

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and
FRIAS TRANSPORTATION INFRASTRUCTURE (“FTI”)
To Provide RideIntegrity Hosted Licensed Software Service**

Contract No. SFMTA 2014-19

This Agreement is made this 20th day of November, 2013, in the City and County of San Francisco, State of California, by and between Frias Transportation Infrastructure (“FTI”), 5295 S Decatur Blvd, Las Vegas, NV 89118 (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”).

I. Recitals

A. The SFMTA requires a hosted database management system that maintains data on: 1) driver licensing status; 2) medallion holders and color scheme affiliations; 3) items lost in San Francisco taxis; 4) taxi compliance with vehicle emission standards; 5) utilization of taxi services by geographic area, day, time, passenger needs and characteristics, driver, color scheme and other factors; and 6) other matters as specified by the SFMTA.

B. The SFMTA additionally requires a system that will: a) on a continuous real time basis, collect, standardize and redistribute taxi customer ride requests, taxi availability data, and taxi dispatch data; and b) make an Application Programming Interface (API) available to application developers to support development of applications that can, using the Data Feed, be used by passengers to electronically hail any licensed San Francisco taxi; and c) deliver a customized SFMTA driver mobile application to support electronic taxi hailing (e-hailing) for use on the android and IOS smartphone and tablet platforms; and d) a driver web portal for drivers to register and securely log in to view the following information: Driver A-card renewal information, electronic waybill information provided by permit holders to ETA System, electronic waybill information provided by authorized app providers to the ETA System. The contractor will host and run this new Electronic Taxi Access System as a Hosted Licensed Software Service under contract with the SFMTA.

C. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.

II. Definitions

Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, including its appendices and any exhibits to those appendices, it shall have the meaning herein set forth.

Acceptance	Notice from the City to FTI that the Hosted Licensed Software Service meets the Specifications contained in the Documentation. City's Acceptance of the Hosted Licensed Software Service shall be governed by the procedures set forth in Section 7.
Data Feed	The stream of continuous real-time data documenting customer ride requests, taxi availability and taxi dispatches, including but not limited to all data required to be provided to the SFMTA by Dispatch Service Permit Holders in accordance with Sections 1105 and 1114 of the San Francisco Transportation Code for the Electronic Taxi Access System.
Color Scheme	The holder of a Color Service permit, as defined in Article 1100 of the San Francisco Transportation Code.
Dispatch Service	The holder of a Dispatch Service permit, as defined in Article 1100 of the San Francisco Transportation Code.
Documentation	The technical publications, including user guides and training materials relating to the use of the Hosted Licensed Software Service, such as reference, installation, administrative and programmer manuals, provided by Contractor to City, whether online or in hard copy format.

Disabling Code

Computer instructions or programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the End User's access to the Hosted Licensed Software Service through the City's website and/or End User's processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

Electronic Taxi Access System

A system that will, on a continuous real time basis, a) collect, standardize and redistribute taxi customer ride requests, taxi availability data, and taxi dispatch data; and b) make a RideIntegrity Application Programming Interface (API) available to application developers to support development of applications that can, using the Data Feed, be used by passengers to electronically hail any licensed San Francisco taxi; and c) deliver a customized RideIntegrity driver mobile application to support electronic taxi hailing (e-hailing) for use on the android and IOS smartphone and tablet platforms; and d) a driver web portal for drivers to register and securely log in to view the following information: driver A-card renewal information, electronic waybill information provided by permit holders to ETA System, electronic waybill information provided by authorized app providers to the ETA System.

End User

A City employee authorized by City to access the Hosted Licensed Software Service, or an Online Dispatch Referral Company authorized by the SFMTA to access the API.

Hosted Services

The collection of managed services, including system administration, hardware management, software system management, network operations, public internet bandwidth, backup and restoration activities, program management and crisis management.

Hosted Licensed Software Service	Contractor's proprietary RideIntegrity core software system and the RideIntegrity driver mobile application and RideIntegrity API that support electronic hailing of San Francisco taxis, including computer programs that reside on Contractor's servers that provide the Services, the Hosted Services, and all related materials, Documentation, and written information received by City from Contractor, whether in machine-readable or printed form.
Services	The collected tasks and obligations comprising the scope of work to be performed by Contractor as described in Appendix A to the Agreement, "Services to be provided by Contractor."
Online Dispatch Referral Company	An entity authorized by the SFMTA to access the Data Feed for use with a consumer app or internet site.
Specifications	The functional and operational characteristics of the Hosted Licensed Software Service as described in FTI's current published product descriptions and technical manuals.

III. Agreement

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from November, 20, 2013 to November, 20, 2018, with four additional one-year extensions that may be exercised at the City's sole option.

3. Effective Date of Agreement. This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform. The Contractor agrees to perform the services provided for in Appendix A, "Services to be Provided by Contractor," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation. Compensation shall be made in monthly payments on or before the first day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Transportation, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **six million dollars (\$6,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the SFMTA, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web

at

[http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1). A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties. (Disallowance)

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon

notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations;

b. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages unless this requirement is waived in whole or in part by the Director of Transportation:

1) Technology Errors and Omissions Liability Insurance with limits of \$3,000,000 per occurrence/loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

A) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, stored or transmitted in electronic form.

B) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.

C) Liability arising from the introduction of a computer virus into, or otherwise causing damage to the District's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

2) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

c. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

c. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

i. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

16. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. This Section 16 shall not apply to, and Contractor shall have no obligation to defend or indemnify or defend City against, any claim challenging the legality of the City's procurement or contracting procedures for this Agreement.

17. Left blank by agreement of the parties. (Incidental and Consequential Damages).

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left blank by agreement of the parties. (Liquidated Damages)

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

8. Submitting False Claims; Monetary

37. Drug-free workplace policy

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| | Penalties. | |
| 10. | Taxes | 53. Compliance with laws |
| 15. | Insurance | 57. Protection of private information |
| 24. | Proprietary or confidential information of City | |
| 30. | Assignment | |

2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this

option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

- 1)** Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- 2)** Not placing any further orders or subcontracts for materials, services, equipment or other items.
- 3)** Terminating all existing orders and subcontracts.
- 4)** At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- 5)** Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- 6)** Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- 7)** Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- 1)** The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- 2)** A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- 3)** The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

g. Contractor shall within three days of the City's issue of any notice of termination to Contractor (for cause or convenience) provide to the City all archived data and data presently in the Data Feed in an agreed-upon machine-readable generic format.

22. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

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| 8. Submitting false claims | 28. Audit and Inspection of Records |
| 10. Taxes | 48. Modification of Agreement. |
| 11. Payment does not imply acceptance of work | 49. Administrative Remedy for Agreement Interpretation. |
| 13. Responsibility for equipment | 50. Agreement Made in California; Venue |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 51. Construction |
| 15. Insurance | 52. Entire Agreement |
| 16. Indemnification | 56. Severability |
| 18. Liability of City | 57. Protection of private information |
| 24. Proprietary or confidential information of City | |
| 26. Ownership of Results | |

27. Works for Hire

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest.

a. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

b. Contractor agrees that neither Contractor nor any sister or parent corporation of Contractor will apply for or accept any motor vehicle for hire permit from the SFMTA during the term of this Agreement, including the term of the license for the Hosted Licensed Software Service.

24. Proprietary or Confidential Information.

a. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information that may be owned or controlled by City ("Confidential Information") and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data. Contractor shall use the same standard of care with respect to names, addresses, telephone numbers, payment information and any other private information that Contractor receives from third parties in the performance of this Agreement.

b. Data Security. Contractor shall at all times during the term of this Agreement provide and maintain up-to-date security with respect to (i) the Services, (ii) the City's website, (iii) Contractor's physical facilities, and (iv) Contractor's networks, to prevent unauthorized access or "hacking" of City's Confidential Information. Contractor shall provide security for its networks and all internet connections consistent with best practices observed by well-managed hosted systems providers working in the financial services industry, and Contractor will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Contractor will maintain appropriate safeguards to restrict access to City's Confidential Information to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., "firewalls" or similar barriers) and password protected access to the City's

Confidential Information. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City's Confidential Information. Contractor also will establish and maintain any additional physical, electronic and procedural controls and safeguards to protect the City's Confidential Information from unwarranted disclosure. City agrees that Contractor has no ability to determine use of or to restrict access to the Data Feed once the SFMTA has granted access to any End User. City agrees that restrictions on use of the Data Feed after it is accessed by an authorized End User will be solely the responsibility of the City and Contractor shall bear no liability in any fashion for the release of data originating from authorized End Users.

c. Loss or Unauthorized Access. Contractor will promptly notify City of any actual or potential exposure or misappropriation of City's Confidential Information (any "Leak") that comes to Contractor's attention. Contractor will cooperate with City and with law enforcement authorities in investigating any such Leak at Contractor's expense in the event the Leak originated from Contractor-controlled Confidential Information, and at the City's expense in the event the Leak originated from City controlled Confidential Information. Contractor will likewise cooperate with City and with law enforcement agencies in any effort to notify injured or potentially injured parties, and such cooperation will be at Contractor's expense, except to the extent that the Leak was caused by City. The remedies and obligations set forth in this section are in addition to any other City may have.

d. Ownership of City Content. While the Hosted Licensed Software Service provided pursuant to this Agreement is the proprietary information and property of Contractor, Contractor acknowledges and agrees that City owns the Data Feed compiled by the Hosted Licensed Software Service, that End Users have a right to access and retrieve such Data Feed at any time, and that any access to and use of such Data Feed by Contractor shall be solely for the purpose of providing the Hosted Services and carrying out Contractor's other obligations under and pursuant to this Agreement. Any other use by Contractor is strictly prohibited, and Contractor is prohibited from transferring or permitting access to the Data Feed to any person or entity for any purpose without the express written authority of the SFMTA.

e. Compliance with State and Federal Privacy Laws. Contractor shall comply with applicable State and federal privacy laws, including, but not limited to, the California Online Privacy Protection Act (Business & Professions Code §§22575-22579, and the Children's Online Privacy Protection Act (15 U.S.C. §6501).

25. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Christiane Hayashi
Taxi Services Section
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
christiane.hayashi@sfmta.com

To Contractor: James Wisniewski
FTI

6795 Edmond St., 3rd Floor
Las Vegas, NV 89118
james@FriasTI.com

Any notice of default must be sent by registered mail with a copy to the Office of the San Francisco City Attorney. .

26. Ownership of Results. Any interest of Contractor or its Subcontractors in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities. This section does not confer any interest or title to the City in the Hosted Licensed Software Service or any other proprietary software, hardware, equipment, documents or data in existence prior to the date of this Agreement, or any associated intellectual property interests related to the Hosted Licensed Software Service, regardless of whether such interests have been perfected as of the date of this Agreement. However, the Data Feed generated or maintained by the Electronic Taxi Access System and any data generated by the RideIntegrity software shall be the property of City.

27. Works for Hire. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities. This section does not confer any interest or title to the City in the Hosted Licensed Software Service or any other proprietary software, hardware, equipment, documents or data in existence prior to the date of this Agreement, or any associated intellectual property interests related to the Hosted Licensed Software Service, regardless of whether such interests have been perfected as of the date of this Agreement. However, the City shall hold all intellectual property rights to the Data Feed generated by the Electronic Taxi Access System and any data generated or maintained by the RideIntegrity software.

28. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Any contract for software or hardware development services that Contractor has executed with any third party for creation of the Hosted Licensed Software Service prior to the effective date of this Agreement shall not be construed as subcontracting for the purposes of this Section.

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the by the SFMTA. The City may not assign any part of this Agreement without the advance written approval of the Contractor.

31. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Left blank by agreement of the parties.

33. Left blank by agreement of the parties. (Local Business Enterprise Utilization; Liquidated Damages).

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension

and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

38. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this

Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Left blank by agreement of the parties. (Public Access to Meetings and Records).

42. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's

obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall

be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages. Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

4) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in

Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law.

5) Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”) in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City’s Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor’s use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by the parties. Contractor shall cooperate with the SFMTA to submit to the SFMTA Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

- 50. Agreement Made in California; Venue.** This Agreement is made and will be performed in San Francisco. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
- 51. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.
- 52. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."
- 53. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.
- 54. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.
- 55. Left blank by agreement of the parties. (Supervision of Minors).**
- 56. Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- 57. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor. Contractor is authorized to disclose private information covered by this Section to a subcontractor to the extent necessary to perform this Agreement, provided that any such subcontract must apply the prohibitions of Administrative Code Chapter 12M to the subcontractor and make the City a third-party beneficiary to the subcontract for the purpose of enforcing any violations of Administrative Code Chapter 12M against the subcontractor. Failure to comply with this section shall be a material breach of this Agreement.
- 58. Left blank by agreement of the parties. (Graffiti Removal)**

59. Left blank by agreement of the parties. (Food Service Waste Reduction Requirements)

60. Left blank by agreement of the parties. (Slavery Era Disclosure)

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

62. Force Majeure.

a. Neither party shall be liable for failure to perform the party's obligations if such failure is as a result of the act or omission of a third party that is beyond the control of the party under and obligation to perform, or if such failure is the result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, computer network or telephone service.

b. If at any time during the performance of this Agreement Contractor anticipates or experiences any delays that are due to the actions or omissions of third parties, including but not limited to delays caused by Dispatch System Permit Holders or their contractors, and that are beyond the control of Contractor, then Contractor shall promptly inform the SFMTA of the reason and anticipated duration of such delays in writing and propose a revised implementation schedule that accounts for the period of delay. The SFMTA shall promptly respond in writing as to whether it accepts the revised implementation schedule based on delays beyond the Contractor's control. Contractor shall take reasonable steps to minimize delay or damages caused by foreseeable events, shall substantially fulfill all non-excused obligations and cooperate with the SFMTA to mitigate any delays to the completion of the work to be provided under this Agreement.

63. PCI Requirements. Contractors providing services and products that collect, transmit or store cardholder data, are subject to the following requirements:

a. Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Council's list of PA-DSS approved and validated payment applications.

b. Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

c. For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council PIN Transaction Security (PTS) program.

d. For items 63(a) to 63(c) above, Contractor shall provide a letter from its qualified security assessor (QSA) affirming its compliance and current PCI or PTS compliance certificate.

e. Contractor shall be responsible for furnishing City with an updated PCI compliance certificate 30 days prior to its expiration.

f. Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Approved:

Frias Transportation Infrastructure, LLC
("FTI")

Edward D. Reiskin
Director of Transportation
San Francisco
Municipal Transportation Agency
Approved as to Form:

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

Dennis J. Herrera
City Attorney

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

By: _____
Mariam Morley
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, SFMTA Board of Directors

Mark A. James
President & Chief Executive Officer
5295 S Decatur Blvd,
Las Vegas, NV 89118

City Vendor Number: 89636

Appendices

- A: Services to be Provided by Contractor
- B: Calculation of Charges
- C. Software License, Maintenance and Service Level Agreement

Appendix A Scope of Work

Description of Services

Contractor agrees to perform the following services:

As described more fully below, FTI shall provide the SFMTA with a hosted database management system that maintains data on: 1) driver licensing status; 2) medallion holders and color scheme affiliations; 3) items lost in San Francisco taxis; 4) taxi compliance with vehicle emission standards; 5) utilization of taxi services by geographic area, day, time, passenger needs and characteristics, driver, color scheme and other factors; and 6) other matters as specified by the SFMTA. In addition FTI shall: 1) provide SFMTA with a system that will, on a continuous real time basis, collect, standardize and redistribute taxi customer ride requests, taxi availability data, and taxi dispatch data; b) make an Application Programming Interface (API) available to application developers to support development of applications that can, using the Data Feed, be used by passengers to electronically hail any licensed San Francisco taxi; c) deliver a customized SFMTA driver mobile application to support electronic taxi hailing (e-hailing) for use on the android and IOS smartphone and tablet platforms; and d) deliver a driver web portal for drivers to register and securely log in to view the following information: Driver A-card renewal information, electronic waybill information provided by permit holders to ETA System, electronic waybill information provided by authorized app providers to the ETA System. The contractor will host and run this new Electronic Taxi Access System as a Hosted Licensed Software Service under this Agreement.

Phase 1 – RideIntegrity Software and Electronic Taxi Access System (ETAS)

Phase 1 implementation shall begin upon contract execution and Phase 1 will be completed within six months, including delivery of all software components of the system, unless otherwise directed by the SFMTA. Software components shall be billed at the rates listed in Appendix B.

Phase 1-A deliverables: RideIntegrity core system including electronic waybills and regulatory data:

1. Delivery of functional RideIntegrity regulatory dashboard to designated SFMTA staff.
2. Testing and deployment of the Completed Trip API as described in Exhibit 1 to this Appendix A.
3. Training for designated SFMTA staff on RideIntegrity regulatory dashboard. Training will include a minimum of 30 hours direct training time with staff. In addition, contractor will deliver a minimum of one 3 – 5 minute screencast training video for each major component of the RideIntegrity software for the purpose of staff review and new staff training on how to use the software.
4. Creation of a minimum of ten custom reports for the SFMTA to access data from the Electronic Taxi Access System through the RideIntegrity dashboard.
5. Documentation for Phase 1-A deliverables.

Appendix A Scope of Work

Phase 1-B deliverables: Driver Web Portal – Additional RideIntegrity Software Options:

1. FTI shall deliver a driver web portal for any driver to register and securely log in to view the following information for that driver: Driver permit status information, electronic trip data associated with that Driver in the RideIntegrity system.
2. Additional RideIntegrity software options to be delivered include the following:
 - a. **GIS mapping with overlay and file exporting capabilities**
 - (i) Ability to export shapefiles for analysis in external software from data queries regarding ridership and/or trip information from RideIntegrity dashboard based on date, time, and location parameters
 - (ii) Ability to import existing shape files to overlay onto system map in RideIntegrity dashboard
 - b. **Nightlife and core tourist analysis**
 - (i) Ability to geo-fence and tag locations based on special events or specific venues within RideIntegrity dashboard
 - (ii) In order to respond to immediate transportation network circumstances, the ability to broadcast to drivers geo-fence limitations on taxi service and preclude ehail in geo-fenced areas.
 - (iii) Ability to run reports on ridership / trip information within geo-fenced locations based on special events or specific venues
 - c. **Online lost and found, comments and complaints system**
 - (i) Delivery of web portal interface to allow for the submission of lost and found, comments and complaints
 - (ii) Interface to view, update, and report on data through RideIntegrity dashboard
 - (iii) Customization of web portal to mimic look and feel of SFMTA website
 - d. **Integrated online forms for licensing and vehicle inventory**
 - (i) Delivery of web portal interface to allow for the electronic submission of electronic forms to the SFMTA RideIntegrity dashboard and directly to email
 - ii) Capability to accept electronic payments through web portal for fees to be collected by the SFMTA consistent with all applicable laws.
 - (iii) Delivery of a minimum of 10 custom electronic forms for online reporting to be specified by the SFMTA
 - (iv) Customization of web portal to mimic look and feel of SFMTA website
 - e. **Driver database and Integration of drivers licensing system (A-cards) with Transcore vendor for San Francisco International Airport (SFO)**
 - (i) These items to be covered in separate scope of work provided by SFO and its contractor, Transcore.
 - f. **Emissions data from OBD II installed vehicles**

Appendix A Scope of Work

- (i) Firmware update to OBD to collect, fuel consumption, mileage, fuel type, vehicle identification number, miles per gallon from vehicle on-board computer
 - (ii) Reporting capabilities of emissions data based on vehicle, Color Scheme, vehicle type, time and date, and location parameters
- g. **Regulatory enforcement mobile applications** – (SFMTA to provide tablets and airtime)
 - (i) Delivery of Android version of RideIntegrity dashboard that displays trip information, vehicle information, driver information from RideIntegrity system
 - (ii) Ability to input violations, citations, or enforcement actions directly into system through tablet
 - (iii) Ability to print custom citation to Bluetooth portable printer from application
- h. **Cloud taximeter validation from OBD II installed vehicles**
 - (i) Ability for SFMTA to input taximeter operating parameters including drop rate, price per mile, mile increment, waiting time rate, waiting time minimum speed, and extra rates
 - (ii) Virtual cloud-based taximeter system that calculates fare based on parameters input by SFMTA and data collected by OBD II device, including vehicle speed and distance from the vehicle computer
 - (iii) Alerts sent via email and through reporting within RideIntegrity dashboard on discrepancies in fares recorded by the system
- i. **Trip deviation monitoring from OBD II installed vehicles**
 - (i) Ability through RideIntegrity system to perform continuous analysis of historical trip data, including start and end trip locations, and compares routes taken against historical similar routes to produce variance reports based on collected trip data
 - (ii) Ability to create alerts and run reports through RideIntegrity dashboard based on SFMTA defined acceptable variance levels between trip route taken or time, and fare of trip
- j. **Auxiliary button (notification feature) from OBD II installed vehicles**
 - (i) Custom firmware update to OBD II device allowing for a driver-accessible switch to be connected to OBD device to transmit signal to system in real-time to the RideIntegrity system
 - (ii) Interface to allow vehicle information, vehicle location, and time of switch activation to be transmitted via text and email when switch is pressed, and to display on map in RideIntegrity dashboard in real-time

3. Additional RideIntegrity software options and driver web portal included in Phase 1-B deliverables shall be delivered within six months of execution of the Agreement at the option of the SFMTA; the monthly price shall be in accordance with the price schedule as attached in Appendix B, upon acceptance by SFMTA.

Appendix A Scope of Work

4. At the direction of the SFMTA, FTI shall customize data interfaces for SFO's Transcore ground transportation management system to transmit and update data stored within the ETAS related to permit holders and vehicle information necessary for proper functionality of SFO's Transcore airport ground transportation system. FTI shall take direction from SFMTA staff as to what specific data, and parameters the SFMTA will allow Transcore to access or update from the ETAS.
5. Delivery of acceptance and testing documentation and procedures for the Phase 1 deliverables, including but not limited to API service level agreements, service level agreement monitoring systems, data retention parameters, data backup and disaster recovery systems.
6. Documentation for Phase 1-B deliverables.
7. Creation of custom reports to the SFMTA for Phase 1-B deliverables.
8. FTI will assist and train designated SFMTA staff on complete data access and system structure for the SFMTA to create its own custom reporting and data extraction.

Phase 1-C Electronic Taxi Access System (ETAS) FTI shall deliver APIs to be used by Online Dispatch Referral Companies to communicate with Dispatch Services (or if exercised, the optional SFMTA driver application described in Phase 2). The required APIs are described in detail in the "Electronic Taxi Access System Design Scope," which is attached to this Appendix A as Exhibit 1, and is incorporated by reference herein. The APIs will receive location, availability, vehicle and driver data into the ETA System and publish data to On-Line Dispatch Referral Companies authorized to receive the data by the SFMTA. FTI shall provide access to SFMTA ETA System data either through an API or a web service interface, and through these services will provide dispatch referrals (e-hails) to existing Dispatch Services or optionally to the Driver Mobile App described in Phase 2-A below. Access to such interfaces or APIs shall be managed by the SFMTA and is subject to licensing terms and conditions of the SFMTA.

Phase 2 - RideIntegrity Driver Mobile Application, OBD II Device Integration and MDD (Mobile Data Device)

Phase 2 describes options to be implemented at the discretion of the SFMTA for those taxi vehicles where data from Dispatch Systems and/or existing in-taxi equipment are not adequate for the full function of RideIntegrity and the Electronic Taxi Access System.

Phase 2-A deliverables: RideIntegrity driver mobile application for e-hail, and RideIntegrity APIs for Online Dispatch Referral Companies:

1. FTI Shall deliver a customized driver mobile application to support electronic taxi hailing (e-hailing) for use on the Android and IOS smartphone and tablet platforms.
1. Within two weeks of notice to proceed on this deliverable, FTI will work with SFMTA staff to wireframe Android and IOS SFMTA driver application.
2. Within six weeks of notice to proceed on this deliverable, FTI shall deliver a working beta model in Android and IOS for SFMTA review and approval.

Appendix A Scope of Work

3. Within ten weeks of notice to proceed on this deliverable, FTI shall deliver completed Android and IOS applications for testing.
4. Within 12 weeks of notice to proceed on this deliverable, FTI shall deliver completed and tested Android and IOS driver applications for distribution to drivers.
5. FTI will either provide a web service interface, an API or will use an existing web service interface provided by SFMTA-authorized Online Dispatch Referral Companies to provide required data between the ETAS and the RideIntegrity driver application in accordance with SFMTA requirements. Failure by the SFMTA to authorize any Online Dispatch Referral Company to access the ETAS System will not affect the payment deadline for Phase 1 so long as FTI has delivered a web service interface.
6. FTI shall maintain, and shall publish updates to and maintenance of the RideIntegrity driver application in both the Apple App store and the Google Play store.
7. FTI shall provide written and/or audio-visual materials for an online training module for drivers to learn to use the ETAS driver application.
8. FTI will perform additional customization of the RideIntegrity driver mobile application after acceptance and deployment upon SFMTA request at a negotiated rate not to exceed \$150 per hour.
9. Documentation for Phase 2-A deliverables.
10. Creation of custom reports to the SFMTA for Phase 2-A deliverables.

Phase 2-B deliverables: OBD II Installation

1. Phase 2-B shall consist of the delivery of RideIntegrity on-board devices (“OBD II devices”) to be installed into vehicles prescribed by the SFMTA. Phase 2-B shall begin no later than December 25th 2013, unless FTI is notified in writing of a later date by the SFMTA.
2. Upon the issuance of a Notice to Proceed by the SFMTA, FTI shall commence installation of not less than 250 OBD II per month, for up to 2,500 vehicles, at the rates specified in Appendix B. If SFMTA elects to provide for OBD II installation through third parties, FTI shall provide installation instructions as needed to preserve all warranties and ensure proper OBD II device operation.
 - a. SFMTA has 30 days following the date of installation to reject an OBD II device or its installation. If SFMTA takes no action within 30 days, the OBD II device and installation shall be deemed to be accepted. If SFMTA elects to deactivate, discontinue use of, or remove the OBD II device and associated router, cancellation fees will apply, as specified in Appendix B.
 - b. SFMTA agrees to facilitate communications between FTI and Color Schemes and Dispatch Services with respect to the OBD II device to address concerns and to provide an information exchange for technical and policy issues
3. FTI warrants that all OBD II devices shall be fully functional -- functional 99.7 percent of vehicle operating time --for 24 months from activation. If a device does not meet this standard during this warranty period it shall be replaced by FTI as soon as possible and within 3 business days of the date that it is determined to be defective, at no cost to the SFMTA. FTI and the

Appendix A Scope of Work

SFMTA shall monitor OBD II function through RideIntegrity software reports that shall compare OBD II device status (heartbeat) with known active taxis (determined through waybill information, observation or other means). When a OBD II device fails, FTI will contact the appropriate Permit Holder to schedule a replacement of the device. If the Permit Holder makes the vehicle available and FTI does not replace the failed OBD II device within 3 business days, the SFMTA will incur no charges for that device for that month. If an OBD II device fails after 24 months from the date of activation, the SFMTA may purchase a new OBD II device, which shall be subject to this warranty, per the costs outlined in Appendix B.

4. Delivery of installation documentation for the OBD II devices.
5. Training of OBD II device installers designated by the SFMTA, if elected.
6. Delivery of Documentation of the Hosted Licensed Software Service for Phase 2.
7. Creation of custom reporting for Phase 2 deliverables.
8. FTI will assist and train the SFMTA staff on complete data access and system structure so that the SFMTA can create its own custom reporting and data extraction.
9. Delivery of acceptance and testing documentation and procedures for the Phase 2 deliverables, including but not limited to API service level agreements, service level agreement monitoring systems, data retention parameters, data backup and disaster recovery systems.

Phase 2-C MDD (Mobile Data Devices)

SFMTA shall have the option to implement Phase 2-C upon written notice to proceed from SFMTA. Following SFMTA's written notice to proceed, FTI shall deliver Mobile Data Devices to be installed in all taxi vehicles designated by the SFMTA within 90 days. Final hardware selection will be at the discretion of the SFMTA. FTI and SFMTA agree and understand that because the Mobile Data Device uses the same airtime as the OBD II device, the airtime for the Mobile Data Device is included in the OBD II device pricing. The Mobile Data Device shall use the driver mobile application developed for the SFMTA by FTI.

Project Management

FTI will provide project management and consulting services related to this Agreement for three months, including a dedicated project manager to be available on site during business hours at the SFMTA's offices at One South Van Ness Avenue, San Francisco for a period of three months. The SFMTA may elect to extend this service on a month-to-month arrangement after the first three months.

On-site Support – Managed Services

FTI will provide one on-site FTI employee dedicated to the SFMTA on a full-time basis to provide support and training on the system for a period of one year. The SFMTA shall provide a space to work from for the employee at its One South Van Ness offices.

Appendix A Scope of Work

Additional Work

At SFMTA's request, FTI shall provide consulting services related to the implementation of RideIntegrity, or related to the work to be provided pursuant to this Agreement, at the hourly consulting rates specified in Appendix B.

**Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope**

This Exhibit 1 to Appendix A describes the requirements of the RideIntegrity Application Programming Interfaces for e-hailing to be delivered pursuant to Appendix A, Phase 1B. The APIs will aggregate and disseminate constantly updated data to allow licensed third-party Online Dispatch Referral Companies to electronically hail San Francisco licensed taxis.

Application Programming Interfaces for E-hailing Requirements

1. *Vehicle Data API*

The vehicle Data Feed will originate and be broadcast to the RideIntegrity system through the RideIntegrity Driver’s app or the on-board device as described in Appendix A. RideIntegrity will make available a vehicle and vehicle location feed to the Online Dispatch Referral Companies. Each Online Dispatch Referral Company will be allowed to receive data every six seconds about every taxi in the system.

The following describe the data that must be included in a vehicle data request and a vehicle location request.

A. *Vehicle Data Request Description*

Fields:

Id	Id of vehicle
Color Scheme	Id of vehicle’s Color Scheme
Medallion	Id of vehicle’s medallion or permit
Drivers	Id’s of drivers authorized to drive this vehicle
Vehicle type	<ul style="list-style-type: none"> • Taxi • Ramp Taxi • Other
Seat count	Number of available seats
Make	Make of vehicle
Model	Model of vehicle
Year	Year of vehicle
Fuel Type	<ul style="list-style-type: none"> • Gasoline • Compressed Natural Gas (CNG) • Hybrid • Electric • Biodeisel
GHG Score	<ul style="list-style-type: none"> • A number indicating the level of carbon emissions from the vehicle based

**Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope**

	on a formula to be provided by SFMTA
Spare	Is this a “spare” cab? (Some cabs can only be used on a contingent basis when the regular cab is unavailable because of a mechanical problem. Such vehicles are “spares.”)

B. *Vehicle Location Data Request Description*

Fields:

Vehicle	Id of vehicle
Driver	Id of driver
Timestamp	Time of location record
Position	Latitude/longitude of vehicles’ current position
Status	Current status of vehicle: <ul style="list-style-type: none"> • Off duty • Empty (on-duty) • Occupied

2. *Business Entity API*

The business entity API is used to query relatively static entity information that will appear in the more dynamic fields. In particular, this API must provide information about:

A. *Dispatch Company*

Fields:

Id	Id number of the Dispatch Service
Name	Name of the Dispatch Service

B. *Color Schemes*

Fields:

Id	Id number of the Color Scheme
Name	Name of the Color Scheme
Dispatch Service Id	<ul style="list-style-type: none"> • The id of the Dispatch Service that dispatches for this Color Scheme.
Dispatcher ID	<ul style="list-style-type: none"> • The id of the individual dispatcher

**Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope**

C. Drivers

Fields:

Id	Id number of the driver
Name	Name of driver
Color Scheme	The id of the driver's Color Scheme
Permit number	The id of the driver's medallion or permit if they are the permit holder
Vehicles	The ids of all vehicles the driver is authorized to drive
Languages	Languages spoken by the driver
Disability training	Has the driver received special training for helping the disabled?
Years driving	How many years has this driver been driving professionally in San Francisco?
Advanced Driver	Has this driver passed advanced training (yes or no)

There are only two messages in this API, one that requests all the business entities of a given name, another that returns the information.

D. Message Descriptions

i. Business Entity Request Message

Message Fields	
Id	Id of the request
Originator	Id of the Online Dispatch Referral Company making the request
Entity	Name of the business entity to retrieve, one of: <ul style="list-style-type: none"> • Dispatch Services • Color Schemes • Drivers • Vehicles

ii. Business Entity Response Message

Message Fields	
Id	Id of the original request
Result	The result of the request (a serialized version of all the entities of the appropriate type).
Error	Any error that occurred in the request

Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope

3. *Dispatch API*

A vehicle dispatch must be an asynchronous series of messages because it requires the driver to accept or reject a request. Furthermore, because of potential communication failures, intermediate information must be sent to make sure the communications have been received by the intended party.

A. *Online Dispatch Referral Company Originates Dispatch Request*

Message coordination for Online Dispatch Referral Company dispatches proceed in this sequence:

- i. Online Dispatch Referral Company posts a Dispatch Request message
- ii. RideIntegrity processes the Dispatch Request message and posts a dispatch request message to one or more Dispatch Services and posts a dispatch request received message back to the Online Dispatch Referral Company, including only the fact that RideIntegrity has received the request
- iii. Dispatch Service processes the dispatch request message and posts a dispatch request received message back to the Data Feed.
- iv. RideIntegrity processes dispatch request received message from Dispatch Service and posts the dispatch request received message back to the Online Dispatch Referral Company containing information about which Dispatch Service has acknowledged receipt.
- v. Zero or more drivers at each Dispatch Service accept a request within 90 seconds and Dispatch Service posts dispatch request disposition message to the Data Feed.
- vi. RideIntegrity processes dispatch request disposition messages and forwards dispatch request disposition messages to Online Dispatch Referral Company.
- vii. Online Dispatch Referral Company processes all received dispatch request disposition messages and (optionally) posts a dispatch request cancellation message to the Data Feed.
- viii. RideIntegrity processes the dispatch request cancellation message, posts a dispatch request cancellation message to one or more Dispatch Services, and posts a dispatch request cancellation received message back to the Online Dispatch Referral Company, including only the fact that RideIntegrity has received the request.

Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope

ix. Dispatch Service processes the dispatch request cancellation message and posts a dispatch request cancellation received message back to the Data Feed and RideIntegrity processes dispatch request cancellation received message from Dispatch Service and posts the dispatch request cancellation received message back to the Online Dispatch Referral Company containing information about which Dispatch Service has acknowledged receipt.

B. *Dispatch Service Originates Dispatch Request*

When no Online Dispatch Referral Company is involved in a dispatch (probably because the customer called the Color Scheme directly), the Dispatch Service sends dispatch request messages directly to the Data Feed, and the sequence is much simpler:

i. Dispatch Service posts a dispatch request message

ii. Dispatch Service waits for drivers to respond and then sends a request disposition message.

C. *Message Descriptions*

i. *Dispatch Request Message*

Fields:

Id	Unique id generated by the originator that will identify all communication about this dispatch through its entire lifecycle.
Originator	Id of company originating this dispatch request. If the dispatch came via an Online Dispatch Referral Company this will be the id of that company. If the dispatch came through “traditional” dispatch (e.g. the customer phones a Color Scheme directly) this will be the id of the Dispatch Service (since no Online Dispatch Referral Company is involved).
Customer phone	Phone number of customer
Time of request	Date and time request was made
Requested pickup location	Address and latitude/longitude for requested pickup location
Requested drop off location	Address and latitude/longitude for requested drop off location (if given by customer)
Requested pick up time	Time requested by customer for pickup (typically “now”)
Vehicles	Zero or more vehicle ids of vehicles that should be dispatched, listed in

Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope

	<p>preference order.</p> <p>If no ids are specified, the Online Dispatch Referral Company is allowing the Dispatch Service itself to select a vehicle to dispatch. In this case, the Online Dispatch Referral Company can use the Color Scheme Ids field to specify which Color Schemes should be allowed to dispatch a vehicle.</p> <p>If one or more id is specified, the Online Dispatch Referral Company is asking the Dispatch Service to dispatch only to the specific vehicles requested.</p> <p>When a Dispatch Service sends a dispatch request (as opposed to a Online Dispatch Referral Company), this field should be filled with the ids of the vehicles to which the Dispatch Service actually offered the dispatch. (e.g. if the Dispatch Service dispatches by zone, only the ids of cabs in the zone should be listed here).</p>
Color Schemes	<p>In the special case where the Online Dispatch Referral Company has not given specific vehicle Ids, this field lists all the Color Schemes the Online Dispatch Referral Company is willing to allow to try to dispatch a vehicle.</p> <p>If the vehicle Ids field and the Color Scheme Ids field are both empty, the Online Dispatch Referral Company is requesting that any vehicle from any Color Scheme may be dispatched, and all Dispatch Services may try to dispatch any vehicle.</p> <p>When a Dispatch Service sends a dispatch request (as opposed to a Online Dispatch Referral Company), this field should be empty if the Vehicle Ids field contains values, and otherwise should include all Color Schemes that the Dispatch Service actually offered the dispatch.</p>
Driver acceptances	All drivers who accepted the request
Driver refusals	All drivers who refused the request
Driver cancellations	All drivers who accepted a request but later canceled their acceptance
3 rd Party cancellations	All vehicles canceled by Online Dispatch Referral Company
MDT message	<p>Text describing the parameters of the dispatch. This is text sent by the Online Dispatch Referral Company for the driver's benefit and shows whatever the Online Dispatch Referral Company wants the driver to know about this dispatch. Information might include:</p> <ul style="list-style-type: none"> • Prepaid tip amount • Customer agrees to forfeit \$10 if they're not at pickup

**Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope**

Disposition	<ul style="list-style-type: none"> • Dispatch pending • No vehicles available • Dispatch scheduled
ETA	Estimated arrival time for dispatched vehicle

ii. *Dispatch Request Received Message*

This message simply acknowledges that RideIntegrity or one of the Dispatch Services has received a dispatch request message.

It says nothing about the final disposition of the dispatch itself, which probably has not yet been decided in any event.

If the recipient can't process the request for some reason, the dispatch request received message specifies an appropriate error code.

Message Fields	
Dispatch request id	The reference number (unique id) that was sent by the Online Dispatch Referral Company in the original dispatch request message.
Recipient	Entity that originally sent the message. This can be either RideIntegrity itself or one of the Dispatch Services. The same message is used to acknowledge receipt of the dispatch request along the entire path.
Error code	Error, if any, for instance: <ul style="list-style-type: none"> • Success (that is, "no error") • The original request was inconsistent or incomplete; request canceled • There was an error trying to forward the request to a Dispatch Service • Dispatch Service reports some other error to be determined

iii. *Dispatch Request Disposition Message*

Message Fields	
Dispatch request id	The reference number (unique id) that was sent by the Online Dispatch Referral Company in the original dispatch request message.
Recipient	Entity that originally sent the message. This can be either RideIntegrity itself or one of the Dispatch Services. The same message is used to acknowledge receipt of the dispatch request along the entire path.
Error code	Error, if any, related to the request as a whole (errors for individual vehicles are below in the disposition field): <ul style="list-style-type: none"> • Success (that is, "no error") • Can't dispatch now • Others to be determined

**Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope**

Disposition	<p>For each vehicle requested, a code indicating the disposition, for instance:</p> <ul style="list-style-type: none"> • Driver accepted dispatch request • Driver declined dispatch request • Driver did not respond at all to dispatch request • Dispatch Service declined request without contacting driver at all • Error occurred (no such vehicle, off-duty, others to be determined) • ETA that the vehicle will arrive at pickup location
-------------	---

iv. Customer Missing Message

When a dispatched vehicle arrives at the pickup location, but the customer is not there, the Dispatch Service should send a “customer missing” message. Such a message must always have a dispatch request id to a previously existing Dispatch Request.

Message Fields	
Dispatch Request id	The reference number (unique id) that was sent by the Online Dispatch Referral Company in the original Dispatch Request message.

v. Vehicle Missing Message

When a dispatched vehicle doesn’t arrive at the pickup location, the Online Dispatch Referral Company should send a “Vehicle Missing” message. Such a message must always have a Dispatch Request id to a previously existing Dispatch Request.

Message Fields	
Dispatch Request id	The reference number (unique id) that was sent by the Online Dispatch Referral Company in the original dispatch request message.

4. Completed Trip API

Whenever any trip is completed, the associated Dispatch Service must send payment information about the trip. This message must be sent no matter whether the trip was dispatched or hailed.

A. Message Descriptions

i. Completed Trip Message

Fields:

Id	Id of trip
Vehicle	Id of vehicle for trip
Driver	Id of driver for trip

**Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope**

Dispatch Service	Id of Dispatch Service for trip
Shift	Id of driver's shift
Online Dispatch Referral Company (3 rd party)	Id of Online Dispatch Referral Company for trip
Dispatch Request	Id of Dispatch Request that originated this trip
Status	<ul style="list-style-type: none"> • Dispatched • Underway • Completed • Driver never showed • Customer never showed
Start/end locations	Locations (address and latitude/longitude) for starting and ending locations
Start/end times	Actual pickup/drop off times
Wheelchair	True if a wheelchair was transported as part of the trip.
Payment type	Indicator for type of payment: <ul style="list-style-type: none"> • Cash • Credit card • Paratransit debit card • Other card (gift card, corporate card, etc.) • Not paid
Fare amount	Fare amount from meter
Tip amount	Tip amount if available
Passenger count	Number of passengers if known
Trip distance	Distance of trip
Vehicle / Driver rating	Rating 1-5 stars by customer

ii. Completed Trip Received Message

This message acknowledges that RideIntegrity has received a Completed Trip message and indicates any error in the message

Message Fields

**Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope**

Trip id	Unique identifier that identifies this trip (hailed or dispatch)
Dispatch request id	Id of the original dispatch request for which this information is being sent (or none if there was no dispatch request because the ride was “hailed” on the street).
Error code	Error, if any, for instance: <ul style="list-style-type: none"> • Success (that is, “no error”) • The dispatch request id refers to a nonexistent (or already “completed”) Dispatch request • Data in completed trip message was somehow inconsistent with itself or other data

5. *Shift Change API*

Whenever any driver comes on shift or goes off shift the associated Dispatch Service must send information about the driver’s shift.

A. *Message Descriptions*

i. *Shift Started Message*

Message Fields	
Shift Id	Id for shift
Driver Id	Id for driver
Start time	Start time of shift

ii. Shift Ended Message

Message Fields	
Shift Id	Id for shift
Driver Id	Id for driver
End time	Start time of shift

6. *Customer Satisfaction API*

Whenever any trip is completed, the associated Dispatch Service may send a customer satisfaction message if it’s appropriate. Because not all customers will supply this information, the message is optional.

A. *Customer Satisfaction Message*

This message indicates that a customer has provided satisfaction information about their ride.

Exhibit 1 to Appendix A
Electronic Taxi Access System Design Scope

Message Fields	
Trip id	Unique identifier that identifies this trip
Cab never arrived	True if the customer reports that the cab never arrived despite agreeing to the dispatch
Vehicle rating	Customer rating from 1 to 5 stars.
Driver rating	Customer rating from 1 to 5 stars.

Appendix B

Calculation of Charges

A. Software Licensing - \$1,585,000 contract total

a. Billed at a rate of \$20,000 per month upon first use of RideIntegrity to collect electronic trip data and other regulatory data from OBD II devices and/or existing Permit Holders' dispatching or payment systems as described in Appendix A, Phase 1-A.

b. Increase of \$7,500 per month, for a total rate of \$27,500 per month, for remainder of contract, upon FTI's delivery and SFMTA's acceptance of RideIntegrity additional software options as described in Appendix A, Phase 1-B, paragraph 2.

B. Software Support - \$317,000 contract total

a. Billed at a rate of \$4,000 per month upon first use of system to collect electronic trip data and other regulatory data from OBD II devices and/or existing Permit Holders' dispatching or payment systems as described in Appendix A, Phase 1-A.

b. Increase of \$1,500 per month, for a total rate of \$5,500 per month, for remainder of contract, upon FTI's delivery and SFMTA's acceptance of RideIntegrity additional software options as described in Appendix A, Phase 1-B.

C. Transcore SFO TMS/GTMS Integration - \$20,000 contract total

Billed at a one-time flat rate of \$5,000 for additional project management upon start of integration with Transcore, and an additional not-to-exceed rate of \$15,000 based on an estimated 100 hours of development time at \$150 per hour due upon delivery and acceptance of work as described in Appendix A, Phase 1-B, paragraph 4.

D. Project Management - \$30,000 contract total

Billed at a rate of \$10,000 per month, inclusive of all costs, upon execution of this Agreement for first three months of the Agreement to include project management and consulting services related to implementation of this Agreement. This service shall include a dedicated project manager to be available on site at the SFMTA forty hours per week for a period of three months. The SFMTA may elect to extend this service on a month-to-month arrangement after the first three months at the same rate for the remainder of the term of this Agreement, or any portion thereof.

E. On-site Managed Services / Support - \$105,000 contract total

Billed at a rate of \$8750 per month, inclusive of all costs, for twelve months beginning 90 days after contract signing for these services, FTI will provide one on-site FTI employee to the SFMTA on a full-time basis to provide ongoing support and training on the system. This employee will be the primary contact in supporting the SFMTA mobile driver application after delivery and acceptance by the SFMTA, working directly with SFMTA staff and permit holders to support the mobile driver application. The SFMTA may choose to extend this service after the first twelve months for the remainder of the term of this Agreement, or any portion thereof, at the same rate.

Appendix B Calculation of Charges

Contract Options:

The following costs are related to the optional Phase 2 deliverables and charges listed are not exceed these amounts. The actual amount billed will be based on the actual number of ODB II devices installed and operational.

F. **Optional: Software Customization** - \$60,000 contract total

\$30,000 upon FTI's delivery and SFMTA's acceptance of a working beta model in Android and IOS of the RideIntegrity mobile driver application as defined in Appendix A, Phase 2-A. \$30,000 remainder of balance due upon final delivery and acceptance of RideIntegrity mobile driver application as defined in Appendix A, Phase 2-A.

G. **Optional: Mobile Data Devices** - \$450,000 contract total

\$450,000 for Mobile Data Devices to be specified by the SFMTA elects to implement Phase 2-C as described in Appendix A. FTI and the SFMTA agree and understand that because the Mobile Data Device uses the same airtime as the OBD II device, the airtime for the Mobile Data Device is included in the OBD II device pricing.

H. **Optional: SFMTA Driver Application Support** - \$57,000 contract total

Billed at a rate of \$1,000 per month upon FTI's delivery and SFMTA's acceptance of the mobile driver application, and continuing for the remainder of this Agreement. This amount includes maintenance of the SFMTA mobile driver application in both the Google Play and Apple "app" stores, as well as maintenance of and updates to the applications on both platforms as described in Appendix A, Phase 2-A, paragraph 5.

I. **Optional: OBD II Devices** - \$957,000 equipment only; \$2,235,200 contract total, including equipment and airtime

a. OBD II devices, including wireless routers and airtime, are billed at the rate of \$42 per month per vehicle for the first 24 months after activation of each device, as described in Appendix A, Phase 2-B. This amount includes a monthly fee \$20 for in-vehicle equipment consisting of the OBD II device with wireless router, and \$22 for airtime.

b. After 24 months the City shall own the OBD II devices and there shall be no charge for the equipment. Therefore, the monthly fee shall be lowered to \$22 per month per vehicle for airtime only.

c. All prices listed in this Agreement for OBD II devices and installation are valid for up to 2500 vehicles installed. Any installations or use beyond 2500 vehicles shall be subject to negotiation at a discounted rate.

J. **Optional: OBD II Device Installation** - \$66,500 contract total

Billed at a rate of \$35 per vehicle for installation of the OBD II devices by FTI installation staff as described in Appendix A, Phase 2-B.

K. **If Phase 2 is implemented, Cancellation Fee applicable to OBD II device**

At any time after SFMTA's acceptance of an OBD II device as described in Appendix A, Phase 2-B, paragraph 3(a), if for any reason other than the failure of FTI to promptly replace a

Appendix B

Calculation of Charges

defective device as required by Appendix A, Phase 2-B, paragraph 3, the SFMTA elects to deactivate, discontinue use of, or permanently remove the OBD II device and associated router, the following cancellation fees will apply to all activated in-vehicle equipment:

- a. Within the first twelve months from date of activation a cancellation fee of \$550 per installed and active OBD II device;
- b. Between the thirteenth and twenty-fourth month from date of activation a cancellation fee of \$275 per installed and active OBD II device;
- c. After the twenty-fourth month no cancellation fees will apply.

L. Additional Work

Any additional work outside of this Scope of Work as authorized by the SFMTA shall be billed at a rate of \$150 per hour, inclusive of all costs.

**Appendix C
Software License**

**Software License
Between the City and County of San Francisco and
Frias Transportation Infrastructure (“FTI”)**

This Software License is made this 8th day of November, 2013, in the City and County of San Francisco, State of California, by and between Frias Transportation Infrastructure (“FTI”), 5295 S Decatur Blvd, Las Vegas, NV 89118, and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Municipal Transportation Agency (“SFMTA”).

Recitals

WHEREAS, the San Francisco Municipal Transportation Agency wishes to license certain software from FTI; and,

WHEREAS, FTI represents and warrants that it is qualified to provide such software and services required by City as set forth in this Attachment.

Now, THEREFORE, the parties agree as follows:

1. License.

a. Grant of License. Subject to the terms and conditions of this Software License, FTI grants City a non-exclusive and non-transferable enterprise license to access and use the Hosted Licensed Software Service and Hosted Services, as applicable, as well as any Documentation, for the term of the Agreement and any renewals thereof. FTI will provide access to the Hosted Licensed Software Service ordered and paid for by the San Francisco Municipal Transportation Agency.

b. No Right of Ownership. City acknowledges and agrees that the Hosted Licensed Software Service is the proprietary information of FTI and that this Software License grants City no title or right of ownership in the Hosted Licensed Software Service or other related intellectual property related to the Hosted Licensed Software Service except as expressly provided in this Agreement. The Hosted Licensed Software Service (including any upgrades, updates, modifications or new versions), the Documentation, computer programs, patents, copyrights and trademarks are and shall remain the exclusive property of FTI, and no rights therein or thereto are granted or otherwise transferred under this Software License, except as expressly set forth herein.

c. Hosted Services. City acknowledges and agrees that the Hosted Licensed Software Service is Software as a Service (SaaS) hosted by FTI.

(1) Click-Wrap Disclaimer. No 'click to accept' agreement that may be required for the End User access to the Hosted Licensed Software Service and no 'terms of use' or 'privacy policy' referenced therein or conditioned for use of the Hosted Licensed Software Service shall apply. Only the provisions of this Software License shall apply to the City's End Users for access thereto and use thereof.

Appendix C Software License

(2) **Hosting Site.** The hosting provider shall be a reputable hosting provider, located within the United States, and in a physically secure commercial third party hosting facility and said hosting provider shall be compliant with ISO 27001. Upon request, FTI must submit to SFMTA an ISO 27001 report certified by an independent third-party auditor. FTI is currently hosting the Hosted Licensed Software Service with Microsoft Azure, San Antonio Operation, San Antonio Texas. In the event FTI changes the foregoing hosting provider or the physical location where the Hosted Licensed Software Service is hosted, FTI shall provide City with prior written notice of said change and disclose the name and location of the replacement hosting provider.

(3) **System Administration and Security.** FTI will perform all system administration duties as required to maintain the service levels described in Exhibit 1, and to facilitate timely restoration of City's data and operations. If necessary, following unanticipated interruptions of the Hosted Licensed Software Service, FTI will implement suitable network security measures to minimize the likelihood of unanticipated interruptions of the Hosted Services.

(4) **Infrastructure Availability.** FTI will provide City with no less than twenty-four (24) hours' notice prior to the unavailability of the Hosted Licensed Software Service due to planned maintenance, which shall be performed during off-peak hours. FTI will provide as much notice as is practicable under the circumstances for updates and fixes which must be applied on a more urgent basis. FTI will provide five business days' notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature, which shall be performed during off-peak hours. Excluding the foregoing events, FTI warrants that the Hosted Services will be available in accordance with the Service Level Agreement ("SLA") set forth in Exhibit 2, which is attached hereto and incorporated by reference herein.

d. City Data Back-Up; City Data Retrieval. Unless prevented by Force Majeure Events, FTI will: (1) execute nightly database backups to a backup server, incremental database transaction log file backups every 30 minutes to a backup server, weekly backups of the database and the default path to a backup server, and nightly incremental backups of the default path to a backup server; (2) replicate City's database and default path to an off-site location (i.e., other than the primary data center); and (3) save the last 14 nightly database backups on a secure transfer server (i.e., at any given time, the last 14 nightly database backups will be on the secure transfer server) from which City may retrieve the database backups at any time.

e. City's Data. The City and FTI agree that all data, content and records of City that are used in conjunction with the Hosted Licensed Software Service is owned by the City. Any reports or other derivative works generated from the content through utilization of the Hosted Licensed Software Service shall be the exclusive property of City, and no rights therein or thereto are granted or otherwise transferred to FTI under this Software License, except as expressly set forth herein. City shall have the right to reproduce and distribute copies of such derivative works generated from City's content through the Hosted Licensed Software Service.

f. Restrictions on Use. City is authorized to use the Hosted Service only for City's purposes, and only by the San Francisco Municipal Transportation Agency. City agrees that it will, through its best efforts, not use, or permit the Hosted Licensed Software Service to be used, in any manner, whether directly or indirectly, that would enable any other person or entity

Appendix C Software License

to use the Hosted Licensed Software Service, other than the SFMTA and other authorized End Users.

g. FTI's Discontinuance of Obligations. FTI agrees that in the event it discontinues its obligations under the terms of this Software License, except as expressly provided for in Section 10 (Termination) of this Appendix C, or ceases to market and/or provide maintenance and support for the Hosted Licensed Software Service, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current source code for all of the programs and all supporting Documentation for the Hosted Licensed Software Service then operating. If City should obtain the source code and the Documentation pursuant to this section, the only use made of the source code and the Documentation will be for the maintenance of the Hosted Licensed Software Service in connection with City's use of the Hosted Licensed Software Service as provided for, and limited by, the provisions of this Software License. The City shall assume the cost of the cloud-based data storage and processing fees for the daily operation of the Hosted Licensed Software Service.

h. Documentation. FTI shall provide City with the Hosted Licensed Software Service specified in this Agreement, and a minimum of two copies of the Documentation per installation. FTI grants to City permission to duplicate all printed Documentation for City's internal use.

i. Proprietary Markings. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Hosted Licensed Software Service or any related materials or Documentation.

j. City Data and Third Party Data. City warrants that it has both the right and the authority to provide the Data Feed to FTI. City retains full ownership of the Data Feed and grants to FTI a limited, nonexclusive, nontransferable license to use said data only to perform FTI's obligations in accordance with the terms and conditions of the Agreement. Pursuant to Section 10(c) of this Software License, upon expiration or termination of the Agreement or this Software License, FTI shall provide a complete copy of the Data Feed, as such may be updated or modified by City's use of the Hosted Licensed Software Service, to City within three business days hours in an agreed-upon machine-readable format. If the City elects to use other hosting option including on-premise hosting and hosting by other third parties, FTI will assist the City in the transition. FTI shall be required to cooperate in the transition of the data to ensure uninterrupted access to the data. FTI shall also fully cooperate in the transition of the Hosted Services to on-premise hosting or to any contractor awarded the services in the future, including but not limited to, providing to the City services support and expertise, provided that City pays all costs of and associated with such services, as calculated at a reasonable time-and materials rate, and providing the City with any export services necessary for the transition. FTI shall have no responsibility for the accuracy, quality, integrity, legality, reliability, or appropriateness of the Data Feed, and City acknowledges that use of any data generated, obtained or acquired through the use of the Services is at City's sole risk and discretion. FTI's or any third-party's use of the Data Feed will be at FTI's or third-party's sole risk and discretion. FTI is not liable or responsible for any results generated using the Data Feed or third party data.

Appendix C Software License

k. Disabling Code. FTI represents and warrants that the Services and any information, reports or other materials provided to End Users as a result of the operation of the Services, including future enhancements and modifications thereto, shall be free of any Disabling Code developed by FTI and/or its agents at the time of their receipt by End Users.

2. Acceptance Testing. After FTI has installed the Hosted Licensed Software Service, the City shall have a period of 60 days (“Acceptance Testing Period”) from the date of installation to verify that the Hosted Licensed Software Service substantially performs to the Specifications contained in the Documentation. In the event that the City determines that the Hosted Licensed Software Service does not meet such Specifications, the City shall notify FTI in writing, and FTI shall modify or correct the Hosted Licensed Software Service so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides FTI with written notice of satisfactory completion of Acceptance testing. If City notifies FTI after the Acceptance Testing Period that the Hosted Licensed Software Service does not meet the Acceptance criteria of this section, then City shall be entitled to terminate this Agreement in accordance with the procedures specified in Section 21 of the Agreement and Section 10 herein, and shall be entitled to a full refund of the license fee.

3. Maintenance and Support.

a. The license granted herein includes the FTI standard maintenance and support services (the “Support Services”) as described herein and in the Software Maintenance and Support Agreement, which is attached hereto as Exhibit 1 and incorporated by reference herein.

b. After Acceptance of the Hosted Licensed Software Service and subject to the terms, conditions, and charges set forth in this Section, FTI will provide City with Support Services for the Hosted Licensed Software Service as follows: (i) FTI will provide such assistance as necessary to cause the Hosted Licensed Software Service to perform in accordance with the Specifications as set forth in the Documentation; (ii) FTI will provide, for City’s use, whatever improvements, enhancements, extensions and other changes to the Hosted Licensed Software Service FTI may develop, and (iii) FTI will update the Hosted Licensed Software Service, as required, to cause it to operate under new versions or releases of the operating system specified in this Software License so long as such updates are made generally available to FTI’s other Licensees.

c. The term of the Support Services shall run concurrently with the term of this Software License. If the City ends the Support Services by notification to FTI, and should the City then subsequently seek Support Services, City will be required to pay the then current reinstatement fee as a condition for restoration of Support Services.

4. Training. FTI shall provide the City with training for the use of the Hosted Licensed Software Service and Hosted Services. FTI shall provide a training module which consists of an audience-specific FTI learning sessions, and shall be subject to the approval of the SFMTA.

5. Warranties.

a. Right to Grant License. FTI hereby warrants that it has title to and/or the authority to grant a license of the Hosted Licensed Software Service to the City.

Appendix C Software License

b. Conformity to Specifications. FTI warrants that when the Hosted Licensed Software Service is delivered to City, it will be free from defects as to design, material, and workmanship and will perform on in accordance with the FTI's published Specifications for the Hosted Licensed Software Service.

6. Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Hosted Licensed Software Service infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), FTI will hold City harmless and defend such action at its own expense. FTI will pay the costs and damages awarded in any such action or the cost of settling such action, and City shall have the right to be represented by counsel of its choosing at the expense of FTI. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Hosted Licensed Software Service constitutes Infringement, FTI will pay the costs associated with resolving such claim and will pay the settlement amount (if any), and FTI shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event a final injunction is obtained against City's use of the Hosted Licensed Software Service by reason of Infringement, or in FTI's opinion City's use of the Hosted Licensed Software Service is likely to become the subject of Infringement, FTI may at its option and expense: (a) procure for City the right to continue to use the Hosted Licensed Software Service as contemplated hereunder, (b) replace the Hosted Licensed Software Service with a non-infringing, functionally equivalent substitute Hosted Licensed Software Service, or (c) suitably modify the Hosted Licensed Software Service to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Hosted Licensed Software Service. If none of these options is reasonably available to FTI, then this Software License or relevant part hereof may be terminated at the option of either party hereto and FTI shall refund to City all amounts paid under this Software License for the license of such infringing Hosted Licensed Software Service. FTI shall have no liability for any claim of Infringement based on City's use or combination of the Hosted Licensed Software Service with products or data of the type for which the Hosted Licensed Software Service was neither designed nor intended to be used.

7. Nondisclosure. City agrees that it shall treat the Hosted Licensed Software Service with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Hosted Licensed Software Service is Accepted by the City until the license is terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the Hosted Licensed Software Service, or any portion thereof, which:

- a.** Is now or hereafter becomes publicly known;
- b.** Is disclosed to City by a third party that the City has no reason to believe is not legally entitled to disclose such information;
- c.** Is known to the City prior to its receipt of the Hosted Licensed Software Service;
- d.** Is subsequently developed by the City independently of any disclosures made hereunder by FTI;
- e.** Is disclosed with FTI's prior written consent; or

Appendix C Software License

f. Is disclosed by FTI to a third party without similar restrictions.

8. FTI's Default. Failure or refusal of FTI to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to City, this Contract may be terminated by City in accordance with Section 20 of the Agreement. Such termination does not waive any other legal remedies available to City.

9. Termination

a. **Basis for Termination by FTI.** FTI shall have the right: 1) to terminate the this Software License if City is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of ninety days after the last day payment is due; provided, however, that written notice is given to City by FTI of the expiration date of the ninety-day delinquency period at least ten days prior to the expiration date; or 2) to terminate this Software License if City commits any breach of Section 2 of this Software License and fails to remedy such breach within thirty days after receipt of written notice by FTI of such breach.

b. **Disposition of Hosted Licensed Software Service on Termination.** Upon the expiration or termination of the Agreement or this Software, City shall immediately: (i) cease all access and use of the Hosted Licensed Software Service, including all Documentation; and (ii) give FTI written certification that through its best efforts and to the best of its knowledge, City has complied with all of its obligations under this Section 10(b). Additionally, FTI shall, within three business days, return all data to City in an agreed-upon machine-readable format. Once a copy of the data making up the Data Feed has been successfully transferred to City, FTI shall within 30 days purge all data making up the Data Feed from its hosted server and within 45 days, provide City with certification that such purge occurred.

c. **Survival.** This section and the following sections of this Software License shall survive termination or expiration of this Attachment: Infringement Indemnification (Section 7), Nondisclosure (Section 8).

10. ISO 27001 Audit. During the Term of the Agreement, FTI will provide, on a semi-annual basis, the ISO27001 Audit report ("Audit Reports") it receives from its hosting service provider as follows: (a) the Audit Reports will include a 180 day (six month) testing period; and (b) the Audit Reports will be available to City no later than 30 days after they are received by Contractor. Upon City's written request, FTI will provide a so-called "negative assurance opinion" to City as soon as said opinion is received from FTI's hosting service provider. FTI shall on a semi-annual basis, and otherwise as reasonably requested by City: (i) provide the foregoing Audit Reports to City and (ii) request such "negative assurance opinions" on City's behalf.

**Appendix C
Software License**

IN WITNESS WHEREOF, the parties hereto have executed this Software License on the day first mentioned above.

CITY

FTI

Approved:

Edward D. Reiskin
Director of Transportation
San Francisco
Municipal Transportation Agency

Mark A. James
President & Chief Executive Officer
5295 S Decatur Blvd,
Las Vegas, NV 89118

City Vendor Number: 89636

San Francisco Municipal Transportation
Agency
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Mariam Morley
Deputy City Attorney

Exhibits

- 1: Software Maintenance and Support Agreement
- 2: Service Level Agreement

Appendix C
Software License
Exhibit 1: Software Maintenance and Support Agreement

Frias Transportation Infrastructure LLC (“FTI”)
Software Maintenance and Support Agreement

This Software Maintenance and Support Agreement between the City and County of San Francisco, acting by and through its Municipal Transportation Agency (“Customer”) and Frias Transportation Infrastructure LLC. (“FTI”) shall be effective for the term of the Software License Agreement agreed upon by Customer and FTI.

Definitions

Where any word or phrase defined below is used in any part of this Software Maintenance and Support Agreement, it shall have the meaning herein set forth.

Errors, Defects and Malfunctions: Either a deviation between the function of the Software and the documentation furnished by FTI, or a failure of the Software that degrades the use of the Software.

Support Services: The Software support service required under the Software License and under this Exhibit 1 to the Software License, including correction of Errors, Defects and Malfunctions; providing telephone and/or online support concerning the installation and use of the Software.

Upgrades: Either an enhancement to the Software to add new features or functions to the Software or Software revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by FTI.

FTI shall provide Maintenance and Support including product upgrades during the term of this Maintenance and Support Agreement for the Hosted Licensed Software Service. During the term of this agreement FTI shall furnish Error, Defect and Malfunction corrections in accordance with the support levels listed below. The SFMTA shall determine the appropriate support level in its sole and absolute discretion.

Level 1: An Error, Defect, or Malfunction which renders the Hosted Licensed Software Service inoperative; or causes the Hosted Licensed Software Service to fail catastrophically.

Level 2: An Error, Defect, or Malfunction which substantially degrades the performance of the Hosted Licensed Software Service, but does not prohibit Customer’s use of Hosted Licensed Software Service.

Level 3: An Error, Defect, or Malfunction that causes only a minor impact on the use of the software.

Level 1 Support: Within two hours, FTI assigns a product specialist to diagnose and correct the Error, Defect or Malfunction; FTI shall also provide ongoing communication about the status of

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Exhibit 1: Software Maintenance and Support Agreement

the correction and shall proceed immediately to provide a Fix, Patch or a workaround. FTI shall exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next subsequent Release. FTI will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

Level 2 Support: Within four hours, FTI assigns a product specialist to diagnose and correct the Error, Defect or Malfunction; FTI shall also provide ongoing communication about the status of the correction and shall proceed immediately to provide a Fix, Patch or a workaround. FTI shall exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next subsequent Release.

Level 3 Support: FTI may include a Fix or Patch in the next Software Release.

Telephone Support FTI shall provide phone support to support the Customer to answer routine questions with respect to the use of the Hosted Licensed Software Service. FTI shall also provide phone support to Customer to initiate resolution of Level 1, Level 2, and Level 3 support requests. Phone support shall be made available to Customer between the hours of 8 a.m. and 5 p.m. Pacific time Monday through Friday, except legal holidays. Email support will for resolution of Level 1, Level 2, and Level 3 support requests shall be available 24-hours a day, seven days a week. Responses to support requests shall be made within the time frame established under the Support Level priority protocols.

Customer Responsibilities Related to Support Customer shall use reasonable efforts to make available to FTI access to systems on which the Customer experiences Error, Defect or Malfunctions as well as all relevant documentation and data. Customer shall also provide reasonable assistance to FTI to assist FTI in providing Support Services. Unless otherwise agreed to in writing between the Customer and FTI, Customer is responsible for all computer hardware, Operating system and associated software and network infrastructure including internet connectivity that Customer uses to access FTI's (SaaS) based Hosted Licensed Software Service.

Qualified Personnel All Work performed under this Maintenance and Support Agreement shall be performed only by competent personnel under the supervision of and in the employment of or under contract of FTI. FTI shall assign adequate personnel resources to provide the level of service within the response times specified in this Maintenance and Support agreement.

The following contacts shall be used under the Maintenance and Support Agreement.

1. Email support available 24-hours a day seven days a week can be sent to Support@FriasTi.com.
2. Telephone Support during regular business hours 8 a.m. to 5 p.m. Pacific time Monday through Friday excluding legal holidays by calling 702-798-1570.

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Exhibit 2: Service Level Agreement

1. Service Level Obligations

This Service Level Agreement may be updated or changed from time to time by written instrument executed and approved in the same manner as this Agreement.

2. Capacity

The system shall scale to a capacity be able to track data for:

- 20,000,000 trips each year
- 10,000,000 dispatch requests per year
- 5,000 vehicles
- 5,00 medallions/permits
- 20,000 drivers
- 1 shift for each driver each day
- 50 Color Schemes
- 25 Online Dispatch Referral Companies
- 20 Dispatch Services

These limits represent increases over today's volumes and above the current contract amount. The system should be structured so that capacity can increase well beyond these values over the foreseeable lifetime of ETAS —at least by a factor of 2 over 5 years.

3. Data retention

All system data must be kept permanently, but can be archived for performance reasons. . All archived data must be recoverable if needed within 24 hours.

4. Online Dispatch Referral Company Provisioning

Referral companies must be first approved and licensed by the SFMTA before API access is granted. Contractor will maintain API keys for individual referral companies and grant the SFMTA a management tool to turn on and turn off access to the hub for these third party vendors. The license agreement shall specify which data elements will be made available to the 3rd party and which to the SFMTA.

5. Security

APIs must be secured to prevent unauthorized access. There are three different levels of authorization:

1	Licensed Read-only 3 rd parties	Authorized to view read-only specified data via the vehicle data feed and business entity API as defined in Exhibit 1 to Appendix A of this Agreement
2	Licensed Dispatching 3 rd parties	Authorized to use all the API's—but only to view specified data
3	SFMTA	Authorized to use all the API's and also to view private data

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The website and APIs must be secured against attacks from common vulnerabilities, such as SQL injection, denial of service, cross-site scripting.

6. Service Availability Commitment

Service availability will be no less than ninety-nine point seven percent (99.7%) uptime. Downtime shall mean the percentage of the total minutes that the Hosted Licensed Software Service Services are not available to be used by the End Users in a given month. Downtime shall not include unavailability during scheduled maintenance or emergency maintenance. End Users will be notified with no less than 24 hours prior to the Hosted Licensed Software Service unavailability for other than scheduled maintenance or emergency maintenance.

7. API Service Level Agreements

The system should be able to handle receiving data from a total of several thousand vehicles every six seconds with the several thousand vehicles split among separate broadcasts by up to 20 different Dispatch Services.

The system should be able to handle broadcasting data for several thousand vehicles every six seconds to up to 25 different Online Dispatch Referral Companies.

The system should be able to handle an unlimited number of simultaneously broadcast messages to various APIs listed in Appendix A. These messages may not be lost—but neither do they need to be synchronous.

For messages in the Dispatch API (for which end-customers will be time sensitive), 95% of responses must be delivered within one second and 99% within two seconds. These responses are typically simply acknowledgements.

For messages in the other, less time-sensitive, API's 95% of messages must be delivered within six seconds and 99% within a minute.

Dispatch Request Disposition Messages must be initiated within 90 seconds of receiving a Dispatch Request Message whether or not all the Dispatch Services have succeeded in sending a response. That is, an Online Dispatch Referral Company should receive an answer to their Dispatch Request within this time limit even if that response is that RideIntegrity has not received any responses.

8. Remedies: Service Availability

a. If the Service Availability Commitment is not met in a given month the SFMTA may require a reduction in the fee otherwise due to FTI calculated by the total amount of time the Hosted Licensed Software Service were unavailable during the month, determined to the nearest hour, at a rate of \$38.00 per hour (\$916 per day).

b. If the Service Availability Commitment is not met in two consecutive months (a "Recurring Availability Failure"), or any four months in a 12 month period, City may, at its option, (a) require a reduction of the fee owed to FTI as set forth above, or (b) terminate the Agreement.

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c. The remedies available to City as set forth above are the City's sole remedies for service availability issues under the Agreement and are conditioned upon City's notification to FTI of the unavailability of the Hosted Licensed Software Service in writing within 10 days of the occurrence of such service outage and FTI's verification of such outage. Notwithstanding the foregoing notice and verification requirements, the resolution of the service interruption shall not be delayed due to the timing of the written notification by City.

9. Exclusions

This Service Level Agreement and any remedies hereunder will not apply in the case of an Excluded Event. "Excluded Event" means any event that adversely impacts the Hosted Licensed Software Service that is caused by (a) the acts or omissions of City, its employees, customers, contractors, agents or permit holders or their contractors; (b) the failure or malfunction of equipment, applications or systems, other than any OBD II device, owned or controlled by City, its employees, customers, contractors, agents or permit holders or their contractors; (c) Force Majeure events as defined in section 62 of the Agreement; (d) scheduled or emergency maintenance; (e) any suspension of Hosted Licensed Software Service that is expressly permitted pursuant to the Agreement; or (f) the unavailability of required City personnel, including as a result of failure to provide FTI with accurate, current contact information. Notwithstanding the foregoing, the occurrence of an "Excluded Event" shall not limit any obligation of FTI to execute on its applicable disaster recovery procedures as set forth below.

10. Security Measures.

FTI will implement firewall, password and other security measures necessary to protect the systems, data and applications managed by FTI from unwanted intrusion, whether over the internet or by other means. City is responsible for implementing adequate firewall, password and other security measures to protect its own managed systems, data and applications from unwanted intrusion, whether over the internet or by other means.

11. Internet Access

FTI will make the Hosted Licensed Software Service available at a specified internet address and will maintain its internet connectivity for the Hosted Licensed Software Services as per Service Availability Commitments above. City acknowledges and agrees that City will be responsible for obtaining its own internet access and that FTI will not be responsible for providing internet access for City.

12. Disaster Recovery

FTI will declare "disaster" status within 24 hours of an event that causes a complete loss of the Hosted Licensed Software Service for 24 hours or more, and will have backup service running in a disaster recovery site within 48 hours of such declaration.