CONTRACT FOR GOODS AND PROFESSIONAL SERVICES

BY AND BETWEEN

METROPOLITAN AREA PLANNING COUNCIL

AND

AT&T CORP.

This contract [the "**CONTRACT**"], dated July 10, 2017, is made and entered into by and between the **Metropolitan Area Planning Council** [**"MAPC"**], a public body politic and corporate, established by Chapter 40B, Sections 24 through 29 of the Massachusetts General Laws, with its principal office at 60 Temple Place, Boston, Massachusetts 02111, acting as the collective purchasing agent for the Cities of Boston, Cambridge, Newton, and Somerville and the Towns of Brookline, Lexington, Natick, Wakefield, and Westwood on behalf of the 101 municipalities of the MAPC Region and their municipal subdivisions [each such municipality and/or municipal subdivision a **"Buyer"** or **"Customer"**], pursuant to Chapter 7, Section 22B of the Massachusetts General Laws and without liability to **MAPC**, and **AT&T Corp.** ["**Vendor**" or **"AT&T"**], with an office at **1500 South Willow Street, Manchester, NH 03103**.

Witnesseth that the parties AGREE as follows:

Article I

General Description of the Work

1. Pursuant to the Terms and Conditions of this **CONTRACT**, the Request for Proposals – RFP No. MAPC 2016 AVL attached as Exhibit B [the "**RFP**"]; the **Vendor's** Price Proposal and Technical Proposal attached in Exhibit C [the "**Price and Technical Proposal**"]; and the Additional Terms and Conditions listed in Exhibit D [the "**Vendor's Additional Terms and Conditions**"] [the **CONTRACT**, the **RFP**, the **Price and Technical Proposal**, and **Vendor's Additional Terms and Conditions**, and all corresponding exhibits, collectively, the "**AGREEMENT**"], **MAPC** hereby engages the **Vendor** to provide the following goods and/or services to the **Buyer**: Supply and Deliver Hardware and Software for Automatic Vehicle Location Systems (AVL) with GPS [the "**AVL SOLUTION**"].

Article II

Services of the Vendor

2. The **Vendor** will provide the **AVL SOLUTION** in accordance with the terms and conditions of the **AGREEMENT.** Vendor is not providing wireless service under the **AGREEMENT.**

3. The **Vendor** shall report, and be responsible, to **MAPC** or its designee as set forth on Exhibit A.

4. There shall be no amendment to the **AGREEMENT** without the written approval of **MAPC** and **AT&T**. **MAPC** shall be under no obligation to pay for any goods provided or services performed by the **Vendor** as any corresponding payment obligations are those of the corresponding **Buyer**.

5. The **Vendor** represents and warrants to **MAPC** as follows:

   i. That it and all its personnel (whether employees, agents or independent vendors) are qualified and duly licensed as required by law and/or local municipal code to provide services and/or goods required by this **AGREEMENT.**
   ii. That it further agrees to perform services, in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.
   iii. That it will obtain any applicable permits, and insurances required for the proper and legal performance of the work anticipated in the **AGREEMENT**.
   iv. That it is not a party to any agreement, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this **AGREEMENT**.

Article III

Performance of the Vendor

6. In the performance of service under this **AGREEMENT**, the **Vendor** acts at all times as an independent contractor. There is no relationship of employment or agency between **MAPC**, on the one hand, and the **Vendor** on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this **AGREEMENT** which the parties view as consistent with their independent vendor relationship.

7. **[RESERVED]**

Article IV

Time of Performance

8. Time shall be of the essence in relation to **Vendor**'s performance under this **AGREEMENT**. **Vendor** shall complete performance as promised in its quote that accompanies the **Buyer**'s purchase order or other document confirming its authorization to the **Vendor** to proceed. Reasonable extensions shall be granted by the **Buyer** at the written request of the **Vendor**, provided the justifying circumstances are documented by and are beyond the reasonable control of **Vendor** and without fault of **Vendor**. In the event of such an extension, all other terms and conditions of this **AGREEMENT**, except the dates of commencement and completion of performance, shall remain in full force and effect between the parties unless modified in writing.

9. **[RESERVED]**

10. **[RESERVED]**

Article V

Revisions in the Work to Be Performed

11. If during the **Vendor**'s Time of Performance, **Buyer** requests revisions or other changes to be made in the scope or character of the work to be performed, **Buyer** will promptly notify **Vendor** in writing. For any mutually agreed upon changes to the scope of work, **Vendor** shall provide **Buyer** with a written quote of change in price and/or change in time of performance and shall proceed with such changes only upon written consent of both **Buyer** and **Vendor**, which shall be construed as a modification to **Buyer**'s original purchase order.

12. **Buyer** will neither unreasonably request revisions nor unreasonably withhold final acceptance of delivered products.

Article VI

Term of Agreement

13. The term of this **AGREEMENT** shall commence upon execution and will continue until June 30, 2017, or until otherwise terminated as provided by this **AGREEMENT**.

14. **MAPC** reserves the right at its sole discretion to extend the **AGREEMENT** for up

to two (2) additional one-year terms ending June 30, 2019 respectively.

15. In the event **MAPC** has not procured and awarded a new, similar contract before the end of the second one-year term extension referenced in §14, then **MAPC** reserves the right at its sole discretion to extend the **AGREEMENT** for an additional period of time until such new contracts have been procured and awarded. However, in no instance shall the **AGREEMENT**'s term, including extensions, exceed three (3) years in total.

16. The **Vendor** agrees to perform promptly upon execution of this **AGREEMENT** and will diligently and faithfully perform in accordance with the provisions hereof.

Article VII

Orders, Fees, Invoices, and Payments

17. Orders, fees, invoices, and payment shall be processed and paid as specified in **Vendor's Additional Terms and Conditions**.

    i. The Parties agree to the Contract Administration Fee set forth in §8.13 of the RFP. The **Vendor** will be required to pay to **MAPC** a Contract Administration Fee of 1 % (one percent) of the total invoiced amount of equipment and services purchased through all resulting contracts and reported in the quarterly reports. The 1% Contract Administration Fee applies only to the purchase of hardware and the initial purchase of software. The Contract Administration Fee will not apply to installation costs, maintenance and support, training, or other ongoing costs or fees. **MAPC** may lower, but will not increase, the Contract Administration Fee at any time during the term of this contract, in which case the cost reduction to the **Vendor** shall be reflected as a discount on the quotes provided to Buyers. **MAPC** will invoice Vendors after which payment of the quarterly Contract Administration Fee is due from the Vendor to MAPC within 30 days of invoicing. Reporting requirements and the Contract Administration Fee shall apply to all transactions regardless of financing arrangement.

Article VIII

Assignment

18. Neither party shall assign, transfer or otherwise dispose of this **AGREEMENT** or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of notifying the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

i. Customer may, without AT&T's consent but upon notice to AT&T, assign in whole or relevant part its rights and obligations under this **AGREEMENT** to a Customer Affiliate. AT&T may, without Customer's consent, assign in whole or relevant part its rights and obligations under this **AGREEMENT** to an AT&T Affiliate. In no other case may this **AGREEMENT** be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). In the case of any assignment, the assigning party shall remain financially responsible for the performance of the assigned obligations.

Subcontracting

19. AT&T may subcontract to an Affiliate or a third party work to be performed under this **AGREEMENT** but will remain financially responsible for the performance of such obligations.

Article IX

Indemnification

20. Third Party Claims.

20.1 **AT&T's Obligations**. AT&T agrees at its expense to defend and either to settle any third-party claim against MAPC, Customer, its Affiliates and its and their respective employees and directors or to pay all damages that a court finally awards against such parties for a claim alleging that a service provided to Customer under this **AGREEMENT** infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a user's content; (b) modifications to the service by Customer, its Affiliate or a third party, or combinations of the service with any non-AT&T services or products by Customer or others; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of a service in violation of this **AGREEMENT**.

20.2 **Infringing Services**. Whenever AT&T is liable under Section 20.1, AT&T may at its option either procure the right for Customer to continue using, or may replace or modify, the service so that it is non-infringing.

20.3 **Notice and Cooperation**. The party seeking defense or settlement of a third-party claim under this Section 20 will provide notice to the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced by the delay. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense. The defending party will use counsel reasonably experienced in the subject matter at issue and will not settle a claim

without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the party being defended is limited to monetary damages that are paid by the defending party under this Section 20.

20.4 AT&T's obligations under Section 20.1 shall not extend to actual or alleged infringement or misappropriation of intellectual property based on Software, Equipment, or third-party services.

Article X

Insurance

21. Before performing under this **AGREEMENT**, the **Vendor** shall obtain, and shall maintain throughout the term of this **AGREEMENT**, insurance at limits specified in the **RFP** and provide written documentation of such in the form specified in the **RFP**. See Exhibit F.

22. The **Vendor** shall give **MAPC** 20 days (twenty) written notice and copies of documentation in the event of any change or cancellation of coverage.

Article XI

Termination of Agreement

23. SUSPENSION AND TERMINATION

23.1 **Termination of AGREEMENT**. This **AGREEMENT** may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding or makes an assignment for the benefit of its creditors.

23.2 **Termination or Suspension**. The following additional termination provisions apply:

(a) **Material Breach**. If either party fails to perform or observe any material warranty, representation, term or condition of this **AGREEMENT**, including non-payment of charges, and such failure continues un-remedied for 30 days after receipt of notice, the aggrieved party may terminate (and AT&T may suspend and later terminate) the affected service and, if the breach materially and adversely affects the entire **AGREEMENT**, terminate (and AT&T may suspend and later terminate) the entire **AGREEMENT.**

(b) **Internet Services**. If Customer fails to rectify a violation of the AUP within 5 days after receiving notice from AT&T, AT&T may suspend the affected service. AT&T reserves the right, however, to suspend or terminate immediately when: (i) AT&T's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) AT&T is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) AT&T reasonably determines that (a) it may be exposed to

sanctions, liability, prosecution or other adverse consequences under applicable law if AT&T were to allow the violation to continue; (b) such violation may harm or interfere with the integrity, normal operations or security of AT&T's network or networks with which AT&T is interconnected or may interfere with another customer's use of AT&T services or the Internet; or (c) such violation otherwise presents an imminent risk of harm to AT&T, AT&T's customers or its or their respective employees.

(c) **Fraud or Abuse**. AT&T may terminate or suspend an affected service and, if the activity materially and adversely affects the entire **AGREEMENT**, terminate or suspend the entire **AGREEMENT**, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer, in the course of breaching the **AGREEMENT**: (i) commits a fraud upon AT&T; (ii) uses the service to commit a fraud upon another party; (iii) unlawfully uses the service; (iv) abuses or misuses AT&T's network or service; or (v) interferes with another customer's use of AT&T's network or services.

(d) **Infringing Services**. If the options described in Section 20.3 (Infringing Services) are not reasonably available, AT&T may at its option terminate the affected service without liability other than as stated in Section 20.1 (AT&T's Obligations).

(e) **Hazardous Materials.** If AT&T encounters any Hazardous Materials at any Customer location, AT&T may terminate the service, or may suspend performance until Customer removes and remediates the Hazardous Materials at Customer's expense in accordance with applicable laws.

23.3 **Effect of Termination**.

(a) Termination or suspension by either party of a service does not waive any other rights or remedies a party may have under this **AGREEMENT** and will not affect the rights and obligations of the parties regarding any other service.

(b) If a service is terminated, Customer will pay all amounts incurred prior to the effective date of termination.

24. **MAPC** shall have the right to terminate this **AGREEMENT** for its convenience upon fourteen (14) calendar days of written notice.

25. **MAPC** shall not be liable for payments for the services and/or expenses or lost profits of the **Vendor** in the event of termination.

Article XII

Entirety of Agreement and Order of Precedence

26. This **AGREEMENT** constitutes the entire **AGREEMENT** between **MAPC** and the **Vendor** with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, e-mail, fax

or courier to the persons designated in Exhibit A.

27. In the event of any conflict among the documents comprising the **AGREEMENT,** such documents shall be construed according to the following priorities:

Highest Priority:	Amendments to the **AGREEMENT** (if any)
Second Priority:	the **AGREEMENT**
Third Priority:	Addenda to the RFP
Fourth Priority:	the **RFP**
Fifth Priority:	the **Price and Technical Proposal**
Sixth Priority:	**Vendor's Additional Terms and Conditions**
Seventh Priority:	Participating Addenda

Article XIII

Severability

28. If any portion of this **AGREEMENT** is found to be invalid or unenforceable or if, notwithstanding Article XIV (Governing Law and Jurisdiction), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

Article XIV

Governing Law and Jurisdiction

29. This **AGREEMENT** shall be governed by, construed and enforced in accordance with laws of the Commonwealth of Massachusetts. **MAPC** and **Vendor** agree to submit their respective jurisdiction and venue to the state and federal courts in the Commonwealth of Massachusetts to resolve any disputes or disagreements that may arise under any provision of this **AGREEMENT**.

Article XV

MAPC Authorized Representative

30. Except as otherwise expressly provided in this **AGREEMENT**, any decision or action by **MAPC** relating to this **AGREEMENT**, its operation, or termination, shall

be made only by **MAPC** or its designated representative identified in Exhibit A.

IN WITNESS WHEREOF, the parties have caused this **AGREEMENT** to be executed by their duly authorized officers on the date written below.

For **MAPC** by or on behalf of the Cities of Boston, Cambridge, Newton, and Somerville and the Towns of Brookline, Lexington, Natick, Wakefield, and Westwood and the 101 municipalities of the MAPC Region and their municipal subdivisions:

x _____ 6/27/17

Signature Date

Rebecca Davis

Name

Deputy Director

Title

For the **VENDOR**:

x _____ 7/10/2017

Signature Date

MARC FLISTER

Name

SR CONTRACT MGR.

Title

EXHIBIT A

NOTICE ADDRESSEES

For **MAPC**:	For the **VENDOR**:
Rebecca Davis	Mark Flister
Name	* Name
Deputy Director	Sr. Solution Architect
Title	* Title
MAPC	**AT&T**
Organization	Organization
60 Temple Place	7229 Parkway Drive
Street Address	* Street Address
Boston, MA 02111	Hanover, MD 21076
City, State, ZIP	* Street Address
617.451.2770	(410) 564-0873
Phone	* Phone
rdavis@mapc.org	mf7988@att.com
E-mail	* E-mail

EXHIBIT B

RFP

[IMMEDIATELY FOLLOWS THIS PAGE]

EXHIBIT C

PRICE AND TECHNICAL PROPOSALS

1. Vendor's Complete Price Proposal for AT&T Fleet Manager

HARDWARE	Unit Price
Hardwired GPS Devices for Municipal Owned Vehicles (completely installed including manufacturers warranties) (AT&T WT10X Device, Activation, Installation - Does not include Salt Spreader Integration Cables - See Optional Pricing)	$381.79
Mobile GPS Devices for Municipal Owned Vehicles (completely installed including manufacturer's warranties) (AT&T WT4530 - OBDII Device, Activation) Unit Installed by Client.	$281.79
Mobile GPS Devices for Contractor Owned Vehicles (completely installed including manufacturer's warranties) (AT&T WT2250 Device, Cigarette Power Adaptor, Activation) Unit Installed by Client.	$317.14
WT10X Device (Replacement)	$267.65
WT2250 Portable Cigarette Power Device (Replacement)	$303.00
WT4530 OBDII Device (Replacement)	$267.65
Input Cable for all Sensors/ Spreader Integration	$50.50
Spreader Integration Cable - Cirus, Force America 5100/6100	$20.20
Spreader Integration Cable - CompuSpread CS440, Dickey John	$40.40
Spreader Integration Cable - CompuSpread CS550	$303.00
Proximity Sensor - For Plow Monitoring	$161.60
Hydraulix Pressure Sensor	$161.60

DATA PUMP SET-UP CHARGES (OPTIONAL)	
Data Pump - Development Kit and Operations Support	$5,757.00

MONTHLY RECURRING CHARGES	
Frequency – 10 seconds Fee per Month for Salt Spreaders, Incl Data	$31.00
Frequency – 10 seconds Fee per Month for Location Only Reporting, Incl Data (WT10X or WT2250)	$25.00
Frequency – 2 minutes Fee per Month for Location & Engine Reporting, Incl Data (WT4530)	$23.00
AT&T Standby Fee – Monthly	$10.00
Data Pump - Monthly Service	$3.00

FEES	
Portal Activation (For New Non Replacement Devices)	$14.00
Reactivation Fee	$14.00
Training - Web Training	$550.00
Training - One Day On-Site (Optional)	$1,500.00
Level 2 Support and Project Management per Hour (Based On Implementation)	$200.00
Standard Install (WT10X)	$100.00
Standard Install (WT4530)	$40.00
Basic Telemetry Install (Salt Spreader)	$40.00
Premium Telemetry Install (Proximity Sensor)	$100.00
Removal of GPS Device (WT10X)	$75.00

2. Vendor's Complete Technical Proposal

(A true and correct copy of the Vendor Technical Proposal follows this page.)

EXHIBIT D

VENDOR'S ADDITIONAL TERMS AND CONDITIONS

1. INTRODUCTION

1.1 Additional Documents. The following additional documents are hereby incorporated into the **AGREEMENT**:

(a) Acceptable Use Policy. AT&T's Acceptable Use Policy ("AUP") applies to (i) services provided over or accessing the Internet and (ii) wireless (*i.e.*, cellular) data and messaging services. The AUP can be found at att.com/aup or other locations AT&T may designate.

(b) Product Brief. The descriptions, pricing and other terms and conditions for the **AVL SOLUTION** are set forth in the AT&T Fleet Manager product brief (the **"PRODUCT BRIEF"**), which can be found at https://www.wireless.att.com/businesscenter/en_US/pdf/legal/att-fleet-manager-product-brief-081016.pdf or other locations AT&T may designate.

1.2 Section Designations. References made to sections or subsections in these **Vendor's Additional Terms and Conditions** refer to these **Vendor's Additional Terms and Conditions** unless otherwise specified. For example, references made to sections or subsections of **Vendor's Additional Terms and Conditions** will be stated as "Section X", while references made to sections or sub-sections of the **CONTRACT** will be stated as "**CONTRACT** Section X."

1.3 Revisions to PRODUCT BRIEF. AT&T may revise the **PRODUCT BRIEF** at any time.

2. AT&T DELIVERABLES

2.1 Services. AT&T will either provide or arrange to have an AT&T Affiliate or third party vendor provide the **AVL SOLUTION** to Customer, subject to the availability and operational limitations of systems, facilities and Equipment. Customer may place an order using AT&T's standard ordering processes.

2.2 Equipment. Title to and risk of loss of Equipment shall pass to Customer on delivery to the transport carrier for shipment to Customer's designated location.

2.3 License and Other Terms. Software and third-party services may be provided subject to the terms of a separate license or other agreement between Customer and either the licensor or the third-party service provider. Customer's execution of a Participating Addendum for or placement of an Order for the **AVL SOLUTION** is Customer's agreement to comply with such separate agreement.

3. CUSTOMER'S COOPERATION

3.1 Access Right. Customer will in a timely manner allow AT&T access as reasonably required for the services to property and equipment that Customer controls and will obtain at Customer's expense timely access for AT&T as reasonably required for the Services to property controlled by third parties such as Customer's landlord. AT&T will coordinate with and, except in an emergency, obtain Customer's consent to enter upon Customer's property and premises, which consent shall not be unreasonably withheld. Access rights mean the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within a building for Customer's

connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities and equipment as AT&T reasonably requires for the Services, subject to Customer's reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities and other items as AT&T reasonably requires for the Services and will obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

3.2 Safe Working Environment. Customer will ensure that the location at which AT&T installs, maintains or provides Services is a safe working environment, free of Hazardous Materials and reasonably suitable for the Services. "Hazardous Materials" mean any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. AT&T shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials.

3.3 Resale of Services. Customer may not resell the services or rebrand the services for resale to third parties without AT&T's prior written consent.

4. PRICING AND BILLING

4.1 Pricing. The prices listed in the **Price and Technical Proposal** are stabilized until the end of the **AGREEMENT**'s Term and will apply in lieu of the corresponding prices set forth in the **PRODUCT BRIEF.** No promotion, credit, discount or waiver set forth in the **PRODUCT BRIEF** will apply. Unless the **Price and Technical Proposal** states otherwise, at the end of the **AGREEMENT**'s Term or the second extension thereof, Customer may continue service (subject to any applicable notice or other requirements in the **PRODUCT BRIEF** under a month-to-month service arrangement at the prices, terms and conditions in effect on the last day of the **AGREEMENT**'s Term.

4.2 Additional Charges and Taxes. Prices set forth in the **Price and Technical Proposal** are exclusive of and Customer will pay all taxes (excluding those on AT&T's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from Customer's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the services, except to the extent Customer provides a valid exemption certificate prior to the delivery of services. To the extent required by law, Customer may withhold or deduct any applicable taxes from payments due to AT&T, provided that Customer will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty and will furnish AT&T with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that AT&T may claim any applicable credit.

4.3 Billing. Unless the **PRODUCT BRIEF** specifies otherwise, Customer's obligation to pay for the **AVL SOLUTION** begins upon availability of the **AVL SOLUTION** to Customer. Customer will pay AT&T without deduction, setoff or delay for any reason (except for withholding taxes as provided in Section 4.2 - Additional Charges and Taxes or in Section 4.5 - Delayed Billing; Disputed Charges). At Customer's request, but subject to AT&T's consent (which may not be unreasonably withheld or withdrawn), Customer's Affiliates may be invoiced separately, and AT&T will accept payment from such Affiliates. Customer will be responsible for payment if Customer's Affiliates do not pay charges in accordance with this **AGREEMENT**. AT&T may require Customer or its Affiliates to tender a deposit if AT&T

determines, in its reasonable judgment, that Customer or its Affiliates are not creditworthy, and AT&T may apply such deposit to any charges owed.

4.4 Payments. Payment is due within 30 days after the date of the invoice and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Customer will reimburse AT&T for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees. AT&T may charge late payment fees at the lowest of (a) 1.5% per month (18% per annum), or (b) the maximum rate allowed by law for overdue payments.

4.5 Delayed Billing; Disputed Charges. Customer will not be required to pay charges for services initially invoiced more than 6 months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. If Customer disputes a charge, Customer will provide notice to AT&T specifically identifying the charge and the reason it is disputed within 6 months after the date of the invoice in which the disputed charge initially appears, or Customer waives the right to dispute the charge. The portion of charges in dispute may be withheld and will not be considered overdue until AT&T completes its investigation of the dispute, but Customer may incur late payment fees in accordance with Section 4.4 (Payments). Following AT&T's notice of the results of its investigation to Customer, payment of all properly due charges and properly accrued late payment fees must be made within ten (10) business days. AT&T will reverse any late payment fees that were invoiced in error.

5. CONFIDENTIAL INFORMATION

5.1 Confidential Information. Confidential Information means: (a) information the parties or their Affiliates share with each other in connection with this **AGREEMENT** or in anticipation of providing services under this **AGREEMENT** (including pricing or other proposals), but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, the terms of this **AGREEMENT**.

5.2 Obligations. A disclosing party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, for which the period is indefinite): (a) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 5) or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process); (b) be held in confidence; and (c) be used only for purposes of using the services, evaluating proposals for new services or performing this **AGREEMENT** (including in the case of AT&T to detect fraud, to check quality and to operate, maintain and enhance the network and services).

5.3 Exceptions. The restrictions in this Section 5 will not apply to any information that: (a) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this **AGREEMENT**.

5.4 Privacy. Each party is responsible for complying with the privacy laws applicable to its business. AT&T shall require its personnel, agents and contractors around the world who process Customer Personal Data to protect Customer Personal Data in accordance with the data protection laws and regulations applicable to AT&T's business. If Customer does not

want AT&T to comprehend Customer data to which it may have access in performing services, Customer must encrypt such data so that it will be unintelligible. Customer is responsible for obtaining consent from and giving notice to its users, employees and agents regarding Customer's and AT&T's collection and use of the user, employee or agent information in connection with a service. Customer will only make accessible or provide Customer Personal Data to AT&T when it has the legal authority to do so. Unless otherwise directed by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information to any employee or agent of Customer without a need for further authentication or authorization.

6. LIMITATIONS OF LIABILITY AND DISCLAIMERS

6.1 Limitation of Liability.

(a) EITHER PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR DAMAGES ON ACCOUNT OF ANY CLAIM ARISING OUT OF AND NOT DISCLAIMED UNDER THIS AGREEMENT SHALL BE:

(i) FOR BODILY INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TO TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY A PARTY'S NEGLIGENCE, PROVEN DIRECT DAMAGES;

(ii) FOR BREACH OF SECTION 5 (Confidential Information), SECTION 8.1 (Publicity) OR SECTION 8.2 (Trademarks), PROVEN DIRECT DAMAGES;

(iii) FOR ANY THIRD-PARTY CLAIMS, THE REMEDIES AVAILABLE UNDER **CONTRACT** SECTION 20 (Third Party Claims);

(iv) FOR CLAIMS ARISING FROM THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVEN DAMAGES; OR

(v) FOR CLAIMS OTHER THAN THOSE SET FORTH IN SECTION 6.1(a)(i)-(iv), PROVEN DIRECT DAMAGES NOT TO EXCEED, ON A PER CLAIM OR AGGREGATE BASIS DURING ANY TWELVE (12) MONTH PERIOD, AN AMOUNT EQUAL TO THE TOTAL NET CHARGES INCURRED BY CUSTOMER FOR THE AFFECTED SERVICE IN THE RELEVANT COUNTRY DURING THE THREE (3) MONTHS PRECEDING THE MONTH IN WHICH THE CLAIM AROSE.

(b) EXCEPT AS SET FORTH IN **CONTRACT** SECTION 20 (Third Party Claims), OR IN THE CASE OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS.

(c) THE LIMITATIONS IN THIS SECTION 6 SHALL NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT.

6.2 Disclaimer of Liability. AT&T WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING

INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS (EXCEPT FOR CREDITS EXPLICITLY SET FORTH IN THIS AGREEMENT); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S (OR ITS AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

6.3 Equipment and Vendor Software Warranty. AT&T shall pass through to Customer any warranties for Equipment and Software available from the manufacturer or licensor. The manufacturer or licensor, and not AT&T, is responsible for any such warranty terms and commitments. ALL SOFTWARE AND EQUIPMENT IS OTHERWISE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS.

6.4 Disclaimer of Warranties. AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA AND INFORMATION.

6.5 Application and Survival. The disclaimer of warranties and limitations of liability set forth in this **AGREEMENT** will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise, of whether damages were foreseeable and of whether a party was advised of the possibility of such damages and will apply so as to limit the liability of each party and its Affiliates and their respective employees, directors, subcontractors and suppliers. The limitations of liability and disclaimers set out in this Section 6 will survive failure of any exclusive remedies provided in this **AGREEMENT**.

7. IMPORT/EXPORT CONTROL Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under this **AGREEMENT** (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

8. MISCELLANEOUS PROVISIONS

8.1 Publicity. Neither party may issue any public statements or announcements relating to the terms of this **AGREEMENT** or to the provision of services without the prior written consent of the other party.

8.2 Trademarks. Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

8.3 Independent Contractor. Each party is an independent contractor. Neither party controls the other, and neither party nor its Affiliates, employees, agents or contractors are Affiliates, employees, agents or contractors of the other party.

8.4 Force Majeure. Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies or other causes beyond such party's reasonable control.

8.5 Amendments and Waivers. Any supplement to or modification or waiver of any provision of this **AGREEMENT** must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this **AGREEMENT** will not operate as a waiver of any other breach of this **AGREEMENT**.

8.6 Injunctive Relief. Nothing in this **AGREEMENT** is intended to or should be construed to prohibit a party from seeking preliminary or permanent injunctive relief in appropriate circumstances from a court of competent jurisdiction.

8.7 Legal Action. Any legal action arising in connection with this **AGREEMENT** must be filed within two (2) years after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

8.8 Notices. Any required notices under this **AGREEMENT** shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth on the cover page of this **AGREEMENT** or to such other office or recipient as designated in writing from time to time.

8.9 Compliance with Laws. Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction.

8.10 No Third Party Beneficiaries. This **AGREEMENT** is for the benefit of Customer and AT&T and does not provide any third party (including users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

8.11 Survival. The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this **AGREEMENT**, including the obligations set forth in Section 5 (Confidential Information), Section 6 (Limitations of Liability and Disclaimers) and **CONTRACT** Section 20 (Third Party Claims), will survive such termination or expiration.

9. PARTICIPATING ADDENDA

9.1 Participating Addenda. The template Participating Addendum attached hereto and incorporated herein as Exhibit G, must be executed by (a) any **Buyer** intending to become a Participating Entity under the **AGREEMENT;** and (b) **Vendor.** The parties expressly acknowledge and agree that immediately upon execution of the **AGREEMENT**, **Vendor** may begin signing **Buyers** onto Participating Addenda under this **AGREEMENT.**

9.2 Participating Entity's Rights Upon Default. Any of the following events shall constitute cause for a Participating Entity to declare **Vendor** in default of the corresponding Participating Addendum: (1) non-performance of contractual requirements; and/or (2) Vendor's

material breach of any term or condition of the corresponding Participating Addendum. In order to declare **Vendor** in default, a Participating Entity shall issue a written notice of default providing a period in which **Vendor** shall have a reasonable opportunity to cure the default(s). Time allowed for cure shall not diminish or eliminate **Vendor's** liability for damages otherwise available under the Participating Addendum. If the default remains after **Vendor** has been provided the opportunity to cure, the Participating Entity may do one or more of the following: (1) exercise any remedy provided by law; (2) terminate the Participating Addendum, or portions thereof.

9.3 No Cross Termination. Notwithstanding the foregoing, in the event of a default by **Vendor** hereunder, then (a) an individual Participating Entity may not terminate the **AGREEMENT** but, instead, may only terminate its own PA; and (b) **MAPC** may not terminate an individual Participating Addendum, except as a consequence of its termination of the **AGREEMENT.** A Participating Entity entitled to terminate its Participating Addendum may not terminate a separate Participating Entity's Participating Addendum. Notwithstanding the foregoing, termination of the **AGREEMENT** automatically terminates all Participating Addenda executed in connection with the **AGREEMENT.**

9.4 Post-Termination Issues. In the event of termination of the **AGREEMENT** or a Participating Addendum for any reason, the parties agree that the provisions of this paragraph survive termination:

(a) The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under the **AGREEMENT** and all Participating Addenda. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

(b) **Vendor** shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by **MAPC** or a Participating Entity;

(c) **Vendor** shall execute any documents and take any actions necessary to effectuate an assignment of this contract if so requested by **MAPC**; and

(d) **Vendor** shall preserve, protect and promptly deliver into **MAPC**'s possession all of **MAPC**'s proprietary information in accordance with this **AGREEMENT**.

10. DEFINITIONS

The following terms have their corresponding meanings in the **AGREEMENT**:

"**Affiliate**" of a party means any entity that controls, is controlled by or is under common control with such party.

"**API**" means an application program interface used to make a resources request from a remote implementer program. An API may include coding, specifications for routines, data structures, object classes, and protocols used to communicate between programs.

"**Customer Personal Data**" means information that identifies an individual that Customer directly or indirectly makes accessible to AT&T and that AT&T collects, holds or uses in the course of providing the services.

"**Effective Date**" of a Pricing Schedule means the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law.

"Equipment" means equipment installed or otherwise provided to a **Buyer** in connection with the **AVL SOLUTION**.

"Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety.

"Participating Entity" means an authorized entity that (a) is a **Buyer;** and (b) has executed a Participating Addendum.

"Participating Addendum" and/or "PA" mean an agreement between **Vendor** and a Participating Entity, in form and substance substantially similar to Exhibit G, through which such Participating Entity participates in the **AGREEMENT.**

"**Software**" means software, including APIs, and all associated written and electronic documentation and data owned by or licensed to **AT&T** and then subsequently licensed, sublicensed or otherwise furnished to **MAPC** and/or a Participating Entity. Software does not include software that is not furnished to **MAPC** and/or a Participating Entity.

EXHIBIT E

[RESERVED]

EXHIBIT F

Other Documents:

1. Insurance Guarantee(s)(to be provided for Contract execution)
2. W9 Request for Taxpayer Identification Number and Certification

EXHIBIT G

Sample Participating Addendum

[Immediately follows this page]