

SOFTWARE LICENSE AGREEMENT**Between****CITY OF COLUMBIA, MISSOURI****And****REMIX SOFTWARE, INC.**

This Software License Agreement (hereinafter "Agreement") is by and between the City of Columbia, Missouri (hereinafter "Customer"), a municipal corporation whose address is 701 E. Broadway, Columbia, MO 65201 and Remix Software, Inc. (hereinafter "Company"), a corporation with the authority to transact business within the State of Missouri and whose address is 1128 Howard Street, San Francisco, CA 94103, and is entered into on the date of the last signatory below (hereinafter "Effective Date"). Customer and Company are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Customer operates a fixed route transportation bus service and strives for continuous improvement in its operation to ensure the best and most efficient service;

WHEREAS, Company provides strategic planning software and support for fixed route operators; and

WHEREAS, Customer wishes to purchase, and Company wishes to provide, subscription model software and support to assist Customer with its transit operations;

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

1. SERVICES AND SUPPORT

1.1 **License.** Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services in accordance with the Service Level Terms attached hereto as **Exhibit B** and made a part of this Agreement. For purposes of this Agreement, "Services" shall include the following:

Remix License

- Remix licenses for an unlimited number of users within Customer
- Software as a Services (SaaS): fully hosted, cloud-based web platform
- Dedicated Success staff from Company for Customer
- Enterprise Support: response to requests in 1 business day

1.2 **Technical Support.** Subject to the terms of this Agreement, Company will provide Customer with reasonable technical support services in accordance with the Company's standard practice.

2. RESTRICTIONS AND RESPONSIBILITIES

Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Confidentiality. Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business that are closed records as defined in the Missouri Sunshine Law, Chapter 610 of the Revised Statutes of Missouri (hereinafter referred to as “Proprietary Information” of the Disclosing Party).

This Agreement shall be interpreted in accordance with the provisions of the Missouri Sunshine Law, Chapter 610 of the Revised Statutes of Missouri. To the extent permitted by law, the Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public through no fault of the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer Data. For purposes of this Agreement, Customer Data includes Proprietary Information provided by Customer to Company to enable the provision of the Services. Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Company Rights. Notwithstanding anything to the contrary and only to the extent permitted by law, Company shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development,

diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4. PRICING AND PAYMENT OF FEES

4.1 **Pricing.** The prices for all Services provided for in this Agreement shall be at the following annual amounts for the corresponding dates:

<u>Dates</u>	<u>Annual Amount</u>
July 2, 2019 to September 30, 2020	\$18,750
October 1, 2020 to September 30, 2021	\$15,000
October 1, 2020 to September 30, 2022	\$15,000

For the period after September 30, 2022, Company reserves the right to update the pricing amount prior to the renewal of each term. Company shall submit a new proposed annual price for the next term at least sixty (60) days before the new term is set to begin. If Company does not submit a new proposed price, then the pricing of the previous term will control. It is expressly understood by both Parties that in no event shall the cumulative amount of payment from Customer to Company for annual Services exceed the pricing set forth as provided in this provision.

4.2 **Billing.** Company shall invoice the Customer on or around October 1 of each year at prices consistent with the terms of this Agreement.

4.3 **Payments.** Customer agrees to pay all uncontested amounts of an invoice within thirty (30) days of its receipt. Customer expressly reserves the right to disapprove in whole or in part a request for payment where the Services rendered are not performed in a timely or satisfactory manner. If an amount of invoice is contested, then Customer shall notify Company in writing within twenty (20) days of receipt of the invoice. Within this written notice, Customer shall provide the reasoning for Customer’s disapproval. Company shall either (a) cure the error in the invoice and resubmit it, or (b) respond in writing justifying its position. If a cure cannot be reached, then the Parties may mutually reach an agreement as to an acceptable alternative.

4.4 **Nature of City’s Obligations.** It is expressly understood by both Parties that the Customer’s funding for this Agreement is entirely dependent on Customer receiving a federal grant related to the Columbia Area Transportation Study Organization (CATSO) Consolidated Planning Grant (CPG). This CATSO CPG is awarded on an annual basis. The obligations of Customer under this Agreement which require the expenditure of funds shall be conditional obligations, subject to the availability of CATSO CPG funds appropriated for those purposes. If the Customer is not awarded this grant, then it shall immediately notify Company who may immediately terminate the Agreement for convenience. Both Parties agree that Customer’s failure to obtain the federal grant funding is not a material breach of this Agreement.

5. TERM AND TERMINATION

5.1 **Term.** The initial term of this Agreement shall be from July 2, 2019 until September 30, 2022. Thereafter, the term of this Agreement shall automatically renew for successive one (1) year terms unless one Party provides written notice to the other Party at least sixty (60) days in advance of the end of the then existing term that it does not wish to renew the term of this Agreement. This Agreement shall continue until it is terminated as provided by the terms of this Agreement, but in no event shall this Agreement be binding on either Party beyond fifteen (15) years from the Effective Date.

5.2 **Termination.** Both Parties agree to the termination provisions provided for in the FTA Subrecipient Terms and Conditions, attached hereto as **Exhibit A** and made a part of this Agreement.

6. WARRANTY

6.1 **Company's Warranties.** Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, Company does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services.

6.2 **Further Warranties.** Company warrants it is authorized to grant licenses or sublicenses for the software described in Services in this Agreement. Company warrants that it uses commercially reasonable efforts to ensure that its products do not contain Harmful Code. For purposes of this Agreement, "Harmful Code" is any code containing any program, routine, or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any time bomb, virus, drop-dead device, malicious logic, worm, Trojan horse or trap or back door. Company warrants that any data from Customer, its employees or customers or derived therefrom shall be stored in the United States of America.

7. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR DAMAGES DUE TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE LIABILITY OF EITHER PARTY FOR DAMAGES OF ANY TYPE RELATED TO OR ARISING OUT OF THE SERVICES SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR ANOTHER THEORY OF

LIABILITY. THIS LIMIT ON LIABILITY DOES NOT APPLY, AND IS INDEPENDENT TO, COMPANY'S HOLD HARMLESS OBLIGATIONS UNDER THIS AGREEMENT.

8. MISCELLANEOUS

8.1 **Hold Harmless Agreement.** To the fullest extent not prohibited by law, Company shall indemnify and hold harmless Customer, its directors, officers, agents, and employees from and against all third party claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any negligent act or omission to act of Company, of any subcontractor (meaning anyone including but not limited to consultants having a contract with Company or a subcontractor for part of the services), of anyone directly or indirectly employed by Company or by any subcontractor, or anyone for whose acts Company or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Company to indemnify, hold harmless, or defend Customer from its own negligence.

8.2 **No Waiver of Sovereign Immunity.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

8.3 **Unauthorized Aliens Prohibited.** Company shall comply with Missouri Revised Statute Section 285.530 in that Company shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, Company shall by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Company shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Company shall require all subcontractors to observe the requirements of this section and shall obtain a Work Authorization Affidavit from each subcontractor performing any of the contracted services.

8.4 **Governing Law and Venue.** This Contract shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Contract, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

8.5 **General Laws.** Company shall comply with all applicable federal, state and local laws, rules, regulations and ordinances.

8.6 **Notices.** Any notice, demand, request or communication required or authorized by this Agreement shall be delivered either by hand, overnight courier or mailed by certified mail, return receipt request, with postage prepaid to:

IF TO CUSTOMER

IF TO COMPANY

City of Columbia, MO
Finance Department
ATTN: Purchasing Agent
P.O. Box 6015
Columbia, MO 65205-6015

Remix Software, Inc.
ATTN: Contract Management
1128 Howard Street
San Francisco, CA 94103

WITH A COPY TO:

City of Columbia, MO
Public Works Department
ATTN: Transit & Parking Manager
P.O. Box 6015
Columbia, MO 65205-6015

Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand and three (3) days after deposit by sending party if delivered by courier or certified mail.

8.7 **Amendment.** No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

8.8 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

8.9 **Assignment.** Company may transfer and assign any of its rights and obligations under this Agreement without Customer's consent, provided, however, that Customer's prior consent shall be required in order for Company to assign or transfer this Agreement to a third party that is barred by the Federal Transit Administration.

8.10 **Parties Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever.

8.11 **Indemnity Against Infringement.** Company, at its own expense, shall defend and indemnify Customer from all claims that the software furnished under this Agreement infringe a U.S. Copyright, provided that Customer gives Company prompt written notice of such claims and permits Company the sole right to control the defense of all such claims and provides Company all reasonable cooperation.

8.12 **Federal Transit Grant Program Requirements.** Both Parties understand that Customer and any subrecipients of federal transit grant funds, including Company and any subcontractors of Company, are subject to the Federal Transit Administration (FTA) regulations governing

these funds. Notwithstanding anything to the contrary contained in this Agreement, both Parties agree to comply with the terms and conditions provided for in the FTA Subrecipient Terms and Conditions, attached hereto as **Exhibit A** and mad a part of this Agreement.

8.13 **Contract Documents.** The Contract Documents include the following attachments and exhibits which are incorporated herein by reference:

- Exhibit:**
- A FTA Subrecipient Terms and Conditions
 - B Service Level Terms

In the event of a conflict between the terms of any of the Contract Documents and the terms of this Agreement, then the terms of this Agreement control. In the event of a conflict between the terms of any Contract Documents, then the terms of the documents control in the order listed above.

8.14 **Entire Agreement.** This Agreement represents the entire and integrated agreement between the Parties relative to the contracted services herein. All previous or contemporaneous contracts, representations, promises and conditions relating to the contracted services herein are superseded.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

CITY OF COLUMBIA, MISSOURI

By: _____
John Glascock, City Manager



Date: _____

ATTEST

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor / ak

CERTIFICATION: I hereby certify that this contract is within the purpose of the appropriation to which it is to be charged, Account No. 55306110-501820, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

Janet Frazier, Director of Finance

REMIX SOFTWARE, INC.

By: _____

Name: _____

Title: _____

Date: _____

ATTEST

BY: _____

EXHIBIT A

CITY OF COLUMBIA, MO
FTA SUBRECIPIENT TERMS AND CONDITIONS
In accordance with FTA C 4220.1F

These terms and conditions are an exhibit of an agreement between the City of Columbia, MO (hereinafter "Agency") and Remix Software, Inc. (hereinafter "Contractor"). The terms and conditions are for the following Transit Project:

SOFTWARE LICENSE AND SUPPORT AGREEMENT

The Parties Agree as follows:

1. **No Federal Government Obligations to Third Parties** (*applicable to all contracts & subcontracts*). Both Parties acknowledge and agree that, notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

2. **False or Fraudulent Statements or Claims** (*applicable to all contracts & subcontracts*). The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801, *et seq.*, and U.S. Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 C.F.R., Part 31, apply to its actions pertaining to this contract. Accordingly, by signing the contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula project financed with federal assistance authorized by 49 U.S.C. § 5307, the Federal Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable federal law and to the extent the Federal Government deems appropriate. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

3. **Access to Third Party Contract Records** (*applicable to all contracts & subcontracts*). Agency agrees to require, and assures that its Contractor require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the

Comptroller General of the United State or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). Contractor further agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with federal laws and regulations or to assure proper project management as determined by FTA.

4. Changes to Federal Requirements (*applicable to all contracts & subcontracts*). Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Agency and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract in compliance with 49 CFR Part 18.

5. Termination (*applicable to projects over \$10,000*).

a. Termination for Convenience (General Provision). Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner the Agency directs.

b. Termination for Default [Breach or Cause] (General Provision). If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision). Agency Shall, in the case of a termination for breach or default, allow the Contractor thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within thirty (30) days after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency

from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach. In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

6. Civil Rights (*applicable to all contracts & subcontracts*).

a. Civil Rights Requirement. Contractor agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

b. Nondiscrimination in Federal Public Transportation Programs. Contractor agrees to comply, and assures compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

c. Nondiscrimination – Title VI of the Civil Rights Act. Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 200d, et. seq., and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 CFR Part 21. Except to the extent FTA determines otherwise in writing, the Contractor agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable federal directives that may be issued.

d. Equal Employment Opportunity. Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et. seq., and implementing federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, Contractor also agrees to follow all applicable Federal EEO directives that may be issued.

(1) *General*. Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions, or transfers, recruitment or recruitment advertising, layoffs or

terminations, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(2) *Equal Employment Opportunity Requirements for Construction Activities.* For activities determined by the U.S. Department of Labor (DOL) to qualify as “construction,” the Contractor agrees to comply and assure the compliance of each subcontractor, lessee, third party contractor or other participant, at any tier of the Project, with all requirements of DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et. seq.; with implementing Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity Relating to Equal Employment Opportunity,” 42 USC § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable federal directives, except as the Federal Government determines otherwise in writing.

e. Nondiscrimination on the Basis of Sex. Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC §§ 1681 et. seq., and with the implementing US DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25, that prohibit discrimination on the basis of sex.

f. Nondiscrimination on the Basis of Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623 and federal transit law at 49 USC § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

g. Nondiscrimination on the Basis of Disability. Contractor agrees to comply with federal prohibitions against discrimination based on disability, including Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §§ 12101 et. seq., which requires that accessible facilities and services be made available to individuals with disabilities, and the Architectural Barriers Act of 1968, as amended, 42 USC §§ 4151 et. seq., and Federal transit law, specifically 49 USC § 5332, and other applicable federal laws, regulations and requirements pertaining to access for seniors or individuals with disabilities.

h. Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections. To the extent applicable, Contractor agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC §§ 1101 et. seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC §§ 4541 et. seq., and the Public Health Service Act of 1912, as amended, 42 USC §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for People with Limited English Proficiency. Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 USC § 2000d-1 note, and follow applicable provisions of the U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’

Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Other Nondiscrimination Laws. Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

k. Incorporation of Provisions. Contractor shall include the provisions of sections A through J of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Agency or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, in the event a Contractor becomes involved, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request Agency or FTA to enter into such litigations to protect the interests of either agency.

l. Sanctions for noncompliance. In the event of Contractor’s noncompliance with the nondiscrimination provisions of this contract, Agency shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to: (i) withholding of payments to Contractor under the contract until the Contractor complies; and/or, (ii) cancellation, termination, or suspension of the contract, in whole or in part.

7. Disadvantaged Business Enterprise (DBE) Requirements *(applicable to all contracts & subcontracts)*. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows: (1) The Contractor agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26. (2) The Contractor agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26.

The Contractor agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient’s DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the FTA Master Agreement. Upon notification by U.S. DOT to the Contractor of the Contractor’s failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal

authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

8. Incorporation of FTA Terms. The provisions herein include certain standard terms and conditions required by the U.S. DOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by U.S. DOT, as set forth in the Federal Transit Administration (FTA) Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement.

9. Debarment and Suspension (*applicable to projects over \$25,000*). This contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor is required to verify that Contractor, its principals, as defined by 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined by 49 CFR §§ 29.940 and 29.945. Contract awards must not be made to parties listed on the governmentwide exclusions in the System for Award Management. Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of the U.S. Office of Management and Budget (US OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. Contractor agrees to, and assures that its subcontractors, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project.

10. Resolution of Disputes, Breaches, or Other Litigation (*applicable to projects over \$100,000*). In compliance with 49 CFR Part 18 and FTA Circular 4220.1F:

a. Disputes. Disputes arising in the performance of this contract which are not resolved by agreement of the Parties shall be decided in writing by the authorized representative of Agency. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the Agency. In connection with such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Agency shall be binding upon the Contractor and the Contractor shall abide by the decision.

b. Performance During Dispute. Unless otherwise directed by Agency, Contractor shall continue performance under this contract while matters in dispute are being resolved.

c. Claims for Damages. Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents, or others for whose act it is legally liable, then a claim for damages therefore shall be made in writing to such other party within a reasonable time and after the first observance of such injury of damage.

d. **Remedies.** Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor

e. **Rights and Remedies.** The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

11. **Lobbying** (*applicable to projects exceeding \$100,000*). Agency and Contractor shall not use federal assistance funds to support lobbying. In accordance with 31 U.S.C. §1352 and U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to a subrecipient until FTA has: (i) received that subrecipient's certification that the subrecipient has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the project is originally derived, consistent with 31 U.S.C. §1352, and (ii) if applicable, the subrecipient's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the project. The Contractor agrees to provide Agency a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier.

12. **Clean Air** (*applicable to all projects exceeding \$100,000*). Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 et. seq, 40 CFR § 15.61, 49 CFR Part 18. Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13. **Clean Water** (*applicable to all projects exceeding \$100,000*). Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq. The Contractor agrees to report each violation to Agency and understands and agrees that Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

14. **Fly America.** Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available. In compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40118 and

U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR §§ 301-10.131 through 301-10.143.

15. Energy Conservation (*applicable to all projects*). Contractor agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 USC §§ 6321 et. seq., except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 622, Subpart C.

16. ADA Access (*applicable to all projects*). Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. Contractor also agrees to comply with all applicable provisions of section 04 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, Contractor agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are the following:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay

Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,”
47 C.F.R. Part 64, Subpart F;

(i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility
Standards,” 36 C.F.R. Part 1194;

(j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R.
Part 609; and

(k) Federal civil rights and nondiscrimination directives implementing the foregoing Federal
laws and regulations, except to the extent the Federal Government determines otherwise in
writing.

[END OF FTA SUBRECIPIENT TERMS AND CONDITIONS]

EXHIBIT B

SERVICE LEVEL TERMS

The Services shall be available 99.9%, measured monthly, excluding holidays and weekends and scheduled maintenance and force majeure events. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than one hour, Company will credit Customer 5% of Service fees for each period of 30 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Company in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.