



5. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
6. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.
7. **Conflict.** All terms and conditions of including any addenda or amendment to the Agreement, not modified herein shall remain in full force and effect and for the term of this Agreement. If there is a conflict between this Addendum and the Agreement, the provisions of this Addendum shall prevail.

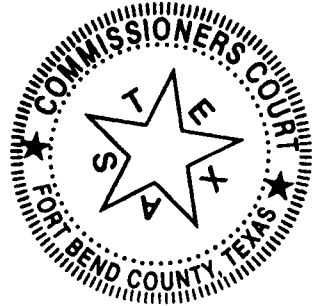
Except as provided herein, all terms and conditions of the Agreement shall remain unchanged.

FORT BEND COUNTY



Robert E. Hebert, County Judge

3-24-15  
Date



ATTEST:

  
\_\_\_\_\_  
Laura Richard, County Clerk

TRAPEZE SOFTWARE GROUP, INC.



Authorized Agent- Signature


Jason Vandenberg  
Authorized Agent- Printed Name

Director of Finance  
Title

March 10<sup>th</sup>, 2015  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$2,666<sup>00</sup> to accomplish and pay the obligation of Fort Bend County under this contract.

  
Robert Edward Sturdivant, County Auditor

# EXHIBIT A



May 14, 2013

5-14-13  
AGENDA ITEM 21C

Fort Bend County  
Attn: Tennille Jones  
12550 Emily Ct  
Suite 400  
Sugar Land, TX 77478

**Re: Signed Agreement**

Dear Ms. Jones,

Please find enclosed three originals signed versions of the Agreement. Please return one fully executed version to my attention.

Should you require anything further, please do not hesitate to contact me directly.

Regards,

Steve Camicata  
General Counsel  
Trapeze Software Group, Inc.  
905-629-5473 (direct line)  
905-238-8408 (facsimile)  
Steve.Camicata@trapezgroup.com

Approved As To Legal Form:

Asst. County Atty.      5-22-13  
Date

Enclosures

**PROCUREMENT OF HARDWARE, SOFTWARE LICENSE,  
SERVICES, AND MAINTENANCE AGREEMENT**

Between

**TRAPEZE SOFTWARE GROUP, INC.** ("Trapeze" or "Contractor"), with its principal place of business at 8360 East Via de Ventura, Suite L-200, Scottsdale, Arizona 85258, U.S.A.

and

**FORT BEND COUNTY**, a body corporate and politic under the laws of the State of Texas ("Licensee"), with its principal place of business at 301 Jackson Street, Richmond, Texas 77469.

Notice Information:

If intended for Trapeze, to:

5800 Explorer Drive, 5<sup>th</sup> Floor

Mississauga, Ontario, Canada L4W 5L4

Contact: Legal Department

Telephone: 1-905-629-8727

If intended for Licensee, to:

12550 Emily Court, Suite 400

Sugar Land, Texas 77478

Contact: Fort Bend County

Telephone: 281-633-7433

Number of Pages in this Agreement including attached Exhibits:     

This terms and conditions of this Agreement shall govern all dealings between Trapeze and the Licensee for the purchase of goods and services from Trapeze. This agreement, including its Exhibits (collectively, the "Agreement") shall apply in place of and prevail over any preceding or subsequent terms and conditions contained or referred to in any of the Licensee's purchase orders, correspondence or elsewhere or implied by trade, custom, practice or course of dealing and any purported provisions to the contrary are hereby extinguished or excluded. Without limiting the generality of the foregoing, Trapeze will not be bound by any standard or printed terms produced by Licensee. Licensee expressly acknowledges that no provisions, representations, undertakings, agreements, regarding the goods or services to be provided hereunder, have been made, other than those contained in this Agreement. The parties agree that no obligations or duties not set out expressly herein shall be imposed upon the parties or implied by law.

Signed for and on behalf of Trapeze:

By: *[Signature]*

Print Name: Daniel Lee

Title: VP Finance

Date: 5/14/13

Signed for and on behalf of Licensee:

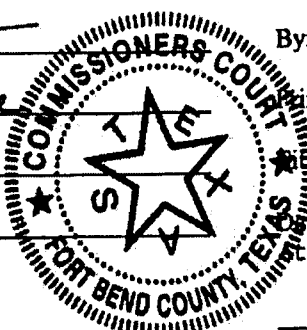
By: *[Signature]*

Print Name: Robert E. Hebert

Title: County Judge

Date: 5-14-2013

Attest: *[Signature]*



Dianne Wilson, County Clerk

FORT BEND COUNTY - HARDWARE, SOFTWARE LICENSE, SERVICES AND MAINTENANCE

NOW THEREFORE, the parties agree as follows:

1. Definitions In this Agreement the capitalized words set out below will have the following meanings:

- "Agreement" this Software License and Maintenance Agreement effectively made between Trapeze and Licensee, and the attached exhibits, all of which form an integral part of this Agreement;
- "Confidential Information" all information obtained by the parties from each other under this Agreement, but does not include any information which at the time of disclosure is generally known by the public.
- "Documentation" the user documentation and training materials pertaining to the Software as supplied by Trapeze;
- "Hardware" the certain hardware as identified in Exhibit B of this Agreement;
- "Software" the certain software as identified in Exhibit A of this Agreement;
- "Source Code" the Software, including all appropriate programmer's comments, data files and structures, headers, files, macros, annotations, and documentation;
- "Statement of Work" the specifications for the services to be provided by Trapeze and the Licensee, attached hereto as Exhibit C;
- "System" the combination of Hardware and Software operating in accordance with Exhibit A of this Agreement;
- "Third Party Products" equipment, hardware, software, documentation, and/or other intangible materials which is not proprietary to Trapeze;
- "Trade Secrets" the Software, Documentation, and other related information (including all modifications of the Software developed for Licensee) disclosed to Licensee under this Agreement, including trade secrets and other confidential and proprietary information of Trapeze;
- "Upgrades" generic enhancements to the Software that Trapeze generally makes available as part of its long term software support program.

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

- (a) Trapeze hereby grants to Licensee a personal, non-transferable, non-exclusive license to use a production copy of the object code version of the Software in the form supplied by Trapeze and on hardware approved by Trapeze as of the License Date referred to in Exhibit A ("License Date"), restricted to the places of business of the Licensee, for the Licensee's own operations, in accordance with the operational characteristics described in Exhibit A.
- (b) Trapeze hereby grants to Licensee a personal, non-transferable, non-exclusive license to use the Documentation, but only as required to exercise the license granted herein.

- (c) Licensee may make one back-up copy of the Software. Licensee may use the production copy of the Software solely to process Licensee's own data, and the software may not be used on a service bureau or similar basis to process data of others.
- (d) Other than the rights of use expressly conferred upon Licensee by this paragraph, Licensee shall have no further rights to use the Software or the Documentation, and shall not copy, reproduce, modify, adapt, reverse engineer, disassemble or translate them, without the express written authority of Trapeze.

3. System Services In accordance with the terms of Exhibit B and Exhibit C, Trapeze will perform services related to Licensee's use of the System (the "Services"). Such services may include installation, modification, testing, training and additional services. Such Services shall be coordinated with the Fort Bend County Information Technology Department.

Trapeze warrants that each of its employees, independent contractors, or agents assigned to perform the Services or provide any technical assistance in configuration, development and implementation, training, use and related services under the terms of this Agreement shall have the skill, training, and background reasonably commensurate with his/her level of performance or responsibility, so as to be able to perform in a competent and professional manner. Licensee reserves the right, in its reasonable discretion, to request the removal of any Trapeze personnel from work under this Agreement.

4. Independent Contractor Trapeze is an independent contractor whose employees or agents will not be deemed to be employees or agents of the Licensee for any purpose. Trapeze is solely responsible for withholding all federal, state and local taxes, if any, from such employees' or agents' compensation and for providing its own compensation and liability insurance coverage for its employees. This Agreement creates no relationship between the parties hereto of joint ventures, partners, associates, principal and agent or franchiser and franchisee. Except as provided herein, neither party is granted the right or authority to assume or create any obligation, responsibility or liability for or on behalf of the other or to otherwise bind the other in any manner whatsoever.

5. Acceptance:

Software Acceptance Upon completing the delivery, installation, and testing of the Hardware and Software, Trapeze will notify Licensee in writing. Licensee will then have twenty (20) business days to conduct acceptance tests in order to ensure the System operates in all material respects as specified in the Documentation. At the end of this period, Licensee will be deemed to accept the System unless Trapeze receives prior written notice outlining the nature of the perceived defects in the Software. Notwithstanding the above, Licensee will be deemed to accept the System when the Licensee puts the Software into operational and functional use (beneficial use). The System will be deemed to be in operational and functional use when the Licensee first uses the System to support its then current operations in any capacity. Upon the deemed acceptance of the System in accordance with this paragraph, Licensee will provide Trapeze with a written acknowledgement to confirm such acceptance.

Vehicle Acceptance Test (VAT): Upon completion of a vehicle's equipment installation, a VAT shall be performed on that vehicle. Trapeze components shall be tested in isolation to verify that the installed equipment performs to the specifications as set forth in the Statement of Work. Then the VAT will confirm the functionality of the Trapeze system on each vehicle. Vehicle Acceptance shall be defined as successful completion of the VAT on the vehicle fleet. Warranty of vehicle equipment shall commence upon Vehicle Acceptance.

Hardware Acceptance: Acceptance and Warranty for hardware, other than vehicle hardware, shall commence upon beneficial use.

6. System Warranty Trapeze warrants the System (Hardware and Software) to operate in all material respects as specified in the Documentation for a period of one (1) year from the date upon which the Hardware or Software is accepted, as defined in Article 5. In no event shall such acceptance occur after the System is first put into operational and functional use. The System will be deemed to be in operational and functional use when the Licensee first uses the System to support its then current operations in any capacity. For any breach of this warranty, Licensee's sole and exclusive remedy and Trapeze's entire obligation hereunder shall be to either repair or replace, at Trapeze's discretion, the defective Hardware or Software. Hardware shall be delivered to Trapeze, postage pre-paid in accordance with Exhibit D. This warranty does not apply to any Hardware or Software damaged as a result of any improper installation, accident, negligence, use in any application for which it was not designed or intended, exposure to any virus or any condition outside of the Documentation, or modification without the prior written consent of Trapeze.

Trapeze warrants that it holds title to all Hardware and Software licensed and delivered pursuant to this Agreement. Trapeze further warrants that it has full power and authority to grant to the Licensee the rights set forth in this Agreement and that neither the performance of the services by Trapeze nor the use by the Licensee of the Software, or any portion thereof, will in any manner constitute an infringement or other violation of any ownership, claim, copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure, or other rights of any third party. No warranty is provided by Trapeze with respect to any third party licensed products. Separate warranties may be available from the developer, distributor, or publisher of the licensed products.

**The foregoing warranty is in lieu of all other warranties or conditions, express or implied, including but not limited to any implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose and any other warranties arising by statute or otherwise in law or from the course of dealing or usage of trade. Without limiting the foregoing, Trapeze will provide any third party hardware strictly on an "as is" basis, without any warranty of any kind, other than any available manufacturer's warranty which the Licensee may be entitled to enforce directly against such manufacturer. Trapeze does not represent or warrant that this Software will meet all of Licensee's particular requirements, or that the operation of the Software will operate 100% error-free or uninterrupted, or that all program errors in the Software can be found in order to be corrected.**

7. System Maintenance:

For the purposes of this Agreement, the following definitions apply:

- a) "Rogue Unit": Hardware that exhibits a recurring problem subject to the following: (i) the undesired symptom reported is the same for three (3) sequential removals, and (ii) the undesired interval is seven (7) operating days or less;
- b) "Turnaround Time": Commences on the date of receipt by Trapeze's Service Center, and continues to the date of shipment back to Licensee;
- c) "No Fault Found ("NFF") / No Trouble Found ("NTF")": Hardware which requires no repair, replacement or adjustment by Trapeze in order to return it to a serviceable level in accordance with Hardware Maintenance subsection (d) below;
- d) "Updates and Upgrades": Those improvements to the Hardware or Software that Trapeze generally makes available as part of the annual maintenance program;
- e) "Priority One (1) Variance": A Hardware or Software performance anomaly resulting in the loss or use of critical system functions to the extent that such loss affects the safety of the public and/or personnel;

- f) "Priority Two (2) Variance": A Hardware or Software deficiency of lesser severity than a Priority One (1) that does not substantially reduce the capability of the System to accomplish its primary system functions (e.g., vehicle communications and AVL). Priority Two (2) Variances indicate functional and/or performance deficiencies, but the System is still capable of accomplishing its primary system functions with a satisfactory degree of safety and effectiveness. A Priority One (1) Variance for which an acceptable workaround has been established shall be reassigned to a Priority Two (2); and
- g) "Service Notification": A notification or bulletin provided by Trapeze that describes a change to Hardware or Software.

A. Software Maintenance

During any warranty period and for any annual support period for which maintenance fees have been paid in full by Licensee, Trapeze will provide the following services at no additional cost:

(a) Trapeze will maintain the Hardware and Software so that it operates in conformity in all material respects with the descriptions and specifications for the Hardware and Software set forth in the Documentation;

(b) In the event that Licensee detects any errors or defects in the Hardware or Software, Trapeze will provide reasonable support services through a telephone software support line from Monday to Friday, 7 am to 7 pm Central time (Except North American holidays) and an available twenty-four hours per day line for emergency support. Upon registration by Licensee, Trapeze will also provide Licensee with access to its software support website, and;

(c) Trapeze will post notices of available Upgrades of the Software on its website and copies of the release notes for download. Trapeze will provide Licensee with Upgrades of the Software at no additional license fee charge.

B. Hardware Maintenance

Commencing upon the delivery of Hardware and continuing for the duration of warranty period and any maintenance periods purchased by Licensee, as outlined in Exhibit B, Summary of Pricing and Payment Schedule, Trapeze agrees to provide the following maintenance and support services:

(a) Trapeze will maintain the Hardware so that it operates in conformity, in all material respects, with the descriptions and specifications for the Hardware set out in the Documentation at the time of this Agreement;

(b) Trapeze shall send Licensee notifications regarding Updates and Upgrades of the Hardware;

(c) Trapeze shall provide phone support to Licensee's authorized callers to assist with troubleshooting of installation, configuration, and operational problems of covered Hardware;

(d) Licensee shall send all Hardware covered by this Agreement directly to the designated Trapeze Service Center outlined in the Return Materials Authorization ("RMA") Request Process, Exhibit D. Upon repair, Trapeze shall return the Hardware to Licensee's designated receiving facility, or other locations as designated by Licensee's applicable Return Order. Cost of shipping to the designated Trapeze Service Center shall be borne by Trapeze. Cost of shipping the repaired Hardware to the Licensee's facilities shall be borne by Trapeze unless the Hardware is deemed NFF/NTF. Hardware returned for repair under this Agreement and subsequently determined by Trapeze to be NTF or NFF is subject to the Time and Material pricing. Trapeze reserves the right to substitute functionally equivalent parts for those parts returned to Trapeze for repair;

- (e) Trapeze shall provide a Turnaround Time of thirty (30) calendar days for Hardware listed in Exhibit A which is returned to Trapeze in accordance with Exhibit D;
- (f) Trapeze shall apply special testing and repair to any Rogue Unit at no additional charge to Licensee. Any special testing and repair shall not be subject to the Turnaround Time specified in subsection (e) above; and
- (g) Trapeze may issue Service Notifications indicating recommended or mandatory changes to the Hardware covered under this Agreement.

**C. Documentation for Hardware Difficulty**

Prior to delivery to Trapeze of Hardware to be repaired, Licensee shall provide Trapeze with a return order, which shall include the following information:

- (i) Date of performance anomaly;
- (ii) Vehicle Number;
- (iii) Detailed system description of performance anomaly;
- (iv) Type number, part number, and serial number of the Hardware;
- (v) Licensee Return / Repair Order Number; and,
- (vi) Ship To address and Contact Name for return of Hardware to Licensee;

**D. Hardware Excluded from Maintenance**

The parties agree that the above maintenance services shall not apply to include maintenance of Third Party Products, and Trapeze shall be under no obligation to provide any maintenance services to the Licensee with respect to such Third Party Products. The parties further agree that the above maintenance services shall not include services which may be required to identify or correct errors, defects or performance issues in the Hardware which are caused by the actions or omissions of the Licensee, its employees, contractors or vehicle riders.

In the event that Hardware covered under this Section is subjected to any of the conditions below by Licensee or any third parties, such Hardware shall be excluded from maintenance service coverage.

- (a) Hardware subjected to carelessness or negligence;
- (b) Hardware subjected to cannibalization or vandalism;
- (c) Hardware subjected to alteration or repair in a manner which conflicts with Trapeze's written repair procedures, specifications, and license terms;
- (d) Hardware subjected to inadequate packing, storage or handling;
- (e) Hardware subjected to fire, wind, flood, leakage, collapse, lightning, explosion, or other Acts of God, including but not limited to acts of war (declared or undeclared), terrorism, or the public enemy; and
- (f) Trapeze Hardware altered as a result of Third Party service bulletins.

8. **Escrow.** Trapeze shall deposit a complete copy of the Software and Source Code with Escrow Associates, LLC following final acceptance of Software by Licensee. Licensee shall be provided with written confirmation from Escrow Associates, LLC that Trapeze has made such a deposit. Provided Licensee fulfills its maintenance fee payment obligations to Trapeze, Trapeze shall update the escrow deposit with all modifications and changes to the Software and, in any event, shall deposit a renewed copy of such Source Code whenever the Software used by Licensee has been updated by Trapeze. The

Source Code deposited shall include comments, explanations, and instructions to compile the Software, and all Software utilities and other materials necessary for use of Source Code. The costs of the escrow shall be borne by Licensee and the term of the Escrow Agreement shall be co-extensive with the term of Trapeze's maintenance and support obligations provided Licensee fulfills its maintenance fee payment obligations to Trapeze.

The Source Code shall be released from escrow upon (a) a verifiable failure to support the Software as determined by a competent independent authority in accordance with this Agreement after formal written notification to Trapeze of such failure and after failure to cure such failure by Trapeze during a thirty (30) day cure period following receipt of notification; (b) failure of Trapeze to function as a going concern or operate in the ordinary course; or (c) the voluntary or involuntary bankruptcy of Trapeze.

Upon release from escrow, the Licensee shall have the right to use, copy, and modify the Source Code in order to use and support the Software, subject to all license restrictions. Regarding any release to the Licensee of the Source Code as provided in the Agreement, Trapeze shall continue to possess ownership rights for the Source Code, and the Licensee shall have the right to use the Source Code in accordance with the Agreement. With respect to any and all Trapeze Source Code required to be escrowed, the Source Code shall be released to Trapeze upon termination of the Agreement unless such termination is caused by (a) verifiable failure of Trapeze to support the Software, as determined by a competent independent authority in accordance with the Agreement and technical specifications after formal written notification to Trapeze of such failure and after failure to cure such failure by Trapeze during a thirty (30) day cure period following receipt of notification; (b) failure of Trapeze to function as a going concern or operate in the ordinary course, or (c) the voluntary or involuntary bankruptcy of Trapeze. In such a case, the Licensee shall continue to be licensed to use the Software and the Source Code to support and maintain the Software.

9. Payment Upon execution of this Agreement, Licensee will issue a Purchase Order to Trapeze, for the Software license fees, service fees, hardware, related expenses and maintenance as set out in Exhibit B, attached hereto, in an amount not to exceed three hundred twenty-two thousand, six hundred eighty-four dollars and 80/100 (\$322,684.80). Trapeze will invoice Licensee for the aforementioned fees as set out in and according to Exhibit B. The total amounts due for all fees are firm fixed amounts and will be invoiced on that basis. Expenses will be billed on an as incurred basis. The Purchase Order shall be governed exclusively by the terms and conditions of this Agreement.

Commencing upon completion of the warranty period for Hardware and Software, Licensee shall pay annual maintenance fees to Trapeze as provided in Exhibit A (the "Maintenance Fee"), attached hereto, in an amount not to exceed twenty-five thousand dollars and no/100 (\$25,000.00) in the first year of such maintenance services. This fee shall be subject to change as set out in Exhibit A. Licensee shall issue a Purchase Order annually specifying the amount set forth in the Trapeze invoice for maintenance services, and the Purchase Order shall be governed by the terms and conditions of this Agreement.

Licensee shall pay invoices within thirty (30) days of receipt of an approved invoice. In the event of an invoice dispute, Licensee shall have ten (10) business days from date of receipt of invoice to advise Trapeze of the reasons for disputing the invoice in question. If Trapeze has not received such notification within such time frame, the invoice in question shall be deemed accepted by Licensee. Overdue undisputed payments will bear interest at the annual rate of ten percent (10%) or the rate set forth in Section 2251.025 of the Texas Government Code, on the amount outstanding from the date when payment is due until the date payment in full is received by Trapeze. Licensee will also be responsible for payment of all applicable taxes and other levies, including sales and use taxes, and this obligation will survive termination of this Agreement. If Licensee has a tax exemption certificate, a copy of the certificate must be provided to Trapeze upon signing of this Agreement to avoid payment of the applicable tax to Trapeze.

Prior to the execution of this Agreement, Trapeze has been advised by the Licensee, and clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the Licensee shall have available the total maximum of three hundred forty-seven thousand six hundred eighty-four dollars and 80/100 (\$347,684.80) for the hardware, software, and services described herein.

10. Trade Secrets and Confidential Information Licensee acknowledges that any Trade Secrets or Confidential Information disclosed to Licensee pursuant to this Agreement are owned by Trapeze and include trade secrets and other confidential and proprietary information of Trapeze. Licensee shall maintain in confidence and not disclose the same, directly or indirectly, to any third party without Trapeze's prior written consent. Licensee further acknowledges that a breach of this Section would cause irreparable harm to Trapeze for which money damages would be inadequate and would entitle Trapeze to injunctive relief and to such other remedies as may be provided by law.

Trapeze expressly acknowledges that Licensee is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§. 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, Licensee will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to Licensee by Trapeze shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

11. Media and Publication Licensee and Trapeze shall not communicate with representatives of the general or technical press, radio, television or other communications media regarding the work under this Agreement without prior written consent of the other party, which such consent shall not be unreasonably withheld. Neither Licensee and Trapeze nor any of its personnel shall publish or reproduce or arrange press releases regarding Licensee and Trapeze without the prior written consent of the other party upon such terms as may be agreeable to both parties.

12. Force Majeure Neither party to this Agreement shall be liable to the other party hereto for loss or damage arising out of any delay or failure by such party in performing its obligations hereunder, except the making of payments due hereunder, if such delay or failure was the unavoidable consequence of a natural disaster, exercise of governmental power, strike or other labor disturbance, war, revolution, embargo, insurrection, operation of military forces, or other event or condition beyond the control of such party, provided that such party notifies the other party of its inability to perform and the reasons therefor, with reasonable promptness, and performs its obligations hereunder as soon as circumstances permit.

13. Remote Access Upon request, Licensee shall provide Trapeze with the right to establish a remote connection to Licensee's computer(s) on which the Software is installed, so as to enable Trapeze to monitor the operation of the Software.

14. Intellectual Property Indemnification In the event of an intellectual property infringement claim by a third party, Trapeze will defend Licensee in respect of any such claims based on the claim that the Software infringes the intellectual property rights of that third party. Trapeze will pay any award rendered against Licensee by a court of competent jurisdiction in such action, provided that Licensee gives Trapeze prompt notice of the claim and Trapeze is permitted to have full and exclusive control of any defense. If all or any part of the Software becomes, or in Trapeze's opinion is likely to

become, the subject of such a claim, Trapeze may either modify the Software to make it non-infringing or terminate this Agreement as it relates to the infringing portion of the Software. This is Trapeze's entire liability concerning intellectual property infringement. Trapeze will not be liable for any infringement or claim based upon any modification of the Software developed by Licensee or any other third party, or use of the Software in combination with software or other technology not supplied or approved in advance by Trapeze, or use of the Software contrary to this Agreement or the Documentation.

15. Limitation of Liability

(a) Trapeze and Licensee do not rely on and will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to Licensee for breach of warranty is for breach of contract under the terms of this Agreement. This does not preclude a claim for fraud.

(b) Trapeze does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any information stored in any system connected to the internet. Trapeze shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Licensee's connection to or use of the internet.

(c) Notwithstanding anything herein to the contrary, Trapeze will not be liable to Licensee or any third party for any claims, expenses, damages, costs or losses whatsoever arising out of or in any way related to:

(i) Licensee's use of map or geographical data, owned by Licensee or any third party, in conjunction with the Software or otherwise; or

(ii) Licensee's use of the Software insofar as such Software may be used to store, transmit, display, disclose or otherwise use data or information which is considered private, confidential, proprietary or otherwise exempt from public disclosure under applicable law.

(d) **TRAPEZE SHALL INDEMNIFY AND DEFEND LICENSEE AGAINST ALL THIRD-PARTY LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, THAT RESULT FROM THE NEGLIGENT ACT, OR WILFULL MISCONDUCT OF TRAPEZE OR ANY OF TRAPEZE'S AGENTS, SERVANTS OR EMPLOYEES.**

(e) Notwithstanding anything herein to the contrary, Trapeze's entire liability and responsibility for any claims, damages, costs or losses whatsoever arising either jointly or solely from or in connection with this Agreement or the use of the System (whether or not in the manner permitted by this Agreement) including claims for breach of contract, tort, misrepresentation, or otherwise, or the development, modification or maintenance of the System will be absolutely limited to the amount of the license fees paid by Licensee.

(f) To the extent allowed by Texas law, Trapeze will not be liable to the Licensee or any third party for losses or damages suffered by Licensee or any third party which fall within the following categories:

(i) incidental or consequential damages, whether foreseeable or not;

(ii) special damages even if Trapeze was aware of circumstances in which special damages could arise;

(iii) loss of profits, anticipated savings, business opportunity, goodwill, or loss of information of any kind.

(g) Paragraphs (e) and (f) do not apply to claims arising out of death or personal injury caused by either party's gross negligence or fraudulent misrepresentation.

#### 16. Insurance

(a) Trapeze shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below. Trapeze shall furnish certificates of insurance to the Licensee evidencing compliance with the insurance requirements hereof. Certificates shall indicate Trapeze's name, name of insurance company, policy number, term of coverage and limits of coverage. Trapeze shall cause its insurance companies to provide the Licensee with at least 30 days prior written notice if the insurance company cancels the policy. Trapeze shall obtain such insurance from such companies having a Bests rating of A-/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

(i) Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

(ii) Employers' Liability insurance with limits not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

(iii) Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$2,000,000	annual aggregate limit
\$1,000,000	each occurrence, combined single limit

(iv) Business Automobile Liability coverage applying to non-owned automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

(v) Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.

(b) The Licensee shall be named as additional insured to all coverages required above except for Workers' Compensation, Business Automobile Liability and Professional Liability. All policies including Workers' Compensation written on behalf of Trapeze shall contain a waiver of subrogation in favor of the Licensee.

(c) If required coverage is written on a claims-made basis, Trapeze warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

#### 17. Termination      The license granted by this Agreement is effective until terminated.

(a) Either party may terminate this Agreement if the other party is in material breach of any term or condition of this Agreement, and fails to cure such default within sixty (60) days after receipt of written notice of such default. Without limitation, the following are deemed material breaches under this Agreement: (i) Licensee fails to pay any amount when due hereunder; (ii) Licensee becomes insolvent or

any proceedings will be commenced by or against Licensee under any bankruptcy, insolvency or similar laws.

(b) If Licensee develops software that is competitive with the Software, or Licensee is acquired by or acquires an interest in a competitor of Trapeze, Trapeze shall have the right to terminate this Agreement immediately.

(c) Either party may terminate for convenience with ninety (90) days written notice.

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

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

18. Assignment Neither party may assign its interest in this Agreement without the prior written consent of the other, and such consent shall not be unreasonably withheld. Notwithstanding the above restrictions, in the event of an assignment or novation of this Agreement to a Trapeze affiliate pursuant to a corporate reorganization, Trapeze shall not require Licensee's consent.

19. Applicable Law This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, USA. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

20. Survival The parties hereto agree that any provisions of this Agreement requiring performance or fulfillment by either party after the termination of this Agreement shall survive such termination.

21. Severability If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is illegal, unenforceable or void and does not relate to the payments to be made to Trapeze. If the remainder of this Agreement, as the case may be, shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by law.

22. Notices All notices hereunder shall be in writing and shall be duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, to the respective addresses of the parties appearing on page one of this Agreement. Any notice given shall be deemed to have been received on the date, which it is delivered if delivered personally, or, if mailed, on the fifth business day next following the mailing thereof. Either party may change its address for notices by giving notice of such change as required in this section.

23. Audits Trapeze may perform audit(s) on the use of the Software and Documentation upon giving Licensee written notice of at least five (5) business days. Licensee agrees to make the necessary operational records, databases, equipment, employees and facilities available to Trapeze for the audit(s). The purpose of the audit will be to verify compliance with the terms and conditions of this Agreement.

24. No Government Obligation to Third Parties. Licensee and Trapeze acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the 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 Licensee, Trapeze, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. Trapeze agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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

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

Trapeze agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

26. Access to Records and Reports. Trapeze agrees to provide Licensee, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Trapeze which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Trapeze also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Trapeze's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Trapeze agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Trapeze agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Trapeze agrees to maintain same until Licensee, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

27. Federal Changes. Trapeze 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 Licensee and FTA, as they may be amended or promulgated from time to time during the term of this contract. Trapeze's failure to so comply shall constitute a material breach of this contract. Notwithstanding the foregoing, should any law change during the performance of this Agreement which causes the scope or deliverables to change, Contractor shall be allowed an equitable adjustment.

28. Civil Rights Requirements. The following requirements apply to the underlying contract:

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Trapeze agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Trapeze agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Trapeze agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations. "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Trapeze agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Trapeze agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, Trapeze agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Trapeze agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Trapeze agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Trapeze agrees to comply with any implementing requirements FTA may issue.

Trapeze also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

29. Disadvantaged Business Enterprise (DBE). This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal of 6% has been established for this procurement. Trapeze has provided documentation of adequate good faith efforts towards meeting this goal.

Trapeze shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Trapeze shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Trapeze to carry out these requirements is a

material breach of this contract, which may result in the termination of this contract or such other remedy as Licensee deems appropriate. Each subcontract Trapeze signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

Trapeze is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after Trapeze's receipt of payment for that work from Licensee. In addition, Trapeze is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Contract is satisfactorily completed.

Trapeze must promptly notify Licensee whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Trapeze may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of Licensee.

30. Incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Trapeze shall not perform any act, fail to perform any act, or refuse to comply with any Licensee requests which would cause Licensee to be in violation of the FTA terms and conditions. Notwithstanding the foregoing, should any law change during the performance of this Agreement which causes the scope or deliverables to change, Contractor shall be allowed an equitable adjustment.

31. Government-Wide Debarment and Suspension (Non-Procurement). This contract is a covered transaction for purposes of 49 CFR Part 29. As such, Trapeze is required to verify that none of Trapeze, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

Trapeze is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Licensee. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Licensee, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

32. Lobbying. Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose

the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

33. Clean Air. Trapeze agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Trapeze agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Trapeze also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

34. Clean Water. Trapeze agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* Trapeze agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Trapeze also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

35. Energy Conservation Requirements. Trapeze agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

36. Privacy Act. Trapeze agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552.a. Among other things, Trapeze agrees to obtain the express consent of the Federal Government before Trapeze or its employees operate a systems of records on behalf of the Federal Government. Trapeze understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. Trapeze also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

37. Cargo Preference. Trapeze agrees to to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

Trapeze agrees to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through Contractor in the case of a subcontractor's bill-of-lading.)

Trapeze agrees to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

38. Fly America. Trapeze agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

39. Buy America Requirements. Trapeze agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

40. Access for Individuals with Disabilities. 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 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; 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; and 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 any subsequent amendments to these laws. In addition, Contractor agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

- (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; and
- (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 regulations, except to the extent the Federal Government determines otherwise in writing.

41. Dispute Resolution. The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement by negotiation between the parties. In the event the dispute cannot be settled through negotiation, the parties agree to submit the dispute to mediation. The party requesting mediation shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within ten (10) days of the receipt of such notice, such dispute shall be submitted for mediation. Each party shall be responsible for its own costs associated with the mediation. The requirement to seek mediation shall be a condition required before filing an action at law or in equity, unless to do so would prevent either party from seeking relief in a court of law or equity under any applicable statute of limitations.

42. Title and Risk of Loss. It is agreed that title and risk of loss to any equipment described herein shall pass to Licensee at the time and place at which Trapeze completes performance with reference to the delivery or installation of the equipment, whichever is applicable. While the equipment is within Trapeze's care, custody, and control, Trapeze will retain title and assume risk of loss. After the equipment has been delivered or installed, title has transferred. The equipment is no longer within Trapeze's care, custody, or control; therefore, Licensee shall then be responsible for risk of loss.

**EXHIBIT A**  
**Deliverables List**

<b>Trapeze Hardware and Software</b>	<b>Quantity</b>	<b>Comment</b>
EH880 Point of Sale, Retail Card Reloading Terminal	10	
TRC320 Card Validator	60	Includes all cabling
TRC880 Handheld Portable Reloading Terminal	10	
Card Initialization equipment	1	Computer hardware to be provided by customer to Trapeze specifications. Trapeze to provide Card Printer.
Training Material and Documentation	1 Lot	
AFC Software License	1 Lot	Licensed to up to 150 Demand Response, Point Deviation and Commuter vehicles

<b>Third Party Products</b>	<b>Quantity</b>	<b>Comment</b>
Smart Cards	5000	MIFare DESFire

**Notes:**

1. Up to six (6) employees will be trained to utilize the AFC back office software and AFC Customer Services software and hardware.
2. Up to six (6) driver trainers will be trained to utilize the AFC in-vehicle hardware who will train remaining drivers.
3. License provided for software and hardware utilization at Fort Bend County (Richmond, TX).
4. Pricing is valid until May 15, 2013
5. Applicable taxes are not included in the pricing above.
6. Valid for one-year from signing of Agreement is the following increase in AFC in-vehicle hardware above and beyond 60 vehicles will be \$1080/smart card validator unit.
7. License is provided for operations with up to 150 Demand Response, Point Deviation and Commuter vehicles.
8. Valid for one-year from signing of Agreement is the following increase in license/maintenance above and beyond 150 vehicles. For an increase in Demand Response, Point Deviation and Commuter vehicles, the one-time licensing fee will increase by \$120/smart card validator unit and annual maintenance will increase by \$352/vehicle.
9. Please note that in reference to AFC hardware and software, the same hardware and software will be provided for the vehicle types.
10. License date is the effective date of this Agreement.

**EXHIBIT B**  
**Summary of Pricing and Payment Schedule**

**I.0 Pricing Summary**

<b>Automated Fare Collection</b>	<b>Unit price</b>	<b>Quantity</b>	<b>Extended Price</b>	<b>Specify (include description like make, model, version or revision)</b>
<b>List all items to be used with detail. Add additional lines as necessary.</b>				
Point of Sale, Retail Card Reloading Terminal	\$ 6,498.00	10	\$ 64,980.00	
On board Card Validator	\$ 1,080.00	60	\$ 64,800.00	Includes all cabling
Portable Reloading Terminal	\$ 2,538.00	10	\$ 25,380.00	
5000 Smart Cards	\$ 3.00	5000	\$ 15,000.00	MIFare DESFire
Customer Service terminal software and card printer hardware	\$ 11,046.00	1	\$ 11,046.00	Computer Hardware provided by customer to Trapeze specifications. Software is used for rider trip information, history transaction info and any rider disputes. Customer Service software is web-based.
Card Initialization equipment	\$ 21,569.00	1	\$ 21,569.00	Computer hardware to be provided by customer to Trapeze specifications. Per FBC request for lower speed equipment.
Back Office software installation	\$ 7,143.00	1	\$ 7,143.00	Back office hardware supplied by customer. Cost for installation includes loading AFC Back Office software and database set-up, which cannot be completed by Fort Bend's staff.
Software Licensing	\$ 70,000.00	1	\$ 70,000.00	Smart card clearing house
Installation Labor	\$ 156.00	55	\$ 8,580.00	
Project Services. Includes Management, Engineering, Deployment, Testing	\$ 82,600.00	1 Lot	\$ 82,600.00	
Development	\$ 6,173.90	1	\$ 6,173.90	Reduction of cost shows decline of TVM hardware and Trapeze's clearer understanding of Fort

				Bend's operations.
Training	\$ 7,000.00	1	\$ 7,000.00	Eight days of training
Training Material and Documentation	\$ 1,429.00	1	\$ 1,429.00	Training material and documentation is customized to Fort Bend's unique requirements. Every agency has different requirements, so materials and documentation contains customized language.
Other including travel	\$ 18,669.00	1	\$ 18,669.00	
Project Total			\$ 404,369.90	
Purchase Incentive			\$ (81,685.10)	
Project Grand Total			\$ 322,684.80	
<b>Warranty/Maintenance</b>				
First Year Warranty	Included		Included	Not separately priced. Included in base.
Maintenance -1st Year	\$ 25,000.00	1	\$ 25,000.00	
Maintenance-2nd Year	\$ 26,000.00	1	\$ 26,000.00	
Maintenance-3rd Year	\$ 27,040.00	1	\$ 27,040.00	
Maintenance-4th Year	\$ 28,122.00	1	\$ 28,122.00	
<b>CUSTOMER DISCOUNT</b>				
<b>TOTAL</b>				
<b>Option</b>				
Stationary Kiosk (TVM)	\$21,442.00	5	\$ 107,210.00	Credit Card only TVM. FBC to provide adequate and approved power and network connections and cabling.
Kiosk installation & Shipping	\$ 6,814.00	5	\$ 34,070.00	
Mifare Classic Smart Card	\$ 1.00	5000	\$ 5,000.00	
Notes: Option pricing are firm for 1 year from notice to proceed. TVM quantities are from 1-5.				

**BILLING MILESTONES**

**HARDWARE & SOFTWARE LICENSE**

Vehicle & Portable Reloading Terminal equipment (TRC320 and TRC880)	\$ 90,180.00
Customer Service & Card Initialization equipment	\$112,595.00
Training Material and Documentation	\$ 1,429.00
Software License	<u>\$ 70,000.00</u>
	<b>\$274,204.00</b>

**SERVICES**

Vehicle Install	\$ 8,580.00
Back Office Install	\$ 13,316.00
System Acceptance (Beneficial Use)	<u>\$ 26,584.80</u>
	<b>\$ 48,480.80</b>

**2.0 Payment Schedule**

Item	Description	Fees
Milestone 1	Due upon contract signing	75% of Software License Fee
Milestone 2	Due upon Delivery	100% of Hardware, Training Materials and Documentation
Milestone 3	Due upon completion	100% of Vehicle and Back Office Install 25% of Software License Fee
Milestone 4	Due upon Software/Hardware System Acceptance (Beneficial Use)	100% of System Acceptance

**3.0 Long-Term Support**

Item	Description	AFC
1	Warranty (1 year from Install)	Included
2	Maintenance (Year 1 from Install)	\$25,000
3	Maintenance (Year 2)	\$26,000
4	Maintenance (Year 3)	\$27,040
5	Maintenance (Year 4)	\$28,122

**EXHIBIT C**  
**Statement of Work**

The scope of work is defined as follows:

Trapeze will be responsible for the design, supply, installation, documentation, testing and commissioning of the contactless Card Based Fare Collection System for FBC. Trapeze will supply the following major components:

- On-Board Smart Card Processor Unit (OBP)
- Retail Reloading Terminals
- Industry-standard contactless smart cards
- Smart Card Printing Workstation(s)
- Central System
- Central System Software
- Network equipment to be provided by Fort Bend to Trapeze specifications
- All related application software
- All cabling related to the installation of the smart card equipment
- Integration with existing WLAN infrastructure
- Maintenance and Operating Manuals and other relevant documentation
- Training of the Operation and Maintenance personnel
- Preparation of business rules and procedures to operate the system efficiently
- Provide technical and maintenance support during "in project" period

### **Integration to Driver Mate**

The proposed system will have a wireless interface to the Tablet hosting the DriverMate application.

Integration between DriverMate and the validator (OBP) will support the following:

- Driver Login support - When the driver logs into the DriverMate, the OBP will be synchronized to the current work piece allowing the OBP to look up fares properly. This reduces the driver responsibility of changing routes on two devices when the work piece changes during the day.
- Stop synchronization - When the vehicle arrives at a stop, DriverMate will send stop information to the OBP. Allows tap on / tap off functionality and related fare structure.
- Companion support - DriverMate will allow the operator to modify the actual number of passengers traveling on a demand response trip. This allows the proper fare to be charged on the OBP.

Transaction Log - The OBP will record data in the transaction log that supports synchronization of fare data to work piece information in reports.

### **Integration to Novus**

The CCS (central computer system) will be integrated to the NOVUS software; capabilities will include basic file and data exchange.

## **Hardware Requirements**

All computer/server hardware to be provided by Fort Bend to Trapeze specifications.

## **Implementation**

A single responsible party will oversee the implementation of the project through the design and implementation activities. It is our practice to provide the customer a single point of contact, the Project Manager, who will be responsible for delivering the system in its entirety. Once the system has achieved revenue readiness, the responsibility for operating the system will pass to FBC.

Trapeze will use its skills in system integration and program management to ensure the schedule for the project is met and that all activities are completed on time, within budget and are of the highest quality. Change management, design reviews, and communication between Trapeze and FBC are core skills we will bring to bear on this project.

During and after the implementation of the CCS System, FBC personnel must be trained on the system, its processes, and characteristics. Trapeze has dedicated personnel focused on training and education. Trapeze will bring this core competency to this project. With these and other core competencies we will deliver not just a world class transit system, but a trained transit staff that is well educated to maintain and operate the system.

### **Schedule**

Trapeze will have the proposed system, delivered to FBC 90 days from notice to proceed.

### **Project Management Tools**

Trapeze project managers employ the following tools to support the successful implementation of projects:

- **Project Plan.** The project tasks and deliverables are scheduled according to the contract documentation, the operational review and the project's resource constraints. All major tasks, deliverables and milestones are itemized and scheduled in a Microsoft Project document. Depending on the specific requirement of a project, other Project Plan documents may include Communications Plan, Scope Management Plan, Risk Management Plan, Human Resources Management Plan and the Project Scope Statement.
- **Milestone Sign-Offs.** As each milestone is achieved, FBC will be asked to sign-off the milestone, confirming that the work associated with the milestone was completed to their satisfaction. Milestones are used as a control point in reporting project progress to the management of both organizations.

- **Operational Review.** The operational review functions as a scope of work for the project. In addition to describing the current operating environment, the operational review lists customizations not identified during the RFP process. Lastly, it documents specifications for reports, interfaces and product customizations that are part of the project scope.
- **Meeting Minutes.** The Trapeze project manager will use the meeting minutes to track the project issues, decisions, and resolutions. Meeting minutes are a clear and concise way of coordinating the work of both FBC and Trapeze, especially as minutes prevent confusion and duplication of work. The minutes can be published to the entire team based on the needs of FBC.
- **Change Orders.** Another project control mechanism, change orders are a primary tool for ensuring that the project tasks remain focused on the overall objectives. Change orders include proposed changes to the project schedule, technical specifications and additional functionality or services. Change orders must be agreed to by both Trapeze and the client.

**Proposed Communications Plan**

It is important on a project of this scope that clear lines of communication are established between FBC and Trapeze. In order to facilitate this communication, we propose the following communications plan. Included in this plan is frequent documentation on the status of the project, including key dates, key issues, and any changes to the project scope.

Format	Participants/Facilitators	Frequency	Individual(s) Responsible	Recipients
Status Meeting	Project Team	Weekly	FBC and Trapeze Project Manager	Not Applicable
Progress Reports	Project Team	Weekly	Trapeze Project Manager	FBC and Trapeze Project Teams
Progress Review Meetings	Project Team	Monthly	Trapeze and FBC Project Managers	FBC and Trapeze Project Team
Project Plan/Work Plan Updates	Project Team	As Required	Trapeze and FBC Project Manager	FBC and Trapeze Project Team
Open Issues Report	Project Team	Weekly	Trapeze and FBC Project Managers	FBC and Trapeze project teams
Change Control	Trapeze and FBC Project Managers	As Required	Trapeze and FBC Project Managers	FBC and Trapeze Team

<b>Format</b>	<b>Participants/Facilitators</b>	<b>Frequency</b>	<b>Individual(s) Responsible</b>	<b>Recipients</b>
Risk Management	Trapeze and FBC Project Managers	As Required	Trapeze and FBC Project Managers	FBC and Trapeze Team

## **Installation**

The installation program will be designed to minimize any interruption and inconvenience to FBC. To accomplish this, we would suggest installing equipment on the vehicles during off-peak hours, preferably during the weekend or alternatively at night. Installation of the CCS hardware and software will be done at FBC's convenience with input from the IT department.

Buses - Each type of vehicle will have a detailed installation drawing and installation instructions. The installation procedure will be based on FBC's approved location and wiring diagrams. FBC will be requested to provide vehicles for installation between the consecutive hours of 8 pm and 5 am and/or during weekends for installation services. Each system will be installed and tested against a pre-approved checklist. As part of the installation procedure, each vehicle will require FBC's sign-off indicating proper and complete installation and that there is no damage to the vehicle. For bus installation FBC will be requested to make available to Trapeze's installation crew:

- a minimum of 5 vehicles per shift
- a minimum of 2 bays within each garage to perform the installation
- if required, drivers to exchange the buses
- access to 110 vac
- access to water and washroom facilities
- authorized personnel to sign-off on the completed installation

## **Project Phases**

### **Project Initiation Phase**

Immediately upon signing of agreement and notice to proceed (NTP), Trapeze will work with the FBC project team to complete a Contract Schedule that will include detailed implementation activities/schedule, progress milestones and deliverables this will ensure the project .

Within ten (10) days following the Notice to Proceed (NTP) the Trapeze Project Manager will produce the Project Binder that will contain the Project Management, Quality Assurance, Installation, and Training plans.

The contract schedule, Project Management Plan, and initial sections of the System Design Document (SDD) will be the basis for the initial project discussions.

Trapeze follows a standard Project Initiation schedule where immediately following the NTP the Trapeze project team will meet with the FBC team for a kickoff meeting for preliminary discussions. The Trapeze team will work with FBC at each stage of the project to confirm all members of the FBC team are given the opportunity to fully participate in the decision making process.

During this time the Project Managers and core project team members can review, agree and schedule the immediate activities as well as future milestones and deliverables. This discussion will allow both project teams to identify risks and efficiencies that can be made throughout the project.

Members from Trapeze will begin surveying the FBC vehicle fleet and IT network. Trapeze will work closely with FBC in conducting pre-installation surveys to identify potential project safety hazards; identifying project hazard control procedures. Trapeze will work closely with FBC expert resources to ensure a mutual understanding of the Smart Card Fare Collection system and how it will integrate into the FBC organization. The output from these surveys will be used to complete deliverables as required in the conformed specification for the project design.

The full project teams from both Trapeze and FBC attend the project kick off meeting for full communication and understanding of project details.

On any project the key to success often lies in the interaction between the two separate projects teams. Trapeze is dedicated to ensuring that positive, pragmatic, professional and successful relationships are built between the project teams

To achieve this Trapeze will:

- Work collaboratively with open lines of communication.
- Involve FBC pro-actively in all phases of the project.
- Clearly understand and explain the relationships that exist between required activities.
- Achieve clear acceptance criteria for each deliverable.
- Manage closely the Smart Card Fare Collection system and vehicle installation process with inbuilt quality.
- Work pro-actively with FBC and subcontractors in providing safety orientation and training to ensure safe and quality installation.

- Work pro-actively with FBC to achieve consistent vehicle availability as per the installation schedule.
- Work pro-actively with FBC in identifying business process issues.
- Work pro-actively with all system users to ensure that the maximum benefit is gained.

#### **Design Review Phase**

During the Design Review Phase, Trapeze uses the System Design Document (SDD) as its starting point and enhances it to reflect the final system architecture and configuration as the document matures through the design phase of the project. Trapeze will demonstrate how the designed system will address the Smart Card fare system requirements. Trapeze recognizes and values the importance of a user-friendly system to both FBC and the riders FBC services.

#### **Preliminary Design Review Phase (PDR)**

The Preliminary Design Document (PDR) will provide the following:

- Purpose and Scope of the PDR package
- An overview of the equipment, System and Configuration of the implementation
- Requirement list will be formatted in a compliance matrix form to show category of requirement and which test phase requirement is tested in.
- Technical documentation for each major functional area
- Block diagrams and plan views of actual and/or planned equipment locations, showing major components in each vehicle by type.
- Drawings showing how existing onboard systems, connect to Trapeze's OBP.

#### **Final Design Review Phase (FDR)**

Trapeze engineering team will need to begin final design efforts as soon as possible after the preliminary designs are agreed and approved. The FDR package will be one complete submittal sufficient to provide all the required details for the overall system integration and operation. Design review requirements defined within the individual subsystem specification sections, will be consolidated and submitted as a single package.

The Final Design will include: Traceability Matrix with Final requirements; Design approach; Testing Approach; Training Approach; and requisite Technical documentation for equipment and software. These documents contain critical information for the project success, i.e., complete list of equipment, final design and configurations of system, and customizations. This phase reduces the chance of misunderstandings on the design and interpretation of the contract requirements.

This effort will result in a mutually understood set of documents that will allow us to configure the Smart Card Fare Collection system product to meet FBC's operational needs in an effective manner. We view this as the "cornerstone" of a successful project. The results of the preliminary design effort will flow down and be incorporated into a final design, which will be reviewed with FBC to confirm compliance

with the design before product validation and installation is initiated. The final design presented to FBC will demonstrate how the system will function in accordance with the agreed requirements.

The FDR package will not be submitted until FBC has approved all individual PDR submittals. The FDR package will be organized to include the following final design information:

- Approved and updated versions of all previously submitted design review materials.
- Updated material will represent complete design, final calculation; detailed product (component level) parts list, drawings, phasing and interface details required for installation.
- All the new and revised sections of the subsystem PDRs shall have a side revision bar to reflect the changes. The previous information submitted in the PDRs shall be organized by subsystem.
- Updated product submittals for all materials and components for which product submittals were not previously submitted and approved.
- Complete Drawing index.
- Complete list of items to be serialized.
- Complete cable identification and equipment labels.
- Complete wiring diagrams for all equipment to be installed, modified, upgraded, or interfaced to under this contract.
- Top level mechanical drawings, if applicable.
- Grounding details.

#### **Validation Phase**

The Validation phase of the project will demonstrate Trapeze's Smart Card Fare Collection system is designed and configured to meet FBC's requirements. The Validation phase consists of the Factory Acceptance Test (FAT) and the on-site Mini-Fleet test.

#### **Factory Acceptance Test (FAT)**

All equipment dedicated and developed for this project will be thoroughly tested at the production level under the supervision of Trapeze or its partners according to the equipment testing procedures and certification of successful testing will be provided.

Once Trapeze has verified the system is operating per the requirements of the conformance specification, Trapeze will invite FBC to witness the formal FAT. The system will be configured with FBC's fare rules to demonstrate the following operations:

- Selling
- Validation

- Tests of system behavior under system failure conditions (network failure and SPS/SC failure)
- Tests with connections to DriverMate and external interfaces

The FAT test will be per written pre-approved procedures. The results of the test will be recorded and approved by FBC or its representative. Successful completion of this milestone will be if no major deficiencies are recorded during this test. Minor deficiencies will be logged and demonstrated that they have been corrected during the Mini-Fleet test

#### **Mini-Fleet Test (MFT)**

Once the FAT is successfully completed, the system (hardware and software) will be installed at FBC. Software that needs to be installed includes the data extractor and key management software and personalization software. No additional software is required to open the central system. Web browsers including Firefox, Internet Explorer and Google Chrome can be used to access the website. All the software to be installed works on Windows OS and Mac OS.

Once the system has been installed on all the vehicles, Trapeze will perform integration testing using a select limited number of vehicles. Upon completion of system verification, the formal MFT will be conducted according to the written MFT procedures as well as demonstrating that minor open items recorder during the FAT have been resolved.

Once Trapeze has verified the system is operating per the requirements of the conformance specification, Trapeze will invite FBC and its consultants to witness the formal MFT. The system will be configured with FBC's fare rules to demonstrate the following operations:

- Selling
- Validation
- Tests of system behavior under system failure conditions (network failure and SPS/SC failure)
- Tests with connections to DriverMate and external interfaces

The results of the test will be recorded and approved by FBC or its representative. Minor deficiencies will be logged and demonstrated that they have been corrected during the System Acceptance Test.

#### **System Acceptance Test**

After the fleet installations have been completed, the System Acceptance Test will be conducted to verify that the entire system is performing as intended. The System Acceptance Test will include the verification of:

- Selling

- Validation (check in / checkout)
- Tests of system behavior under system failure conditions (network failure and SPS/SC failure)
- Tests with connections to DriverMate and external interfaces

System Acceptance shall not be granted until all previous validation testing of the Smart Card Fare Collection system has been completed and a System Acceptance Test is successfully completed. Successful completion of the System Acceptance test will occur if there are no major deficiencies that are recorded by FBC during the System Acceptance test. Minor deficiencies will be recorded onto a punch list and resolved during the warranty period.

In the event of any major failure or reoccurring minor failure, system acceptance testing shall be halted until major failure or reoccurring minor failure rectification.

FBC may determine after inspection and acceptance that an element is suitable for operation, although it may not be totally responsive to all contract requirements. FBC may conditionally accept that element of the system. Conditionally accepted elements will be available to FBC for use until Trapeze is able to initiate and execute corrective action. Trapeze understands that any conditional acceptance does not remove the liability to correct defects as required by the contract. Any defect will be recorded on a punch list and maintained until the warranty period is completed.

#### **Project Closure Phase**

During this phase of the project, final documentation is prepared and delivered to FBC. FBC is responsible for reviewing the documentation. Once the documentation is reviewed and approved, Trapeze will present the project closure letter to FBC for signature.

## Proposed Training Plan

Effective training must be an integral part of the systems' acceptance by FBC. The effectiveness of training determines the ease with which the system is integrated into FBC's organization. It also provides the buy-in by management and front-line staff that are vital to the success of the project. Executives educated on the operations and benefits of the system will provide the management support necessary to make the system work effectively, and a well trained staff will ensure that the new system is reliable and easy for riders to use.

Our training program is designed to provide the maximum level of effectiveness all levels of the organization. The principal objective of the training program will be to impart the necessary skills and knowledge to FBC staff, to ensure seamless operation of the system at optimum levels for the planned life of the system.

In the roll out phase of the project, satisfying the agency's needs will be foremost in our curriculum and training development activities. Trapeze's proposed training approach builds on our 20 plus-year history of providing customer specific solutions for the user's of our technologies. A "customer training needs assessment" directs our efforts to provide training solutions that fit customer specific applications.

The primary aim of the program is to develop the capability for FBC to perform similar training under their own training programs, using a train-the-trainers concept. For this purpose, classroom presentations may be videotaped for future use as a training tool. All materials used in the programs such as models, manuals, mock-ups and drawings, will be of durable construction and will become the property of the FBC after the training period. Training materials will be updated as required during the course to conform to the latest version of hardware and software installed in the equipment and system.

Trapeze's training package will be developed and delivered by qualified training personnel who have extensive hands on experience. Complete training manuals will be developed for each session. These will reference and incorporate the content of operations and maintenance manuals, where appropriate. Training sessions will be conducted at FBC's facilities to optimize participation.

FBC furnished training related items

Trapeze assumes that FBC will furnish the use of the following training related items:

- o Classroom and practical training space
- o Projectors and easels
- o Use of actual equipment as training aids

The preferred methodology for the training in systems knowledge is either a lecture or a seminar.

Proposed Course Name	Assumptions	Students / Session	Max # Students	# Days / Session	Sessions	Days
Smart Card Operator Train-the-Trainer	Vehicle Operator Training Specialists & Fixed Route Field Trainers;	5	10	1 Day	2	2 Days

Card Reload Terminals Ticking Agent Train-the Trainer	Smart Card Ticketing Agent Field Trainers and Training Specialists One (1) Ticketing Workstation per <u>two (2)</u> students	2	2	1 Day	1	1 Days
Equipment Maintenance Training	Equipment Maintenance Personnel Trainers	5	5	2 Days	1	2 Days
Central Computer System	Transit System Administrators One (1) Workstation per <u>two (2)</u> students	2	2	1 Days	1	1 Days
Report Generation Training – Smart Card	Transit System Administrators One (1) Workstation per <u>two (2)</u> students	2	2	2 Day	1	2 Days
Note: Training Day = 7 Hours with breaks				Total Days:		8 Days

**EXHIBIT D**  
**Return Material Authorization ("RMA") Process**

*All items returned to Trapeze must have the following information presented prior to the issuing of a Return Material Authorization ("RMA") number. The reason for return (as specific as possible), the item(s) part number(s), serial number and Licensee contact. For vehicle installed equipment please provide the vehicle id, vehicle make/model and vehicle year.*

**RETURN MATERIAL AUTHORIZATION ("RMA") REQUEST**

Licensee's who have equipment needing repair, having received Trapeze approval for the repair shall follow the procedure outlined below:

Licensee (or authorized representative) has equipment needing repair.

Licensee (or authorized representative) provides to Trapeze: Part Number, Serial Number, and Detailed Problem Description with Unit by logging onto [www.MyTrapeze.com](http://www.MyTrapeze.com) and selecting "Request an RMA" on the left side. You will need to enter the following information:

- a) Serial number
- b) corresponding problem description for each device being returned
- c) return shipping address
- d) billing address

A complete and accurate description of the condition or problem of the component or unit and the initial trouble shooting shall be done by the Licensee (or authorized representative).

The Licensee (or authorized representative) shall ship the unit and CRG (Customer Returned Goods) form to:

Trapeze Software Group, Inc.  
5265 Rockwell Dr NE  
Cedar Rapids, IA 52402  
Attention: RMA Department

For International shipments, please include a commercial invoice to prove place of origin for the repair.

**Packing**

- Licensee (or authorized representative) places all equipment (EXCEPT IVLU's) in a nonstatic bag along with a copy of RMA form. IVLU's shall be sent in an ESD static sensitive bag. Trapeze will provide non-static bags at Licensee's request. Licensee shall place a copy of the CRG Form, which shall be provided by Trapeze at the time of the RMA request, inside the box or taped to the outside of the bag of the unit being returned. Licensee (or authorized representative) shall pack all returned units carefully, using packing peanuts and bubble wrap when necessary. All returns are Licensee property and must be protected during shipping and through the entire return process.
- Use the values on the commercial invoice for entering the 'Value for Customs' on shipping forms (for International shipments)
- Do not enter a 'Total Declared Value for Carriage'. (For International shipments)
- Mark the RMA number on the top of the outside boxes.
- Attach one copy of the commercial invoice to each box (for international shipments)
- Attach the waybill.

**Please note:**

- Trapeze will provide proper packaging at a nominal fee if the units are not sent to us in original

- packaging or if the packaging is damaged.
- Licensee is responsible for shipping to and from Trapeze on all non-warranty/non-maintenance repairs.
  - If the quantity or serial numbers are not filled out correctly on the commercial invoice, customs may hold the shipment, or the shipment may be refused.

If you have any questions, please contact our Customer Care Department ([cc@trapezegrp.com](mailto:cc@trapezegrp.com)).

# EXHIBIT B-1



**Trapeze Software Group, Inc.**  
**d.b.a. TripSpark Technologies**  
 ("TripSpark")  
 8360 East Via De Ventura, Suite L-200  
 Scottsdale, AZ USA 85258  
 Telephone: 480.627.8400 Fax  
 905.238.8408

**WORK ORDER**

**Client Name:** Fort Bend County Public Transportation  
**Address:** 12550 Emilly Court Suite 400 Sugarland, TX 77478  
**Attention:** James Hoss  
**Position:** Operations Manager  
**Phone:** 281-243-6747  
**Email:** james.hoss@fortbendcountytexas.gov

**Work Order#:** 0068000000ryFCXAA2


**N.B A copy of the purchase order related to the items below MUST be received by TripSpark prior to the performance of any services or delivery of any hardware or software.**

Product Name	Type	Total Price
Tap to pay kit (16 units)	Hardware	\$20,432 US
Shipping	Shipping	\$1,232 US

**\*\*Total:** \$21,664 US *Plus Applicable Sales Tax*

*This Work Order between Trapeze Software Group, Inc. d.b.a TripSpark Technologies ("TripSpark" or "Seller") and Fort Bend ("Client" or "Buyer") is governed by the terms of conditions of the agreement in place between the parties, with the exception of warranty which shall be governed by Section 5 ("Warranty") as stipulated under TripSpark Terms and Conditions of Sale, Attachment 1, hereto. If there is no current agreement in place between the parties then the TripSpark Terms and Conditions of Sale, Attachment 1 hereto, shall govern this Work Order. All other terms and conditions are excluded from this Work Order and shall have no effect whatsoever.*

**Work will be billed net 30 upon receipt of TripSpark invoice as described on the Work Order or per the attached Statement of Work, if applicable.**

Trapeze Software Group, Inc.  
  
 Director, Client Services *Finama*  
*March 10<sup>th</sup>, 2015*  
 Date

Client Name  
 \_\_\_\_\_  
 Date

**\*\*Price valid for thirty (30) days. All Prices in US dollars.**

*In addition to the services and/or fees payable by Client to use taxes (but excluding taxes based on the net income of TripSpark resulting from this Work Order) shall be the responsibility of the Client. If any withholding tax or similar levy is applicable to the fees or other amounts payable to TripSpark, Client shall pay such additional amount as shall result in TripSpark receiving the total amount of the fees and/or services or other amounts it would have been paid but for such tax or levy. TripSpark requires a response within 30 calendar days. After 30 days this work order will expire.*

## Attachment 1

### TripSpark Terms and Conditions of Sale

#### 1. GENERAL.

These Trapeze Software Group, d.b.a. TripSpark Technologies (the "Seller") terms of sale, quote letter and all attachments hereto are provided as part of an offer to enter into a contract for the purchase and supply of Goods and/or Services. Buyer's (as Buyer is defined in the quote letter accompanying these terms) issuance of a purchase order and/or execution of the quote letter will constitute an acceptance of this offer on the terms hereof and shall create a binding contract. Buyer agrees that any terms associated with the Buyer's purchase order shall be for administrative purposes only and shall not form a part of this contract. Any modifications proposed by Buyer are not a part of this contract in the absence of Seller's written assent. As used in these Standard Terms and Conditions of sale "Goods" shall mean the equipment ("Equipment") sold and delivered hereunder, including any embedded software ("Software") licensed in conjunction with said Equipment, limited to spare and repair parts. "Services" shall mean the labor described under this quotation, which shall be provided by Seller and/or authorized representatives.

#### 2. PRICES.

2.1 Unless otherwise agreed by Seller in writing, all prices quoted by Seller: (i) are based on Canadian Dollars, (ii) are exclusive of all brokerage fees and duties, (iii) provide for the Goods Ex Works shipping point (as that term is defined in Incoterms 2013), and (iv) include Seller's standard commercial packaging. Seller reserves the right to deliver, at no change in price, substitute Goods of equal or better capability provided however, that such substitute Goods maintain the form, fit, and functionality of the originally contracted Goods. Partial deliveries are acceptable. Unless otherwise stated, such prices are effective for ninety (90) days from the date of quotation. Except as otherwise specified, the prices stated do not include any state, federal, or local sales, use or excise taxes, now in force or enacted in the future, applicable to the sale, license, delivery, or use of Goods and/or Services, and the Buyer expressly agrees to pay to Seller, in addition to the prices stated, the amount of any such taxes which may be imposed upon or payable by Seller.

2.2 Transportation of Goods shall be by common carrier, at Buyer's risk and expense. Upon request from Buyer to expedite shipments due to delays or other events not caused by Seller, all costs will be paid by Buyer.

2.4 Buyer shall have a reasonable time, not to exceed five (5) days from the date of receipt, to inspect the Goods. Buyer will notify Seller in writing of particular deficiencies of the Goods during the inspection period. Failure to give notice or particularize the deficiencies will result in Buyer's acceptance of the Goods.

#### 3. TERMS OF PAYMENT AND BILLING.

Where credit is extended to Buyer, terms of payment shall be net thirty (30) days from date of invoice. Notwithstanding any statement of terms or time of payment to the contrary appearing on the face of the purchase order, Seller reserves the right to require payment in advance of shipment or to ship C.O.D. In the event Buyer fails to pay any invoice when due, in addition to any other right reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid. It is agreed that risk of loss and title to any Goods described herein, excluding any Software or third party licensed products, shall pass to Buyer at the time and place at which Seller ships the Goods.

#### 4. INTELLECTUAL PROPERTY RIGHTS.

Unless otherwise specified herein, neither this contract nor the delivery of any Goods or Services hereunder shall be construed as granting either by estoppel or otherwise, any right in or license under any present or future data, drawings, plans or ideas or methods disclosed in this contract, or under any invention, patent, copyright, trade secret, or other intellectual property now or hereafter owned or controlled by Seller.

#### 5. WARRANTY.

The Equipment sold hereunder is subject to the following warranties:

5.1 Seller agrees to repair or replace at its discretion, without charge, any such Equipment, which are defective as to design, workmanship or material, and which is returned to Seller at its

factory, transportation prepaid, provided: (i) notice of the claimed defect is given to Seller within ninety (90) calendar days from date of delivery and the Equipment is returned in accordance with Seller's instructions; (ii) such Equipment shall not be deemed to be defective if, due to exposure to any condition in excess of those published in the product specification, it shall fail to operate in a normal manner; (iii) Seller's obligations with respect to such Equipment are conditioned upon the proper installation and operation of such Equipment by Buyer in accordance with Seller's written directions; and (iv) the warranty stated in this section shall be void if such Equipment is altered or repair is attempted or made by other than Seller or Seller's authorized service center. No warranty is provided by Seller with respect to the Software or any third licensed or hardware products. Separate warranties may be available from the third party developer, distributor or publisher.

Buyer agrees to pay for all service expenses not covered by this warranty at Seller's then current standard service rates.

NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO ANY GOODS SOLD OR SOFTWARE OR SERVICES DELIVERED HEREUNDER, AND THE FOREGOING SHALL CONSTITUTE THE BUYER'S SOLE RIGHT AND REMEDY UNDER THIS AGREEMENT.

#### 6. LIMITATION OF LIABILITY.

6.1 Buyer acknowledges and understands that a computer in a vehicle has the potential to distract the driver from the primary task of driving which can compromise a vehicle's safety. Buyer acknowledges and agrees that it is solely responsible for providing and ensuring the proper training of its drivers, owners or operators in the operation of the motor vehicle or motor vehicles in conjunction with the use or operation of the Goods described in this contract. "Motor vehicle" includes any automotive machinery utilized for the transport of persons or goods in which Goods have been incorporated or installed. Buyer shall include this paragraph in any third party agreement it may have in which Goods are provided to a third party.

6.2 Buyer acknowledges and agrees that Seller shall not be liable to Buyer for any claim or action including costs arising out of the use or misuse of any motor vehicle operated by Buyer in conjunction with or separate from the use of the Goods described in this contract including any personal injury claim or action and Buyer shall indemnify and defend Seller from any such claim or action including costs. Buyer shall include this paragraph in any third party agreement it may have in which Goods are provided to a third party.

6.3 IN NO EVENT SHALL SELLER BE LIABLE TO ANYONE FOR ANY SPECIAL, COLLATERAL, EXEMPLARY, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR REMOVAL AND REINSTALLATION OF GOODS, LOSS OF GOODWILL, LOSS OF SAVINGS, LOSS OF PROFITS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE SERVICES, OR THE USE OF OR INABILITY TO USE ANY GOODS DESCRIBED HEREIN EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PRODUCT, OR OTHER MATERIALS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES. SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED THE FEES PAID BY BUYER TO SELLER FOR THE SOFTWARE, EQUIPMENT OR SERVICES GIVING RISE TO A CLAIM.

#### 7. FORCE MAJEURE.

Except for payments due from Buyer to Seller hereunder, neither party shall be responsible for delay or failure to perform any part of this contract if such delay or failure to perform is caused, directly or indirectly, by an occurrence beyond that party's reasonable control, including, but not limited to, supplier limitations, fire, epidemics, floods, accidents, earthquakes, hurricanes, war (declared or undeclared), terrorist acts, blockades, embargoes, acts, demands or requirements of any government, restraining order of any courts, acts of God or other events of force majeure.

## 8. PATENT AND INTELLECTUAL PROPERTY INDEMNIFICATION.

8.1 Seller agrees that it will defend, at its own expense, all suits against Buyer for infringement of any intellectual property, including by not limited to, patents, copyrights and trademarks, covering, or alleged to cover, the Goods described herein in the form sold by Seller and Seller agrees that it will pay all sums which, by final judgment or decree in any such suits, may be assessed against the Buyer on account of such infringement, provided that Seller shall be given: (i) immediate written notice of all claims of any such infringement and of any suits brought or threatened against Buyer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice of the right of the Buyer to continue the use, as contemplated, of the Goods so purchased. If in any such suit so defended the Goods are held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so, Seller may either procure the right to continue the use of the same for the Buyer, or replace the same with a non-infringing product, or modify said Goods so as to be non-infringing, or, if the foregoing options are not reasonably available, take back the infringing Goods and refund some of the purchase price taking into account a reasonable allowance for use, damage, or obsolescence.

8.2 If the infringement by the Buyer is alleged prior to completion of delivery of the Goods under this contract, Seller may decline to make further shipments without being in breach of this contract, and provided Seller has not been enjoined from selling the Goods to Buyer, Seller agrees to supply such Goods to the Buyer at the Buyer's option, whereupon the indemnity obligation herein stated with respect to Seller shall reciprocally apply with respect to the Buyer.

## 9. SOFTWARE LICENSE FOR EQUIPMENT SPECIFIC SOFTWARE.

9.1 Any Software embedded in the Goods delivered hereunder is intellectual property of Seller or a third party licensor, and shall remain the sole and exclusive property of Seller or its respective licensors. Seller grants the Buyer a perpetual, non-exclusive license to use the Software only in or with the Goods sold hereunder. The Buyer shall not copy, modify, or disassemble the Software, or permit others to do so. Buyer shall not transfer the license granted hereunder or possession of the Software except as part of or with the Goods, such transfer being subject to the restrictions contained herein. This license shall automatically terminate upon any breach or default by Buyer of this contract or in the event that there is filed by or against the Buyer any petition in bankruptcy or reorganization or for the assignment of this license for the benefit of Buyer's creditors. Buyer agrees to use the licensed Software only as provided herein. Buyer agrees that it will take appropriate action by instruction, agreement, or otherwise with its employees permitted access to licensed Software to notify its employees of its obligation under these terms with respect to use, reproduction, protection, and security.

9.2 The Goods sold hereunder may include third party software licensed to Seller, including but not limited to: (i) Microsoft Corporation; (ii) Here, formerly NAVTEQ North America, LLC; (iii) Telogis, Inc.; (iv) Yellowfin International Pty Ltd.; (v) Nuance Communications, Inc., formerly Loquendo S.p.A. The terms of Seller's software license grant apply to the use of the third party software and the licensors of such software are third party beneficiaries of the rights granted under those terms. Buyer may only transfer any embedded software product with the Goods in accordance with the terms and conditions of this contract.

## 10. RESOLUTION OF DISPUTES.

10.1 The parties shall attempt to resolve any dispute arising out of or relating to this contract promptly by negotiation in good faith between executives who have the authority to settle the dispute. Any party shall give any other party written notice of any dispute not resolved in the ordinary course of business. Within seven (7) business days after delivery of such notice, the party receiving notice shall submit to the other a written response thereto. All reasonable requests for information made by one party to any other shall be honored in a timely fashion. All negotiations conducted pursuant to this section (and any of the parties' submissions in contemplation hereof) shall be kept confidential by the parties and shall be treated by the parties and their representatives as compromise and settlement negotiations under the Federal Rules of Evidence and any similar state rules.

10.2 If the matter in dispute has not been resolved within thirty (30) calendar days of the initial dispute date, either Party (the "Claimant") may submit the dispute to binding arbitration in the Province of Ontario in accordance with the rules and procedures set forth in the *Commercial Arbitration Act (Ontario)*. The arbitration shall be conducted by a single, commercially-experienced arbitrator selected by mutual agreement of both parties, and pre-hearing discovery shall be permitted if and only

to the extent determined by the arbitrators to be necessary in order to effectuate resolution of the matter in dispute. If the parties cannot agree on an arbitrator within fourteen (14) calendar days of the first nomination for appointment, the parties shall refer the appointment of an arbitrator to ADR Chambers. The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the Province of Ontario. Equitable remedies shall be available from the arbitrators. Consequential, punitive, exemplary, indirect or similar damages shall not be awarded by the arbitrators, although attorneys' fees and the costs of arbitration may be assessed against either or both parties. Any provisions of the award which are determined to be unenforceable in any jurisdiction, shall as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof. The arbitrators' decision shall be rendered within thirty (30) days of the conclusion of any hearing hereunder and the arbitrators' judgment shall be final and binding on the parties. Any award and judgment may be entered and enforced in any court of competent jurisdiction.

10.3 Resolution of disputes under the procedures of this section shall be the sole and exclusive means of resolving disputes arising out of or relating to this contract.

## 11. EXPORT CONTROLS.

Buyer acknowledges and agrees that any Goods purchased by it from Seller may be subject to export controls imposed by the United States Government under various federal laws, including but not limited to, the Export Administration Act of 1979, as amended (the "Act"), and/or successor legislation, and the regulations promulgated thereunder. Buyer agrees not to export or re-export any Goods without complying with the Act.

## 12. CANCELLATION. ORDER CANCELLATION OR RESCHEDULE.

Any cancellation or delivery reschedule requires prior written authorization by Seller. Goods in continuous production may be subject to a minimum ten percent (10%) cancellation charge. There will be no charge for rescheduling a delivery, but pricing will be subject to the price list in effect at the time of the new delivery date. Goods not in continuous production are subject to cancellation or reschedule charges commensurate with the impact of the action on Seller. Charges for canceling or rescheduling the delivery of Goods not in continuous production will be determined at the time authorization is granted.

## 13. GOODS RETURNED FOR CREDIT.

Any Goods to be returned for credit requires prior written authorization by Seller. Goods authorized for return may be subject to a minimum fifteen percent (15%) return charge. The exact return charge will be determined at the time return authorization is granted.

## 14. NATURE OF RELATIONSHIP.

Seller and Buyer are independent contractors. This contract does not, and shall not be deemed to make either Seller or Buyer the agent or legal representative of the other for any purpose whatsoever, and Buyer shall not have any right or authority to assume or create any obligation, warranty or responsibility whatsoever, express or implied, on behalf of Seller, or to bind Seller in any respect whatsoever.

## 15. ASSIGNMENT.

Neither party may assign any rights or obligations under this contract without the written consent of the other, which shall not be unreasonably withheld, except that Seller may assign this contract without consent to any subsidiary or affiliated company or by way of merger or acquisition.

## 16. MODIFICATION.

This contract may not be changed, modified or amended except in writing signed by duly authorized representatives of the parties.

## 17. GOVERNING LAW.

This contract shall be governed, construed and interpreted under and pursuant to the substantive laws of the State of Delaware, excluding its choice of law rules, and the parties agree that the "UN Convention for the International Sale of Goods" is expressly excluded.

## 18. INTEGRATION.

These terms and conditions, including any attachments or other documents incorporated by reference herein, constitute the entire contract and the complete and exclusive statement of agreement with respect to the subject matter hereof, and supersede any provisions on the face and reverse side of Buyer's purchase order or any prior agreement inconsistent with the provisions hereof concerning the matters specified herein and any representations, promises, warranties or statements made by either party that differ in any way from the terms of this contract shall be given no force or effect. Seller and Buyer

specifically represent each to the other that there are no additional or supplemental agreements between them related in any way to the Goods or the use of Services thereof, unless copies of the same are presently attached hereto and made a part hereof. Seller's failure to object to terms contained in any communication from Buyer will not be a waiver of the terms hereof. The headings of the sections herein have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

**19. SEVERABILITY OF TERMS; WAIVER.**

Waiver by Seller of any default of Buyer hereunder shall not be deemed a waiver of any other default of Buyer. The express provision herein for certain rights and remedies of Seller shall not be construed to deprive Seller of any other rights and remedies to which it would otherwise be entitled under applicable law. The invalidity of the whole or in part of any provisions hereof shall not affect the validity of any other provision.

**20. CONFIDENTIALITY**

Buyer agrees that any and all confidential information, in oral or written form, whether obtained from Seller, its agents or assigns, or other sources, or generated by Buyer pursuant to this contract shall not be used for any purpose other than fulfilling the requirements of this contract. Buyer further agrees to keep in absolute confidence all data relative to the business of Seller and their agents or assigns. No news release, including but not limited to photographs and film, public announcement, denial or confirmation of any part of the subject matter of any phase of any program hereunder shall be made by Buyer without prior written approval of Seller. Buyer shall promptly give Seller written notice of any request for disclosure of Proprietary Information designated by Seller as "Confidential" or "Trade Secret" prior to disclosure to allow Seller the opportunity to seek injunctive relief or such other relief as may be appropriate and shall fully cooperate with Seller, at Seller's expense, in seeking confidential treatment for any such disclosure.

Buyer acknowledges that compliance with this Confidential Information section is necessary to protect the business and proprietary information of Seller, and that a breach of the same will cause irreparable and continuing damage for which money damages may not be adequate. Consequently, if Buyer breaches or threatens to breach this Confidential Information Section, Seller may seek: (1) temporary, preliminary, or permanent injunctive relief, or other equitable relief, in order to prevent such damage; and (2) money damages, insofar as they can be determined.