property and all Deliverables (excluding any Contractor Technology embodied in the Deliverables), together with all improvements, derivative works or enhancements to any of the foregoing and all Intellectual Property Rights related thereto ("Authority IP"). Except as expressly authorized in this Exhibit in the performance of the Services solely for the benefit of the Authority or Customers, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or process any Authority Data or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is harmful to the Authority. To the extent possible, the Deliverables (excluding any Contractor Technology embodied therein) shall be a work made for hire specifically commissioned for the Authority. In order to protect and preserve the Authority's rights, the Contractor hereby irrevocably and unconditionally assigns and transfers to the Authority all right, title and interest in and to the Authority IP that the Contractor may acquire without further consideration.
- 2.3 As between the parties, and except for the licenses granted or as otherwise provided in this contract, the Contractor retains all right, title and interest in and to the System and all Contractor Technology and all Intellectual Property Rights related thereto. The Contractor grants to the Authority a non-exclusive, perpetual, royalty free, fully paid up, irrevocable, and transferable license, with the right to sublicense, in and to any Contractor Technology embodied in the Deliverables for the Authority and its Customers and service providers to exercise and exploit its and their ownership rights in the Deliverables in any manner. The foregoing license does not authorize the Authority to separate any Contractor Technology from the Deliverable in which it is incorporated for creating a standalone product for marketing to others.
- 2.4 The Contractor further agrees to perform all obligations set forth in the Authority's Proprietary Rights and Data Security Exhibit attached to this Exhibit.

3. Proprietary Information and Non-Disclosure.

- 3.1 The Contractor acknowledges and agrees that this contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the term of this contract, the Contractor may acquire certain "Confidential Information" (as defined herein) from or regarding the Authority employees, agents and representatives or documents, or otherwise as a result of performing the Services of the Contractor hereunder.
- 3.2 "Confidential Information" as used herein, shall mean and include, without limitation:
- 3.2.1 Any information concerning the Authority or the Project, which is provided by the Authority or any Project team members to the Contractor, such as accounting and financial data, product, marketing, development, pricing and related business plans and budgets, and all of the information and plans related to the Project, which are not published;
- 3.2.2 All Authority Data; and



- 3.2.3 The Deliverables (including without limitation all work in progress) other than any Contractor Technology embodied in the Deliverables.
- 3.3 The Contractor acknowledges and agrees that all such Confidential Information is and shall be deemed the sole, exclusive, confidential and proprietary property and trade secrets of the Authority at all times during the Service Term and following any expiration of termination hereof. The Contractor agrees to hold in confidence without disclosing or otherwise using any Confidential Information, except as such disclosure or use may be required in connection with and limited to the Services of the Contractor hereunder.
- 3.4 The Contractor acknowledges and agrees that the Authority would not have entered into this contract unless the Authority were assured that all such Confidential Information would be held in confidence by the Contractor in trust for the sole benefit of the Authority.
- 3.5 During the Service Term, the Contractor shall not improperly use or disclose any proprietary information or trade secrets of any third party and will not bring on to the premises of the Authority any unpublished documents or any property belonging to any third party unless consented to in writing by the third party.
- 3.6 The Contractor's obligation of confidentiality hereunder shall not apply to information that: (i) is already in the Contractor's possession without an obligation of confidentiality; (ii) is rightfully disclosed to the Contractor by a third party with no obligation of confidentiality; or (iii) is required to be disclosed by court or regulatory order, provided the Contractor gives the Authority prompt notice of any such order.
- 3.7 Upon any termination or expiration of this contract, the Contractor agrees to deliver to the Authority any and all Confidential Information except that the Contractor may keep one file copy of any Confidential Information pertinent to its rights and obligations surviving the expiration or termination of this contract, which copy shall be held in confidence in accordance with this Section.
4. Hosted Services. With respect to the Application and/or any Authority Data hosted or Processed by the Contractor, the following terms will apply:
- 4.1 Unless otherwise designated in the contract or agreed upon in writing by the Authority, the Contractor will use commercially reasonable efforts to make the Application available 24 hours per day 7 days a week. The Contractor represents that access to the Application for The Authority and its Customers will be maintained at an availability standard of 99.99% as measured over the course of a calendar month, excluding Standard Exceptions (the "Service Levels"). "Standard Exceptions" to the 99.99% service-availability standard shall mean scheduled maintenance, maintenance downtime to resolve extraordinary technical problems with the Application or the host operating environment, force majeure (including state or federally declared natural disasters in the Contractor's physical locations), or technical difficulties attributable to any non-Contractor computer hardware, or technical difficulties attributable to the Authority's interface with the Application unless such technical difficulties are the direct fault of the Contractor. The Contractor agrees to measure and provide a detailed report to the Authority, on a monthly basis, showing the Contractor's provision of the Application as compared to the Service Levels.
- 4.2 Unless otherwise approved in writing by the Authority, the Contractor must host the Application in the United States of America ("U.S.A.") at the location(s) specified by the Contractor, must provide services under this contract with resources (e.g., hardware and software) located in the U.S.A, and must not transfer or process any Authority Data outside of the U.S.A.
- 4.3 In the event of the expiration or termination of the Service Term, upon the Authority's written request, the Contractor will provide Termination Assistance Services for a period of time commencing on the effective date of termination or expiration of this Contract and ending on a date designated in advance by the Authority.
- 4.4 The Contractor will promptly notify the Authority upon discovering or otherwise learning of a Security Incident. Following any Security Incident, the Contractor will consult in good faith with

the Authority regarding Remediation Efforts that may be necessary and reasonable. The Contractor will (i) at the Authority's direction undertake Remediation Efforts at the Contractor's sole expense and reimburse the Authority for its reasonable costs and expenses in connection with any Remediation Efforts that it elects to undertake, (ii) ensure that such Remediation Efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident, and (iii) reasonably cooperate with any Remediation Efforts undertaken by the Authority.

- 4.5 In addition to any other indemnification obligations set forth in this Exhibit and the contract, the Contractor will indemnify, defend and hold harmless all the Authority Indemnitees from and against any and all losses, damages, liabilities, judgments, awards, penalties, interest, fines, costs and fees or expenses of whatever kind, including reasonable attorneys' fees ("Losses") incurred by such the Authority Indemnitee as a result of any claim, demand, suit, action, investigation, allegation or any other proceeding (collectively, "Claims") arising out of or relating to: (i) any Security Incident and/or (ii) the Contractor's or its employees', agents' or contractors' breach of any of the terms, conditions or obligations relating to data security, privacy, or any Authority Data set forth in the contract or this Exhibit. However, if the Contractor can demonstrate through clear and convincing evidence that the Authority was the sole cause of a Security Incident and the Contractor was fully compliant with the Contractor's obligations, then this Section will not apply to such Security Incident. For the purposes of this Section, Losses will include, without limitation, the cost of Remediation Efforts. The Contractor's obligations in this Section are in addition to any indemnification or similar obligations that the Contractor may have under the contract. The rights and remedies of the Authority under this Exhibit will not be subject to any limitation or exclusion of actions or remedies or any other similar limiting provisions stated in the contract. Without limiting the foregoing: (a) there will be no limitations or exclusions on the Contractor's liability arising under this Exhibit, the contract or otherwise relating to Claims pertaining to privacy, security, or confidentiality or relating to unauthorized use of Authority Data, and (b) the Contractor will be liable for all obligations under this Section and for reimbursement of Losses for Remediation Efforts regardless of whether such amounts are characterized by any person, court or other third party as direct, indirect, consequential, special, or punitive damages.
- 4.6 Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact Customers or employees of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal obligation to notify such Customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to such Customers and employees to those required by the legal obligation or as pre-approved by the Authority. The Contractor will reasonably cooperate in connection with notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.
5. Rights to Access and Use Application. The Contractor hereby grants to the Authority, Customers (but only in their capacity as Customers), and third-party service providers providing services to the Authority (but only in their capacity as the Authority's service providers) a non-exclusive, worldwide, royalty-free license to access and use the Application during the Service Term. Such license shall be enterprise-wide for an unlimited number of users or transactions, unless limitations on use are expressly agreed upon by the Authority in this contract. The Authority may allow its contractors and service providers to access and use the Application in the course of performing services for the Authority, including application development services, data processing and facilities management services.
6. Use of Authority's Name. The Contractor agrees not to make any written use of or reference to the Authority's name for any marketing, public relation, advertising, display or other business purpose or make any use of Authority Data for any activity unrelated to the express business purposes and interests of the Authority under this contract, without the prior written consent of the Authority, which consent will not be unreasonably withheld.

7. Specific Performance. The Contractor acknowledges and agrees that the remedy at law for the breach of provisions of this contract (particularly with respect to ownership of intellectual property and Confidential Information) may be inadequate and that the Authority may be entitled to injunctive relief without bond, in addition to any other rights or remedies which the Authority may have for such breach.
8. Indemnification. In addition to general indemnification set forth elsewhere in the contract, the following indemnification obligations shall apply:
- 8.1 **THE CONTRACTOR SHALL, TO THE PROPORTIONATE EXTENT THAT THEY ARE RESPONSIBLE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE AUTHORITY AND ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, CUSTOMERS AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS AND LOSSES OF ANY NATURE OR KIND TO THE EXTENT ARISING OUT OF, CAUSED BY, OR RESULTING FROM: (I) ANY FAILURE OF THE APPLICATION OR THE SERVICES TO CONFORM WITH APPLICABLE LAWS OR THE TECHNICAL SPECIFICATIONS OR SECURITY REQUIREMENTS SET FORTH IN THIS CONTRACT; (II) ANY SECURITY INCIDENT; AND (III) ANY ACTUAL OR ALLEGED VIOLATION, INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY RELATED TO THE SERVICES AND THE APPLICATION, REGARDLESS OF WHETHER OR NOT ANY SUCH CLAIM OR LOSS IS CAUSED IN PART BY ANY INDEMNITEE. IN PARTICULAR, THE CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR'S OBLIGATION TO INDEMNIFY THE AUTHORITY EXTENDS TO ANY LIABILITY ARISING OUT OF ANY ACTUAL NEGLIGENCE BY THE CONTRACTOR IN THE DELIVERY OF ANY PRODUCTS OR SERVICES UNDER THIS CONTRACT. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR SHALL NOT BE LIABLE TO AN INDEMNITEE FOR ANY LOSSES INCURRED BY SUCH INDEMNITEE TO THE EXTENT SUCH CLAIM IS ATTRIBUTABLE SOLELY TO THAT INDEMNITEE'S SOLE NEGLIGENCE.**
- 8.2 Either party shall promptly advise the other party in writing of any action, administrative or legal proceeding, or investigation to which this indemnification may apply. The Contractor shall, at its expense, assume on behalf of the indemnitees and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to the Authority; provided, however, that the Authority shall have the right, at its option, to be represented therein by advisory counsel of its own selection and at its own expense. This indemnification shall not be limited to damages, compensation, or benefits payable under insurance policies, workers' compensation acts, disability benefit acts, or other employees/benefit acts.
- 8.3 If the Application or any use thereof by the Authority or Customers is held to infringe or it is believed by the Authority to infringe the rights of third parties, the Contractor's will, at its expense and upon the Authority's request, to: (i) modify the Application (and each affected module) to be non-infringing so long as the utility or performance of the Application is not materially impaired and the Application continues to conform to Applicable Laws, the Technical Specifications and the Authority's original requirements in all respects, subject to the Authority's approval; or (ii) obtain for the Authority a license to continue using the infringing Application (or affected component thereof).
- 8.4 The indemnity obligations contained in this Section shall survive the termination, suspension, abandonment and/or completion of this contract.
9. Approval. Any approval given by the Authority shall not relieve the Contractor of its obligations and other duties under this contract or be construed as an assumption or waiver by the Authority.