

## SOFTWARE LICENSE & SERVICES AGREEMENT

THIS SOFTWARE LICENSE & SERVICES AGREEMENT, including all exhibits attached hereto, (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2017, by and between XXVENDORXX, (“**Licensor**”), located at XXADDRESSXX, the XXTRANSIT SYSTEMXX (“**Licensee**”) located at XXTRANSIT SYSTEM ADDRESSXX. Licensor and Licensee may be referred to individually as a “**Party**”, or together as the “**Parties**”.

**Entire Agreement.** This Agreement, including the Ohio Department of Transportation Invitation to Bid (ITB) #142-17 and MASTER AGREEMENT For Provision of Transit Scheduling and Dispatching Software Systems TRANSIT TECH OHIO (T2O) PROJECT (“**MASTER AGREEMENT**”), constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous proposals, agreements and communications, whether oral or written, between the parties relating to the subject matter hereof, and all past courses of dealing or industry custom. This Agreement may be amended only in writing signed by the duly authorized representatives of both Parties.

**Project Scope.** The Parties acknowledge the Project Scope is defined by the Vendor Quote as agreed upon and signed by both Parties. The Project Scope will be implemented in accordance with the milestones listed below. The project **MUST** be completed by December 30, 2018 to be eligible to receive TIGER VII grant funds. Expenditures incurred after December 30, 2018 will be at the Vendor’s expense.

**Funding Period Covered.** This agreement shall be in effect for five (5) years with five (5) one (1) year extensions notwithstanding termination provisions contained herein. TIGER VII funds will pay for all purchase, license and implementation expenses and up to three (3) years of maintenance expenses. At the conclusion of the third year of maintenance expenses, the licensee will pay the annual fees. After year five (5) is complete, the Transit System will have the option to extend the contract one year under the same terms, conditions, and pricing. This extension offer will be provided to the completion of year 10.

**Compliance with Federal and State Procurement Regulations.** The Parties acknowledge that this agreement is executed pursuant to the terms of MASTER AGREEMENT and ITB #142-17 and shall incorporate the terms of these documents subject to the order of precedence defined herein.

**Order of Precedence.** If there is a conflict between the body of this Agreement and any of the Exhibits attached hereto, then the higher level document will supersede any of the lower level documents in accordance with the following order of precedence, from highest to lowest:

- (a) Federally Required Clauses;
- (b) MASTER AGREEMENT
- (c) Ohio Department of Transportation ITB #142-17;
- (d) The body of this Agreement;
- (e) Additional exhibits; and
- (f) Exhibit E – Proposal;

provided that, if the terms related to Licensed Software or Support Services (including warranties), in whole or in part, described in Exhibit E are more favorable to Licensee than those set forth in the body of this Agreement, Exhibit A or Exhibit B, then Exhibit E shall control with respect to such conflict.

**Acceptance.** All acceptance shall be provided in writing by the Licensee. Unless otherwise stated, no Licensee may permit the commencement of the provision of any goods or services by the Licensor without the written concurrence of the Ohio Department of Transportation Office of Transit (ODOT). The agreement between the Licensee and Licensor does not guarantee that funds will be expended on the contract unless accompanied by a signed letter of concurrence from ODOT. Lack of any written

concurrence from the Licensee or ODOT within a defined time period shall not constitute acceptance under any circumstances

**Payment and Milestones.** The parties shall agree for progressive payments to be made upon satisfactory completion of the following milestones at the mutual discretion of the Licensee and ODOT:

Milestone	Payment per ITB Schedule
1. Delivery of equipment and materials to Licensee	Value of equipment
2. Set-up of cloud resources or other backend software/equipment	Value of incurred staff time and resource allocations, license expenses, not to exceed 50% of total contract value.
3. Installation of Tablet Software	Incurred staff time and license expense
4. Onsite travel and training completed	Value of incurred expenses and staff time
5. Installation of equipment and onsite materials	Value of labor and additional equipment not already charged.
6. Acceptance of scheduling system	Remainder of scheduling system value (50%)
7. Acceptance of web portal (if applicable)	Value of web portal addition
8. Acceptance of text messaging (if applicable)	Value of text messaging addition
9. Acceptance of IVR (if applicable)	Value of IVR addition
10. Acceptance of Pre-trip Inspection	Value of pre-trip inspection addition
11. Final Project Acceptance	5% total contract value

Licensor understands and agrees that Licensee is prohibited from providing any type of advance payment. Terms of all payments shall be Net 30.

**Assignment.** Neither Party may assign this Agreement or any right, interest or benefit under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld; provided that in the event of a change in control of a Party, except for a change of control of Licensee to a direct or indirect competitor of Licensor, either Party shall have the right to assign this Agreement to a successor who acquired substantially all of the assets or equity of such Party. Subject to the foregoing, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, Licensor may subcontract the performance of any or all of its obligations under this Agreement, provided it remains directly liable to Licensee.

**Termination for Convenience of Licensee.** The Licensee may terminate this contract any time by a notice in writing that shall specify the effective date thereof, from Licensee to the Licensor, at least thirty (30) days before the effective date of such termination. In that event, any goods accepted by Licensee prior to the effective date of the termination shall become Licensee's property and the Licensor shall be entitled

to receive just and equitable compensation therefore and for any services accepted by Licensee prior to the effective date; provided that the amount of such compensation shall not, in any event, exceed the maximum aggregate compensation payable by Licensee to Licensor, properly attributable to the goods and/or services so accepted.

Neither the acceptance, by Licensee, of any goods and/or services; the payment, by Licensee, for any goods and/or services; nor both acceptance and payment, shall be deemed to waive, to compromise, or to affect in any manner the liability of the Licensor for any breach of contract, of warranty, or both of contract and of warranty.

**Indemnification by Licensor.** Licensor shall to the extent allowed by law indemnify, defend and hold harmless Licensee and ODOT, and its officers, directors, employees and agents, from and against any and all claims made or threatened by any third party and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation or defense ("Damages").

**Indemnification by Licensee and ODOT.** Licensee and ODOT are public entities, or grantees of public funds, subject to the laws and regulations of the State of Ohio and are not permitted to indemnify the Licensor under any circumstances.

**Counterparts; Facsimile.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.

IN WITNESS WHEREOF, each Party has caused this Software License & Services Agreement to be executed by its authorized representative to be effective as of the date hereof.

**Licensor**

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

Signature: \_\_\_\_\_

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

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

**Licensee**

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

Signature: \_\_\_\_\_

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

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