



**Hosting and Compliance Management Service Agreement**

**between**

**The Oklahoma City Airport Trust**

**and**

**Early Morning Software, Inc.**

**Effective Date: December 31, 2023**

# Hosting and Compliance Management Service Agreement

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**HOSTING AND COMPLIANCE MANAGEMENT SERVICE AGREEMENT**

This Hosting and Compliance Management Service Agreement (“Agreement”) is made and entered into by and between the Trustees of the Oklahoma City Airport Trust (“Trust”), a public trust, and Early Morning Software, Inc. (“Service Provider”), a corporation organized under the laws of Maryland.

**WITNESSETH:**

**WHEREAS**, the Trust leases, operates, and maintains certain real estate for the benefit of The City of Oklahoma City (“City”) known as Will Rogers World Airport (“Airport”) which is located in Oklahoma and Cleveland Counties, Oklahoma; and

**WHEREAS**, the Trust requested bids through an informal bid process for hosting and compliance management services for the Airport’s disadvantaged business entities (“DBE”) compliance program; and

**WHEREAS**, Service Provider represented itself as an expert in the field of hosting and compliance management services with skilled professionals willing, able and capable of timely providing the Services requested and required by this Agreement; and

**WHEREAS**, Service Provider agrees to provide the Trust all services as an independent contractor and in accordance with the standards exercised by experts in the field necessary to provide the Services in compliance with this Agreement; and

**WHEREAS**, the Trust has determined that Service Provider submitted the lowest and best informal bid for the Services defined in this Agreement; and

**WHEREAS**, Trust and Service Provider desire to enter into this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual obligations, covenants, and agreements hereinafter set forth, Trust and Service Provider agree as follows, to wit:

**ARTICLE 1. TERM**

This Agreement shall be effective as of December 31, 2023 (“Effective Date”) and shall be effective for a period of three (3) years and will terminate on December 30, 2026 (“Term”), unless sooner terminated as provided herein. This Service Provider’s hosting and compliance management services system will begin implementation based upon the mutually agreed Implementation Schedule which will be within thirty (30) days of the Effective Date and upon receipt of the Prism's Compliance Management System’s Annual Subscription Fee. The Trust delegate authority to the Director of Airports to approve and amend, on behalf of the Trust, the Implementation Schedule. The hosting and compliance management services system will be active on the Go Live Date.

## **ARTICLE 2. INDEPENDENT CONTRACTOR**

### 2.01 **Generally**

The parties hereby acknowledge and covenant that:

- A. Service Provider is an independent contractor and will act exclusively as an independent contractor. Service Provider is not an agent or employee of the Trust in performing the duties in this Agreement.
- B. The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship.

### 2.02 **Payments**

All payments to Service Provider pursuant to this Agreement shall be due and payable in the State of Oklahoma, even if Services of Service Provider are performed outside the State of Oklahoma.

### 2.03 **Withholdings**

The Trust will not withhold any social security tax, workmen's compensation, Medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to Service Provider as Service Provider is an independent contractor and the members of the Service Provider's Project Team are not employees of the City. Any such taxes, if due, are the responsibilities of the Service Provider and will not be charged to the Trust.

### 2.04 **Benefit Programs**

Service Provider acknowledges that as an independent contractor it and its Project Team are not eligible to participate in any health, welfare or retirement benefit programs provided by the City for its employees.

### 2.05 **Project Team**

Service Provider is solely responsible for the actions, non-action, omissions, and performance of Service Provider's employees, agents, and subcontractors ("Service Provider's Project Team") and to ensure the timely provision and performance of the Services. Service Provider will be solely responsible for ensuring the Service Provider's Project Team fully understands the Services, Scope of Services identified in Exhibit A, and the schedule for performance. Service Provider will be solely responsible for ensuring the Service Provider's Project Team is adequately trained, instructed, and managed so that Service Provider timely provides the Services and satisfies Service Provider's obligations under this Agreement. Service Provider may not change the Service Provider's Project Team without the prior written consent of the Director of Airports or designee ("Director").

## **ARTICLE 3. PERMITTED USE**

Service Provider shall have the right and privilege to install, maintain, and operate the hosting and

compliance management services as more specifically defined within Exhibit A (“Services”). Any other use must be approved by the parties through written amendment hereto. As consideration for this right and privilege, Service Provider agrees and is hereby obligated to maintain and operate said Services in accordance with the terms and conditions set forth herein. Moreover, no sales to the public, whether wholesale or retail, shall be conducted from the Airport in any manner prohibited by federal, state, or local laws or regulations.

#### **ARTICLE 4. COMPENSATION**

##### **4.01 Compensation**

The Trust will pay the Service Provider the applicable compensation, not to exceed One Hundred Thousand Dollars (\$100,000) for the total amount of the Agreement, for Services as specified in the Schedule of Fees described in Exhibit B which have been received, reviewed, and approved, subject to the Services being provided in accordance with the terms of this Agreement and the submission of appropriate documentation and completion and acceptance of all the Services and deliverables. No payment will be due or owing for any incomplete or undocumented Services.

##### **4.02 Invoicing**

The Service Provider shall submit monthly, properly prepared itemized invoices and the required monthly reports by the fifth (5<sup>th</sup>) business day of the applicable month for the previous month’s Services. Invoices must be sent via email to [okcatap@okc.gov](mailto:okcatap@okc.gov), or as otherwise directed by the Director.

##### **4.03 Requirements for Payment**

The Service Provider shall be responsible for resolving any discrepancies in Service Provider’s invoices that are noted by Airport staff. Invoices will not be submitted by Airport staff to the Trust for payment until all discrepancies are resolved to the satisfaction of the Director. Once a valid invoice is received, it will be submitted to the Trust for approval of payment at the next available Trust meeting.

Invoices must contain the following:

- A. Service Provider’s name, address, and Federal Taxpayer Identification Number;
- B. Detailed itemization of actual Services provided;
- C. Total amount of the invoice; and
- D. Such other information may be requested by Airport staff for verification purposes. Should additional backup material be requested by Airport staff, the Service Provider shall comply promptly with such requested material.

#### **ARTICLE 5. BOOKS AND RECORDS RETENTION**

In order to ensure that the Trust, by and through the Director, is able to adequately monitor the **Service Provider’s performance under the terms of this Agreement**, the Service Provider will keep and maintain true and accurate records relating to the Services provided herein in accordance with generally accepted accounting principles, and will make the same readily available for examination

by the Director during normal business hours during the term of this Agreement and shall be maintained for a period of no less than five (5) years after the end of the term of this Agreement.

**ARTICLE 6. HAZARDOUS MATERIAL(S) AND COMPLIANCE WITH ENVIRONMENTAL LAW(S)**

6.01 Definitions

For the purpose of this article, the following definitions apply:

- A. “*Contamination*” shall mean the presence of any Hazardous Materials in concentrations exceeding those identified as relevant and appropriate pursuant to Environmental Laws.
  
- B. “*Hazardous Material(s)*” shall mean any hazardous or toxic substance, material or waste, regulated, considered or addressed by any Environmental Law, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law. Hazardous Materials shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, caustic, corrosive, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, chemical paint removers and other caustics, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released.
  
- C. “*Environmental Law(s)*” shall mean in the broadest sense any and all applicable federal, state and local statutes, ordinances, regulations, rules, guidance, or guidelines now or hereafter in effect, as the same may be amended from time to time relating to the protection of human health, safety or the environment and those substances defined as hazardous waste, hazardous substances, hazardous materials, toxic, pollutants or otherwise regulated under the analogous laws of Oklahoma and/or the United States or in regulations promulgated pursuant to such laws.

6.02 Hazardous Material(s)

Service Provider agrees that its services will not and do not require use of Hazardous Materials.

## **ARTICLE 7. TRUST'S RESERVED RIGHTS**

### 7.01 Airport Development Reservation

Trust reserves the right to further develop or improve the aircraft operating area of the Airport as it sees fit and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Service Provider from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of Trust would limit the usefulness of the Airport or constitute a hazard to aircraft.

### 7.02 War or National Emergency

During a time of war or national emergency declared by Congress, Trust shall have the right to lease the Airport or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the lease to the Government shall be suspended.

### 7.03 Subordination

Any other provision of this Agreement notwithstanding, this Agreement shall be subordinate to the provisions of any existing or future agreement between Trust and the United States, relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to Trust of Federal funds for the development of the Airport. To the extent any provision of this Agreement is in conflict with any grant assurance, rule or regulation imposed on the Trust by the United States Government or other regulatory entity, the provision of the grant assurance, rule or regulation shall be incorporated in this Agreement as if written specifically herein and Service Provider shall agree to abide by such grant assurance, rule or regulation as a condition precedent to the use of any facilities or premises of the Trust.

### 7.04 Reservation of Rights

Trust reserves all rights and remedies that Trust may otherwise have at law or in equity and the exercise of one or more rights or remedies will not prejudice the concurrent or subsequent exercise of other rights of remedies.

## **ARTICLE 8. NONINTERFERENCE WITH OPERATION OF AIRPORT**

Service Provider covenants and agrees that it will not allow any condition on the Airport, nor permit the conduct of any activity on such areas, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities; nor will Service Provider use or permit the Airport to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard. If any proscribed or prohibited condition or activity, as described above, shall be permitted to exist on the Airport, the Trust may terminate the Agreement. Provided, however, should the condition create a health, safety or welfare condition necessitating immediate abatement or correction of the condition interfering with operation of Airport, the Trust, by and through the Director may immediately abate or correct the condition at Service Provider's expense without any prior notice as described in Article 12 Termination.

## **ARTICLE 9. TAXES**

To the extent any taxes are assessed pursuant to applicable law or any assessment is not subject to the Trust's exempt status, Service Provider agrees to pay all present and future taxes or, in lieu of taxes, special assessments now or hereafter levied or assessed for taxes arising during the term of this Agreement, upon Service Provider's interest in or use of the Airport. The Service Provider shall defend, indemnify and save Trust and the City harmless from any claims or liens in connection with such taxes or, in lieu of taxes, assessments.

## **ARTICLE 10. MISCELLANEOUS COVENANTS**

### 10.01 Rules and Regulation Compliance

Service Provider shall observe and comply with any and all present and future requirements of the constituted public authorities and with all federal, state, or local laws, policies, administrative regulations and standard rules applicable to Service Provider or Trust for the intended use of the Airport, including by way of example, but not of limitation, all general rules and regulations promulgated from time to time by the Director in connection with the administration of the Airport.

### 10.02 Signs and Advertisement

It is agreed that the Service Provider will not place, erect, maintain, or display any advertisement signs, legends, applications, brochures, or posters at or on the Airport.

### 10.03 Noise or Sound Shock Waves

Service Provider hereby agrees to make no claims or file or cause to be filed any legal or equitable actions against Trust or the City for any kind of damages which result from noise, vibration or sound shock waves due to aircraft use of the Airport's facilities.

### 10.04 Communications Equipment

Service Provider shall not install, maintain, or operate, or to grant to any third party the right to install, maintain, or operate any wireless network, satellite dish, antenna, wireless communications equipment, meteorological, aerial navigation, distributed antenna system, UHF and VHF radio system, internet access equipment or systems, or other similar related equipment or systems (collectively "Communications Equipment") as the Communications Equipment could cause or be used to create electrical interference with communication between the Airport, the control tower, and any aircraft, make it difficult for flyers to distinguish between airport lights and others, impair visibility in the vicinity of the Airport, or endanger the landing, take off or maneuvering aircraft or interfere with security systems or the services provided by any Airport communications.

## **ARTICLE 11. INDEMNITY AND INSURANCE**

### 11.01 Indemnity

Except as otherwise provided in Article 6, Service Provider hereby agrees to release, defend, indemnify, and save harmless the Trust and the City and their officers, agents, and employees from and against any and all loss of or damage to property or injuries to or death

of any person(s), or all claims, damages, suits, costs, expense, liability, actions, demands, liens, fines, encumbrances, or proceedings (including all reasonable legal fees and expenses) of any kind or nature whatsoever in matters resulting from, or arising out of: (a) Service Provider's intentional acts or omissions, negligence, misconduct, operations, or activities under or in connection with this Agreement; or (b) in matters resulting from, or arising out of Service Provider's use and occupancy of any portion of the Airport, and including, without limiting the generality of the foregoing, acts and omissions of Service Provider's officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents. Provided, however, Service Provider shall not be liable or be required to release Trust for any loss, damage, claims, suits, cost, expense, or actions occasioned by the negligence or willful misconduct of the Trust, the City, or their officers, trustees, and employees. The parties covenant to give each other prompt notice of any claims. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

11.02 Liability Insurance

Service Provider shall purchase, or cause to be purchased, and maintain in effect during the Term of this Agreement with insurance carriers or risk retention groups authorized to do business in the State of Oklahoma and approved by the Director, any insurance required by this paragraph. The insurance and additional insured requirements contained in this Agreement are considered minimum coverage amounts and Service Provider may elect greater coverage limits than what is specified in this Agreement or as may be required by law. All applicable coverage, unless specified otherwise, shall remain in full force and effect until the expiration, cancellation, or termination of the Agreement and for the subsequent two (2) years following the expiration, cancellation, or termination for loss covered by and occurring during the term of the Agreement.

A. Workers' Compensation and Employer's Liability Insurance

The Service Provider shall maintain during the Term of the Agreement, Workers' Compensation Insurance and Employer's Liability Insurance in amounts as prescribed by laws of the State of Oklahoma.

B. Commercial General Liability Insurance

Service Provider shall carry a policy of Commercial General Liability Insurance, which must include coverage for contractual liability, to protect the Service Provider and any additional insured parties from claims for bodily injury, including death, as well as from claims for property damages or loss which may arise from activities, omissions, and operations of the Service Provider under the Agreement, whether such activities, omissions, and operations be by the Service Provider, subcontractor, or by anyone employed by or acting for the benefit of the Service Provider in conjunction with this Agreement in a combined single occurrence or accident of \$1,000,000 for any number of property or bodily injury claims arising out of a single act, accident, or occurrence.

C. Automobile Liability Insurance

Service Provider shall carry insurance covering owned, leased, hired, or other non-owned vehicles to be utilized by Service Provider in the amounts prescribed by Oklahoma law.

11.03 Contents

The Trust's property insurance does not insure Service Provider's contents, property, furniture, fixtures, equipment, materials, displays, or other property in any building, structure or the Facilities owned by Trust even if a property loss is the result of a loss covered by Trust's property insurance. Service Provider is encouraged to insure any of its property, contents, furniture, fixtures, improvements, displays, or equipment located on the Airport.

11.04 Certificates of Insurance

A. Deductibles

Any policy, except Worker's Compensation and Employer's Liability, having a deductible or retained self-insurance that exceeds \$25,000 shall not be allowed unless such insurance program is approved in advance by the Director, such approval shall not be unreasonably withheld. The Service Provider shall notify the Director immediately if Service Provider has deductibles or retains self-insurance in excess of this stated amount. Service Provider shall be solely responsible for any allowed deductible or retained self-insurance amounts. Any elected deductible or self-insured retention of the Service Provider will not diminish Service Provider's liability under this Agreement for claims or losses falling within any such deductible or self-insured retention amounts. Failure by Service Provider to assume and pay for any deductible or retained self-insurance amount may be considered a material breach and may result in immediate termination at the Trust's option. If, during the term of the Agreement, the Service Provider's elected insurance program exceeds any approved deductible then the Director may require Service Provider to take such reasonable actions to ensure first dollar of loss coverage to the Trust and City including reducing or eliminating such deductibles.

B. Form of Certificate

Certificate(s) of Insurance, acceptable to the Trust, in the form as shown on Exhibit "C" attached to Agreement or a form substantially similar thereto such as an approved ACORD form which includes the applicable line(s) of insurance, name(s) of insurance companies, policy number(s), amount of any deductible or self-insurance retainage, coverage amounts, all additional insured parties, and contractual liability coverage, shall be submitted to the Trust in conjunction with the signed Agreement.

C. Additional Insured

The Certificates of Insurance shall name Service Provider as insured and the Oklahoma City Airport Trust and The City of Oklahoma City as additional insured (including any actual policy endorsement numbers) on any general liability insurance policy, in a manner of equal standing to that of any named insured under said policy. Any insurance policy or liability coverage of the City or the Trust shall

be considered subordinate, if applicable at all, to the primary coverage of the Service Provider. Copies of additional insured or notice provision endorsements shall be submitted to the Trust along with any Certificates of Insurance. Copies of all insurance policies required herein naming the City or Trust as an additional insured shall be made available for review by the Trust or the City at the Trust's principal place of business on a timely basis when requested.

D. Notice of Change in Policy

Service Provider must provide the Trust at least thirty (30) days prior written notice of any cancellation or material coverage change in their policies or to have an endorsement made to each policy to include such notice periods in the event the policy provides a different notice period for any additional insured(s). For the purpose of this provision, a material change shall be considered any deductible or self-insurance that exceeds \$25,000 or any coverage amount that does not meet the minimum requirements contained herein or any coverage that is adverse to any terms that received approval by the Director.

E. Signatory

The Certificates of Insurance must be signed by the Authorized Representatives of the insurance company(s) shown on the certificate with proof that he/she is an authorized representative thereof.

F. Contractual Liability

The Certificate of Insurance for the Commercial General Liability Insurance shall also include evidence of coverage for Service Provider's contractual liabilities as required herein. In the event the Certificate of Insurance does not delineate coverage for Service Provider's contractual liabilities or the Service Provider's insurance policy does not provide sufficient coverage for the Service Provider's contractual obligations contained in this Agreement, Service Provider agrees that Service Provider's contractual obligations to the Trust are not diminished by the Service Provider's elected insurance provisions.

D. Failure to Maintain Insurance

If Service Provider fails to provide the foregoing insurance or fails to maintain a current certificate of insurance on file with the Trust, the Director may assess a \$100 per day fee on the Service Provider for each day that the Service Provider is not in compliance.

E. Umbrella Coverage

In the event the Service Provider relies on excess or umbrella insurance to satisfy the requirement of this Article, any such policy shall follow form and be no less broad than the underlying policy, shall cover the term of the underlying policy without interruption, and shall include a dropdown provision with no gap in policy limits.

## **ARTICLE 12. TERMINATION**

### **12.01 Termination for Convenience**

The Trust, at its option, may terminate this Agreement for any reason whatsoever by giving ninety (90) days written notice to the Service Provider. Trust agrees that, to the extent it received a promotional rate / discount, and the Agreement is not terminated for cause, Trust will pay Service Provider an "early cancellation penalty" in the amount of the difference between the full price of services and the discounted rate for the period the Trust utilized Service Provider services ("Early Termination Fee"). The Trust, at its option, may terminate this Agreement for any reason whatsoever by giving ninety (90) days written notice to the Service Provider.

### **12.02 Termination for Cause**

The Trust may notify the Service Provider of Termination for cause as described in this Agreement and the Service Standards. Upon Trust's determination of cause and Service Provider's failure to remedy the cause within thirty (30) calendar days, the Service Provider shall not be entitled future payments. The Trust may hold any outstanding payments for prior completed services as security for payment of all costs, expenses, or damages incurred by the Trust by reason of the Service Provider's Default or other cause. The Service Provider shall deliver to the Trust all deliverables, including but not limited to, all Project documents, data, reports, and other information and materials accumulated or created in performing this Agreement, whether complete or incomplete, unless notice directs otherwise. Service Provider's Default means the failure of the Service Provider, which has not been remedied or expressly waived, to perform or otherwise comply with a material term of the Agreement.

The rights and remedies in this Article are in addition to any other rights and remedies provided by law or under this Agreement. Termination herein shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by the Service Provider under this Agreement.

## **ARTICLE 13. WAIVER OF STATUTORY NOTICE**

In the event Trust exercises its option to terminate this Agreement for any reason, any notice of termination given by Trust to the Service Provider as provided in this Agreement shall be sufficient to cancel and terminate this Agreement. To the extent any such notice of termination is required pursuant to 41 O.S § 51 *et seq.*, Service Provider hereby expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by Trust under any provisions of the laws of the State of Oklahoma. Upon such termination, the Service Provider hereby agrees that it will forthwith surrender possession of the Trust's information and property to the Trust, provided that the Trust has submitted payment for all services provided up to and including the date of termination as well as early termination fees, if applicable.

**ARTICLE 14. TRANSFER OF MAJORITY INTEREST, VOTING CONTROL, OR OWNERSHIP**

If any individual or group of individuals, or any other entity presently owns or possesses a majority interest, equity position, voting control, or ownership in Service Provider, then a transfer of a majority interest, equity position, voting control, or ownership of Service Provider, including by sale, merger, consolidation, or other reorganization (collectively referred to as a “Change in Control”), shall be deemed to be an assignment of this Agreement that requires the express written consent of the Trust, as provided in Article 15. As used in this Agreement, a “Change in Control” means a change in the ownership of more than 50% of the outstanding voting equity interests of Service Provider or a change in the possession of the power to direct or cause the direction of the management and policies of Service Provider, whether through the ownership of voting equity, by statute, or according to the provisions of a contract. If a Change in Control occurs without the prior written approval of Trust, then the Trust may terminate this Agreement under the provisions of Article 12 hereof. If Service Provider is a “reporting company” as defined in the Corporate Transparency Act or other similar public disclosure reporting requirements and there is a Change in Control of Service Provider, such change shall be reported to Trust in conjunction with any reporting required by the Corporate Transparency Act or other similar public disclosure reporting requirements. If Service Provider does not make such disclosure to Trust, Trust may terminate the Agreement under the provisions of Article 12 hereof. Any person or entity with a majority interest, voting control, or ownership of Service Provider, regardless of the form of the entity, shall have sufficient financial resources and operational experience to conduct the operation and activities permitted on the Airport under this Agreement. As required by Article 15 at least ninety (90) days prior to any Change in Control, Service Provider shall submit written documentation to Trust showing good and sufficient financial worth and adequate experience in the operation of the Facilities on the part of the contemplated transferee, and evidencing the intent of such contemplated transferee to expressly assume in writing, and agree to be bound by and fulfill all of the terms, covenants, obligations, and agreements contained in this Agreement, the sufficiency of which shall be in the sole discretion of the Director.

**ARTICLE 15. ASSIGNMENT**

The Services Provider shall not assign or transfer this Agreement, in whole or in part.

**ARTICLE 16. GENERAL CIVIL RIGHTS PROVISIONS**

In all its activities within the scope of its airport program, the Service Provider agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin, (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

If the Service Provider transfers its obligation to another, the transferee is obligated in the same manner as the Service Provider. The above provision obligates the Service Provider for the period

during which the property is owned, used or possessed by the Service Provider and the Trust remains obligated to the Federal Aviation Administration.

## **ARTICLE 17. CIVIL RIGHTS TITLE VI ASSURANCE**

### 17.01 Title VI Clauses for Compliance with Nondiscrimination Requirements

During the performance of this Agreement, the Service Provider, for itself, its assignee, and successors in interest, agrees as follows:

A. Compliance with Regulations

The Service Provider (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

B. Nondiscrimination

The Service Provider, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Service Provider will not participate directly or indirectly in the discrimination prohibited by the [Title VI] Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

C. Solicitations for Subcontracts, including Procurements of Materials and Equipment

In all solicitations, either by competitive bidding or negotiation made by the Service Provider for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Service Provider of the Service Provider's obligations under this Agreement and the [Title VI] Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

D. Information and Reports

The Service Provider will provide all information and reports required by the Acts, the Regulations, and the directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Trust or the Federal Aviation Administration to be pertinent to ascertain compliance with such [Title VI] Nondiscrimination Acts and Authorities and instructions. Where any information required of a Service Provider is in the exclusive possession of another who fails or refuses to furnish the information, the Service Provider will so certify to the Trust or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance

In the event of a Service Provider's noncompliance with the nondiscrimination provisions of this Agreement, the Trust will impose such contract sanction [in accordance with any applicable notice and cure provisions provided for in this Contract] as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1. Withholding any payments to the Service Provider under the Agreement until the Service Provider complies; and/or
2. Cancelling, terminating, or suspending an Agreement, in whole or in part.

F. Incorporation of Provisions: The Service Provider will include the provisions of [Paragraph 17.01, subparagraphs] A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Service Provider will take action with respect to any subcontract or procurement as the Trust or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Service Provider becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Service Provider may request the Trust to enter into any litigation to protect the interests of the Trust. In addition, the Service Provider may request the United States to enter into the litigation to protect the interests of the United States.

17.02 Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Service Provider, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age

Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. at 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681 *et seq*).

**ARTICLE 18. TITLE VI CLAUSES FOR THE TRANSFER OF OR  
CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED OR IMPROVED  
UNDER THE AIRPORT IMPROVEMENT PROGRAM**

18.01 Property Acquired or Improved Under Airport Improvement Program

The following clause will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Trust pursuant to the provisions of the Airport Improvement Program grant assurances.

The Service Provider for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Service Provider will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

18.02 Construction/Use/Access to Property Under Activity, Facility, or Program

The following clause will be included in deeds, licenses, permits, or similar instruments entered into by the Trust pursuant to the provisions of the Airport Improvement Program grant assurances.

The Service Provider for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (a) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (c) that the Service Provider will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

**ARTICLE 19. GENERAL CONDITIONS**

19.01 No Extra Work

No claims for extra work, product, Services, solution, or deliverables of any kind or nature or character shall be recognized or paid by or be binding upon the Trust unless such Services, work, product, solution, or deliverable is first requested by Trust and approved in writing by the Service Provider through an amendment to this Agreement.

19.02 Upgrades and Substitutions

During the performance of this Agreement, if any software named in this Agreement is upgraded in the software provider's product line by software performing the same functions, but using improved technology, then the newer product will be substituted upon the direction and approval of the Director, or designee, and implemented by Service Provider for no increase in costs or fees.

19.03 Commercially Reasonable Efforts

Service Provider shall make concerted commercially reasonable efforts to remediate and resolve critical issues, where Trust's service is inoperable, within 48 – 72 hours. Service Provider shall provide technical support services Monday through Friday from 8:00 a.m. to 8:00 p.m. EST, except on holidays and emergency closings. Any failure on the part of the Trust to timely object to the time of performance shall not waive any right of the Trust to object at a later time.

19.04 Confidentiality

Service Provider acknowledges that in the course of providing Services, the Trust may provide Service Provider with access to valuable information of a confidential or proprietary nature, including but not limited to information relating to Trust employees, customers, business process, custodial systems, data, safety, and technology. Service Provider agrees that neither Service Provider nor its employees, sub-contractors, or agents, without prior written consent of Trust, will disclose to any person, any information obtained.

Trust acknowledges that in the course of receiving Services, the Trust may gain access to valuable information of a confidential and proprietary nature, including but not limited to information relating to Service Provider employees, customers, business process, custodial systems, data, safety, and technology. Trust agrees that neither the Trust nor its employees, sub-contractors, or agents, without prior written consent of Service Provider, will disclose to any person, any information obtained, unless required by law or a court of law. If required by law or by a court of law, then the Trust will provide notice to the Service Provider prior to the release of records.

19.05 Warranties

Service Provider warrants that all Services, products, solutions, and products performed or provided under this Agreement shall be performed consistent with generally prevailing professional standards and expertise normally employed by expert professionals performing the same or similar work. Service Provider shall maintain during the course of this Agreement said standard of care, expertise, skill, diligence, and professional competency for any and all such Services, products, solutions, and deliverables. The Service Provider also acknowledges and agrees to provide all express and implied warranties required or provided for by Oklahoma statutory and case law.

19.06 Notices

Notices to Trust or Service Provider pursuant to the provisions hereof shall be sufficient if sent by: (a) registered or certified mail, return receipt requested, postage prepaid, and deemed received on the third business day after the date mailed if recipient refused proper delivery; (b) a nationally recognized overnight courier (receipt requested) and deemed received the next business day following the date it was sent if the recipient refused proper delivery; (c) electronic mail and deemed received on the date sent if sent during normal business hours of the recipient and on the next business day if sent after normal business hours of the recipient; or (d) hand delivered, addressed to:

For the Trust: Oklahoma City Airport Trust  
Will Rogers World Airport  
7100 Terminal Drive, Unit 937  
Oklahoma City, Oklahoma 73159-0937  
Telephone: (405) 316-3200  
Email: [wrvabusinessproperties@okc.gov](mailto:wrvabusinessproperties@okc.gov)

For the Service Provider: Early Morning Software, Inc.  
227 Holliday Street  
Baltimore, MD 21202  
Telephone: (410) 394-9012  
Email: [donna@emslab.com](mailto:donna@emslab.com)

A party may designate a change to the physical address by written notice given to the other Party in accordance with this Paragraph 19.07.

Unless otherwise stated herein, notice to each party shall be sufficient and deemed received

on the third business day if sent by U.S. Postal Service regular mail, postage prepaid, to the address listed herein whether accepted, or if hand delivered. Bills, statements, and other communication to or Trust may be through telephone or sent through the U.S. Postal Service regular delivery, or electronic mail.

19.07 Non-Waiver

The waiver by Trust of any breach of the Service Provider of any term, covenant, provision, or condition hereof shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, term, provision, or condition hereof, nor shall any forbearance by the non-breaching party to seek a remedy for any breach by the breaching party be a waiver by the non-breaching party of its rights and remedies with respect to such or any subsequent breach of the same or with respect to any other breach.

19.08 Binding Effect

This Agreement shall be binding upon the parties, and their respective successors and assigns, as of the Effective Date.

19.09 Severability

In the event any terms, covenants, conditions, or provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term, covenant, condition, or provision hereof.

19.10 Entire Agreement; Modification Hereof

This Agreement (including the Exhibits hereto) expresses the entire understanding of Trust and the Service Provider concerning the Agreement at the Airport and all agreements of Trust and of Service Provider with each other, and neither Trust nor Service Provider has made or shall be bound by any agreement or any representation to the other concerning the Agreement which is not expressly set forth in this Agreement (including the Exhibits hereto). This Agreement (including the Exhibits hereto) may be modified only by a written agreement of subsequent date hereto signed by Trust and Service Provider.

19.11 Execution of Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

19.12 Effect of Saturdays, Sundays and Legal Holidays

Whenever this Agreement requires any action to be taken on a Sunday, a Saturday, or a legal holiday, such action shall be taken on the first business day occurring thereafter in the place where the action is to be taken. Whenever in this Agreement the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on Sunday, a Saturday, or a legal holiday recognized by the City of Oklahoma City, such time shall continue to run until 11:59 p.m. on the next succeeding business day.

19.13 Descriptive Headings: Table of Contents

The descriptive headings of the sections of this Agreement and any table of contents annexed thereto or copies hereof are inserted or annexed for convenience of reference only and do not constitute a part of this Agreement, and shall not affect the meaning,

construction, interpretation, or effect of this Agreement.

19.14 Construction and Enforcement

This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma. Whenever in this Agreement it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform or not to perform, as the case may be, such act or obligation.

19.15 Venue

The parties acknowledge and agree that in the event of any dispute or disagreement that necessitates court intervention, the venue for all litigation shall be the District Court of Oklahoma County, Oklahoma.

19.16 Construction of Agreement

In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

19.17 Recitals Contractual in Nature

The parties acknowledge and agree that the recitals as contained hereinabove in this Agreement are contractual in nature and binding on the parties.

19.18 Holding Over

Reserved.

19.19 Conflicts

If there is a conflict between any provision within the Agreement or any Exhibit, then the language contained in any article, paragraph or section with the Agreement shall govern and control over any conflicting language, term, or provisions in any Exhibit. If in the event the Agreement is silent, the Exhibit will govern.

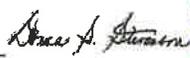
19.20 Surrender of the Designated Areas

Reserved.

The Remainder of this Page is Intentionally Blank.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands to this Agreement as of the Effective Date stated above.

**Early Morning Software, Inc., Service Provider**

  
Signature

Stevenson  
DN: CN = Donna S. Stevenson  
email = donna@emslab.com C =  
US O = Early Morning Software,  
Inc  
Date: 2023.12.29 00:54:11 -05'00'

Donna S. Stevenson  
Printed Name

President  
Title

**APPROVED** by the General Manager on behalf of the Trust on the 29 day of December 2023.



Director of Airports/General Manager

**RATIFIED AND APPROVED** by the Oklahoma City Airport Trust and signed by the Chairman this 25TH day of JANUARY 2024.

**ATTEST:**



Trust Secretary



**OKLAHOMA CITY AIRPORT TRUST**



Chairman

**REVIEWED** for form and legality.



Assistant Municipal Counselor/  
Attorney for the Trust

## **EXHIBIT A – SCOPE OF SERVICES**

The Scope of Services to be provided by the Service Provider in accordance with this Agreement follows:

Provide excellent Services and support.

Provide the Trust's vendors with the best and most intuitive Customer Relationship Management experience.

Demonstrate a commitment to practices that yield effective and meaningful engagement of DBE and MBE communities.

Provide PRiSM Enterprise System with the following capabilities.

The sections that follow provide a brief description of each PRiSM capability.

- |                             |                                 |                                    |
|-----------------------------|---------------------------------|------------------------------------|
| ✦ Vendor Search & Directory | ✦ On-line Vendor Registration   | ✦ Goal Management                  |
| ✦ Contract & PO Manager     | ✦ Subcontractor Management      | ✦ Project Management               |
| ✦ Prompt Payment Manager    | ✦ Concessions Management        | ✦ Sales Concessions Compliance     |
| ✦ Prevailing Wage (USDOL)   | ✦ Prime, Tier 2 & Sub Reporting | ✦ Outreach Manager/ Branded Portal |

### **Business Development and Outreach Management**

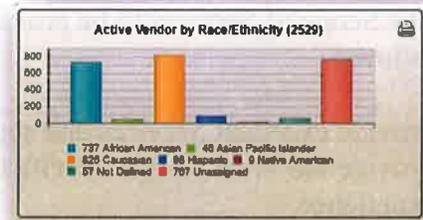
Provide the PRiSM Supplier Management Suite to meet and achieve more outreach. The Supplier Management Suite will be comprised of the following modules:

- ✦ Vendor On-line Registration
- ✦ Vendor Search & Directory
- ✦ Branded Portal
- ✦ Survey Center
- ✦ Outreach Management

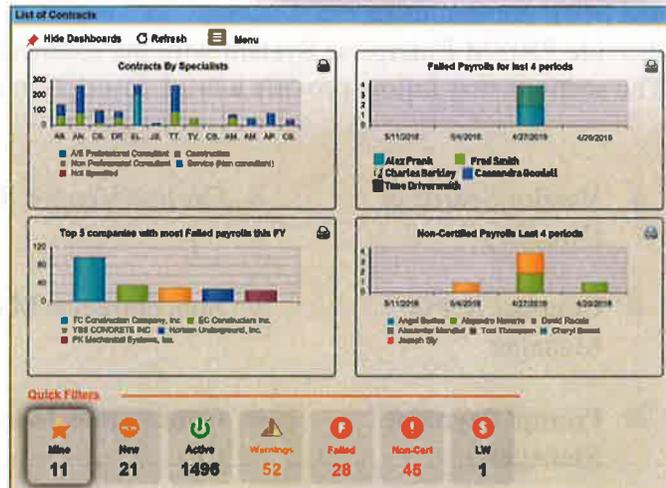
## Vendor On-line Registration and Vendor Search & Directory

On-line Vendor Registration and Directory of *Certified and non-Certified* Vendors

- 📌 Create and manage vendor profiles and organizational background
- 📌 Track demographic, location, and capacity information for Vendors
- 📌 View and verify M/WBE certifications
- 📌 Perform advance, filtered searches for suppliers by location, market, address, industry classification, product or service, and more
- 📌 Perform PRiSM 'Poogle' or keyword searches against Vendor Database
- 📌 Store supplier relevant documents such MWBE certificates, capability statements, references, W-9 and more
- 📌 *PRiSM Vendor Search & Directory will be provisioned for an annual capacity of 2,500 vendors.*
- 📌 *PRiSM On-line Vendor Registration will be provisioned for 200 vendors.*



*The PRiSM DataXchange will be enabled to import the Oklahoma Department of Transportation UCP DBE directory data. The Trust will establish the request for the UCP DBE data.*



## Outreach Management

- 📌 Create queries to identify Small/Minority/Female Business Enterprises using North American Industry Classification System (NAICS) and UNSPCS codes and disseminate electronic notifications and outreach information
- 📌 Communicate with vendors directly from PRISM for upcoming outreach opportunities
- 📌 Display upcoming events on the vendor's PRISM home page.
- 📌 Schedule notifications to suppliers automatically or on demand
- 📌 Maintain a repository of correspondence letters
- 📌 Log any correspondence distributed using PRiSM
- 📌 *PRiSM Outreach Manager will be provisioned for an annual capacity of 100 Outreach Campaigns.*

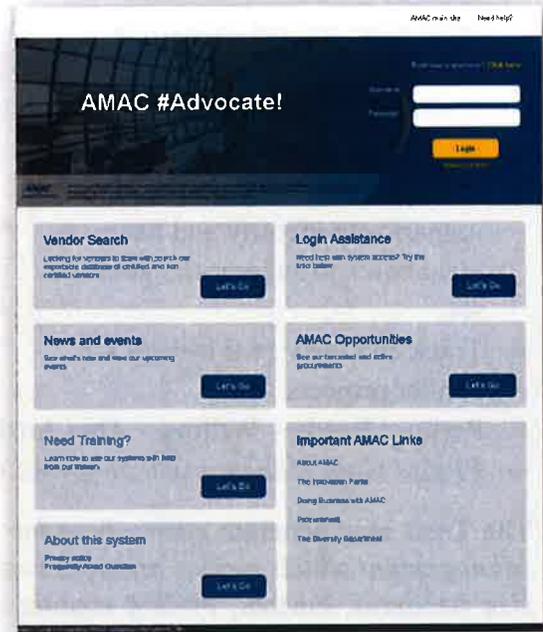
## Branded PRiSM Portal

### Services Capabilities and Benefits

- 🔗 Custom branded Portal and web address for easy, quick access to the Trust's Diversity Program resources
- 🔗 Integrated relevant Trust web links

### Trust's Vendor Contractor Capabilities and Benefits

- 🔗 Consistent user interface and branding with the Trust's logo
- 🔗 Central web page for the Trust
- 🔗 search public supplier directory
- 🔗 access PRiSM login
- 🔗 links to register for training
- 🔗 review news and events
- 🔗 Links to the Trust's web resources for optimized user experience for its suppliers



## PRiSM Survey Capabilities

The PRiSM Survey modules empower the Trust to effectively collect information from vendors.

- 🔗 Create interviews for Commercially Useful Function reviews
- 🔗 Employ questionnaires for compliance audits and reviews
- 🔗 Create surveys to collect pre- and post-events feedback
- 🔗 Electronically capture anecdotal data for Disparity studies

## Goal Setting

### PRiSM Goal Setting Capabilities

Incorporated in the PRiSM Acquisition Suite is the **Goal Setting** module. With Goal Setting, the Trust has the guided workflow to set any program (DBE/MBE/SBE/VBE) and contract goal using available vendor directories. Also available as an optional capability is the Market Availability which provides a similar workflow; however, the Trust may employ census data as the bases for availability of firms. PRiSM maintains a history of the goals, making it easy to benchmark attainment against overall program goal.

- 🔗 Plan and manage solicitation event dates – Issuance, Questions, Goal Due, Bid Due and more
- 🔗 Perform filtered searches for name, industry, industry classification, department, buyer product or service,

- 🚧 Set MWBE and DBE Business goals at contract level based upon procurement categories
- 🚧 Applies industry standard and USDOT compliant goal setting practices
- 🚧 Staff perform “What If...” scenarios to identify and have legal bases to support the goal set
- 🚧 Track and view goal history for similar projects
- 🚧 Perform Ready – Willing – Able Analysis
- 🚧 *PRiSM Goal Manager will be provisioned for an annual capacity of 100 solicitations.*

**Procurement Summary**

Procurement Number:	P0814000201408-31	Procurement Name:	Foundation Remediation - Emergency Procurement
Procurement Type:	Construction	Goal Due Date:	01/16/2019
Solicitation:	RFP	Department:	Public Works
Industry Codes:	238210, 327310	Budget:	\$1,025,965.00
Buyer Name:	Moyo Fakeye		
SOW/Purpose:	Remediate the foundation of city hall and relocate all utility services. 327390		

Would you like to see a [Goal History](#) on procurements like this one?

Select the goal types you wish to set goals for and click **Continue to Goal Modeling**.

<input type="checkbox"/> ACDBE	<input type="checkbox"/> CBE	<input type="checkbox"/> CSBE	<input type="checkbox"/> DBE
<input type="checkbox"/> EDP	<input type="checkbox"/> LDB	<input type="checkbox"/> MBE	<input type="checkbox"/> No Goal
<input checked="" type="checkbox"/> SBE			

(The listed goal types are from your PRISM configuration)

The Trust may generate *narrowly tailor goals* at a contract or project level using **PRiSM Goal Management** which applies multiple factors beyond supplier availability, i.e., CUF, location and size standards. Further, PRiSM enables the Trust to analyze vendors’ *Ready-Willing-Able* with integrated interest inquiry and contract performance information.

## Reporting

### PRiSM Report Center

The PRiSM system was originally designed in collaboration with a US DOT grantee having requirements for DBE and MBE program and compliance management. PRiSM Team annually participates in US DOT training and monitor regulations to ensure clients have optimal and required capabilities. The Trust will fulfill its reporting requirement utilizing PRiSM Report Center which has hundreds of dashboards, reports, and ad-hoc capabilities. The *Uniform DBE Commitment and Participation Report is a standard PRiSM Report*. See Appendix for Sample Reports.

#### Trust Capabilities and Benefits

- 🚧 Generate Uniform DBE Commitment and Participation Report and transmit to FAA using multiple formats
- 🚧 Perform benchmark short-fall analysis comparing Goal vs. Commitment vs. Participation
- 🚧 Annotate reports with purpose, frequency, and meta data requirements
- 🚧 Define advance queries by user and common to all Trust users
- 🚧 Perform advance queries
- 🚧 Generate Ad-hoc reports
- 🚧 Custom reports available
- 🚧 Export reports to industry standard formats, such as MS Excel, RTF, PDF
- 🚧 Disparity studies are easy with the multitude of relevant data collected within PRiSM
  - Suppliers: primes and subcontractors
  - Supplier types: supplier, manufacturer, broker
  - Contract types: good & services, professional services, construction
  - Contract award type: PO, Contract, Blanket Order, Job Order,
  - Solicitation types: ITB, IFB, RFQ, RFP

- Payment types: cash, Check, Credit Card, Sub payments at any Tier
- Workforce classification: construction trades and EEO classification
- Employee demographics: race, gender, income, residency, craft, and more

FYTD Race Attainment			FYTD Contract Type Spend		
Total Prime Spend = \$41,005,500.00, FY = Jan '20-Dec '20			Total Prime Spend = \$41,005,500.00, FY = Jan '20-Dec '20		
Race	FYTD Spend	FYTD % Spend	Contract Type	FYTD Spend	FYTD % Spend
*Not Assigned	\$241,700	0.59%	*Not Assigned	\$100,000	0.24%
African American	\$3,627,500	8.85%	Construction	\$8,222,500	20.05%
Asian American	\$502,000	1.22%	Construction Services	\$0	0%
Asian Pacific-American	\$0	0%	Economic Development	\$0	0%
Caucasian	\$2,702,249	6.59%	Injury Grant	\$0	0%
<b>Total:</b>	<b>\$10,026,800</b>	<b>24.45%</b>	<b>Total:</b>	<b>\$10,025,500</b>	<b>24.45%</b>

## DBE Participation Report

UNIFORM REPORT OF DBE COMMITMENTS / AWARDS AND PAYMENTS										
**Please refer to the instructions sheet for directions on filling out this form**										
1	Submitted to (check only once):	<input type="checkbox"/> FHWA <input type="checkbox"/> FAA <input checked="" type="checkbox"/> FTA-								
2	AIP Number (FAA Recipients Only) Grant Number (FTA Recipient Only)									
3	Reporting fiscal year in which reporting period falls	2017			4 Date This Report Submitted: April 15, 2017					
5	Reporting Period:	<input checked="" type="checkbox"/> Report due June 1 (for period Oct 1 - Mar 31)			<input type="checkbox"/> Report due Dec 1 (for period April 1 - Sept 30)			<input type="checkbox"/> FAA Annual Report		
6	Name and address of Recipient:									
7	Annual DBE Goal(s):	Race Conscious Projection	11.00 %	Race Neutral Goal	3.00 %	OVERALL Goal	15.00 %			
Awards / Commitments this Reporting Period										
A	AWARDS / COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts committed during this reporting period)	A	B	C	D	E	F	G	H	I
		Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs [C/A]
8	Prime contracts awarded this period	\$0	0	\$0	0	\$0	0	\$0	0	0.00%
9	Subcontracts awarded/committed this period	\$0	0	\$0	0	\$0	0	\$0	0	0.00%
10	<b>TOTAL</b>	\$0	0	\$0	0	\$0	0	\$0	0	0.00%
Contracts Awarded to DBEs this Period										
B	BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F			
		Total to DBE (dollar amount)			Total to DBE (number)					
		Women	Men	Total	Women	Men	Total			
11	Black American	\$0	\$0	\$0	0	0	0			
12	Hispanic American	\$0	\$0	\$0	0	0	0			
13	Native American	\$0	\$0	\$0	0	0	0			
14	Asian-Pacific American	\$0	\$0	\$0	0	0	0			
15	Subcontinent Asian American	\$0	\$0	\$0	0	0	0			
16	Non-Minority	\$0	\$0	\$0	0	0	0			
17	<b>TOTAL</b>	\$0	\$0	\$0	0	0	0			
Payments Made this Period										
C	PAYMENTS ON ONGOING CONTRACTS (responsibility of signing recipient only)	A	B	C	D	E	F			
		Total Number of Contracts	Total Dollars Paid (dollars)	Total Number of DBE Contracts	Total Payments to DBEs firms (dollars)	Total Number of DBE firms Paid (number)	Percent to DBEs			
18	Prime and sub contracts currently in progress	7	\$6,846,429	5	\$6,516,429	3	95%			
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A	B	C	D	E				
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (dollars)	Total DBE Participation (dollars)	Percent to DBEs				
19	Race Conscious	0	\$0	\$0	\$0	0.00%				
20	Race Neutral	0	\$0	\$0	\$0	0.00%				
21	<b>TOTAL</b>	0	\$0	\$0	\$0	0.00%				
22	Submitted by: .. Your Name Here ..	24. Signature:			25. Phone Number: .. Your Phone Number Here ..					



Office of Contract Compliance

### DBE Participation Report

Reporting Year: 03/1/2019 to 02/28/2020

#### DBE Prime and DBE Sub Dollars Earned

Contracts to DBE Primes	19
Contracts to DBE Subs	31

DBE Prime Dollars	\$4,927,135.89	25.10%
DBE Sub Dollars	\$14,702,559.85	74.90%
<b>Total DBE Dollars Earned</b>	<b>\$19,629,745.54</b>	<b>100.00%</b>



Total DBE Prime Dollars	\$4,927,135.89	25.10%
Total DBE Sub Dollars	\$14,702,559.85	74.90%
<b>Total</b>	<b>\$19,629,745.54</b>	<b>100.00%</b>

# Compliance Attainment Report

## Compliance Exception Report (SMB, SPP)



Key Project Number - All - | Contract Status Address | Contract Type - Construction | Department - All -  
 From 07/01/2019 To 06/30/2019 | Via the Report Filter | (Clear Report) | (Add - Favorites) | (Export) | (Summary Worksheet)

Project -

Contract: PG-0173 - Oldness Drive over South UWay Creek Bridge Replacement

Overall Goal: 20.0%  
 Goal Based on Award Amount by: 597,918.61

Award Date: 07/02/2018  
 Start Date: 07/02/2018  
 End Date: 03/08/2019

Prime Contractor: Marsh Infrastructure South Co.

Total Contract Value: \$2,358,503.55  
 Net Payment: \$2,266,319.63  
 Percent Complete (Contract Life): 94.05%

Subcontractor Name	SMB	SPP	Net Commitment		Gross Commitment		Net Payment		Gross Payment		Period of Performance	List of Active Certificates (7/01/2019 to 6/30/2019)
			%	\$	%	\$	%	\$	%	\$		
Clear Water Consultants			0.00	\$41,127.71	0.00	\$14,127.71	99.45	\$1,429,000.00	96.43	\$1,429,000.00	07/02/2018 to 03/08/2019	SEE, FFE
Adrian Construction Group, Inc			0.95	\$22,003.99	0.95	\$22,003.99	99.00	\$20,130,000.00	90.39	\$20,130,000.00	07/02/2018 to 03/08/2019	SEE, FFE
Southern Construction, LLC			2.11	\$47,789.84	2.11	\$47,789.84	97.29	\$48,438.47	97.29	\$48,438.47	07/02/2018 to 03/08/2019	SEE, FFE
American Shoring, Inc.			1.04	\$33,444.77	1.04	\$33,444.77	97.49	\$24,900.49	97.49	\$24,900.49	07/02/2018 to 03/08/2019	AAAE, SEE, FFE
Arack, Inc.			1.31	\$33,902.79	1.31	\$33,902.79	95.49	\$29,411.98	95.49	\$29,411.98	07/02/2018 to 03/08/2019	SEE, FFE, HAAB
Highway Services, Inc.			0.52	\$12,288.96	0.52	\$12,288.96	94.00	\$9,000.00	94.00	\$9,000.00	07/02/2018 to 03/08/2019	SEE, FFE, HAAB
Hardy Transportation Services, Inc.			20.43	\$418,522.29	20.43	\$418,522.29	25.56	\$539,650.34	24.54	\$339,420.94	07/02/2018 to 03/08/2019	AAAE, SEE
Lowie Contracting Services, LLC			3.52	\$83,688.22	3.52	\$83,688.22	54.09	\$44,534.62	54.09	\$44,534.62	07/02/2018 to 03/08/2019	AAAE, SEE
Golden Key Co., Inc.			0.42	\$10,000.00	0.42	\$10,000.00	0.00	\$0.00	0.00	\$0.00	07/02/2018 to 03/08/2019	AAAE, SEE
Baker Consulting Services, LLC			0.76	\$17,877.83	0.76	\$17,877.83	71.47	\$12,777.20	71.47	\$12,777.20	07/02/2018 to 03/08/2019	AAAE, SEE
Georgia Dream Services, LLC			0.71	\$15,808.12	0.71	\$15,808.12	4.28	\$57,711.98	4.31	\$57,711.98	07/02/2018 to 03/08/2019	AAAE, SEE
The Emulsion Company, LLC			0.14	\$3,207.63	0.14	\$3,207.63	100.00	\$4,800.00	100.00	\$4,800.00	07/02/2018 to 03/08/2019	AAAE, SEE
DEWNEY TREES, INC.			0.75	\$17,689.74	0.75	\$17,689.74	94.05	\$14,811.25	94.05	\$14,811.25	07/02/2018 to 03/08/2019	AAAE, SEE
Marsh Building Form Co., Inc.			0.07	\$1,990.15	0.07	\$1,990.15	94.68	\$4,200.00	94.68	\$4,200.00	07/02/2018 to 03/08/2019	AAAE, SEE
Marsh Building Form Co., Inc.			1.94	\$43,126.68	1.94	\$43,126.68	94.49	\$41,847.18	94.49	\$41,847.18	07/02/2018 to 03/08/2019	AAAE, SEE
<b>Total</b>			<b>33.49</b>	<b>\$77,714.31</b>	<b>33.49</b>	<b>\$77,714.31</b>	<b>41.16</b>	<b>\$27,818.53</b>	<b>41.14</b>	<b>\$27,818.53</b>		

Payment to Prime	Payments to Subs	Prime Retained Spread
\$1,773,183.17	\$165,401.37	\$96,723.97

Summary for Subcontractor Certificates		
AAAE	4	
SEE	3	
HAAB	1	

## Contract Compliance

PRiSM proposes to provide the Trust with the **PRiSM Contract Compliance Management Suite** to fulfill and exceed its Contract Compliance requirement. Its Contract Compliance Management Suite will be comprised of the following modules, each of which is described below.

- ↳ Contract and PO
- ↳ Subcontractor Management
- ↳ Project Management
- ↳ Prime, Tier 2 & Sub Reporting
- ↳ Prompt Payment

### **Contract and PO**

#### Trust Capabilities and Benefits

As a US DOT Grantee and Locally funded organization, the Trust contracts will establish DBE, MBE and SBE program goals for its contracts. PRiSM Contract and PO manage varying types of contracts and all the pertinent contract details for tracking awards – prime, start/end dates, funding source, goals, waivers, retainage requirements, location, and even custom tags.

- ↳ Track Purchase Orders
- ↳ Assign federal and local funding, and inherently associate reporting guidelines
- ↳ Track contract value and payments for direct, contract, and task-based orders
- ↳ Manage change orders and recalculate contract value
- ↳ Automatically recalculate goals and attainment when compliance is applicable to change order
- ↳ Automatic notice to user departments of contract renewal and expiration
- ↳ Automatic Notification to risk managers for insurance expiration
- ↳ Track contract compliance complaints
- ↳ *PRiSM Contract and PO Manager will be provisioned for an annual capacity of 100 contracts.*

The screenshot displays a web-based interface for contract management. At the top, there is a navigation bar with tabs for 'Contract Info', 'Subcontractors', 'Change Orders', 'Goals', 'Reporting', 'Compliance', and 'Payments'. Below the navigation bar, a message box states: 'Fill out the detailed information below. Please provide Award Date and Award Amount if possible as they are used by most of the reports. Click "Save Changes" button to submit the changes.' The main content area is titled 'Contract Info' and contains the following data:

Contract Name	Interim Response and Remediation Services Contract		
Contract Number	15-0034	Award Date	4/15/2015
Amount	\$10,700,000.00	Start Date	4/15/2015
Sum of COs (all)	\$0.00	End Date	4/15/2020
Sum of COs (cr)	\$0.00	Overall Goal	0
Contract Value	\$10,700,000.00	Added By	Importer
Contract Value (cr)	\$10,700,000.00	Date Added	10/31/2019

### **Project Management**

#### Trust Capabilities and Benefits

- ↳ Track every Project and the associated contractor award by Task Order and Funding Source and Funding Type for any size capital project
- ↳ Manage subcontractor awards and commitment and generate attainment by supplier, subcontractor award and payments
- ↳ Generate rich reports and dashboards that provide the progress of Capital Projects, Public Private Partnerships, and Master Agreements.
- ↳ *PRiSM Project Management capabilities will be provisioned for an annual capacity of 50 Project Task Orders.*

## Subcontractor Manager

### Trust Capabilities and Benefits

With PRiSM Subcontractor Manager, the Trust will track any Tier subcontractor and their respective goal being fulfilled on the contract. Dynamically, PRiSM automatically accounts for the Gross Commitment and Net Commitment to each subcontractor, thus, eliminating the risk of Double-counting dollars in the subcontracting tiers.

- 🔑 Collect subcontractor agreement and documents in Reference Center
- 🔑 Record payments to subcontractors and report D/M/WBE and SBE participation
- 🔑 Apply CFR 49 part 26 and local program Supplier, Manufacturers, and Broker payment ratios
- 🔑 Analyze Predictive Performance Indicators
- 🔑 *PRiSM Subcontractor Manager will be provisioned for an annual capacity of 100 contracts.*

## Prime, Tier 2 & Sub Reporting

### Trust Contractor Capabilities and Benefits

PRISM Prime, Tier 2 & Sub Reporting enable the Trust primes to access PRiSM report payment and invoice transactions. Our Closed-loop Acknowledgement workflow begins with Prime and Subcontractors acknowledging contract and subcontractor commitments with the Sub Utilization Plan. The CLA workflow extends to the following features and gives the Trust full transparency to the transactions between primes and subs. Non-compliance is easily determined with automate *Compliance Alerts* and remediated with correspondence and reference documents.

- 🔑 Monitor Prime and Subcontractor Payment and Invoice reports
- 🔑 Manage request for Substitution or Change in Subcontractor Plan
- 🔑 Track contract and diversity spend to date as dollars and percent participation by diversity groups
- 🔑 Reduce compliance costs by **Tier 2 & Sub Reporting** which allows contractors to enter their own periodic reports, invoices, and payments over the web
- 🔑 Track payment discrepancies through subcontractor reporting rather than whistle blowing
- 🔑 PRISM Closed-loop Acknowledgement allows you to audit and report verified subcontractor payments by vendor and cancelled checks
- 🔑 Have full transparency to **ALL** Subcontractor unpaid and outstanding invoices at **ANY** Tier
- 🔑 Automatic notification to contractors and subcontractors with delinquent reports
- 🔑 Quick analysis of missing payment reports
- 🔑 Automatic Alerts allow Contract managers when contractors are in non-compliance
- 🔑 Capability to generate real-time expenditures tracking reports daily, weekly, monthly, and quarterly by date range

Vendor	Amount Paid	Payment Date	Invoice #	Invoice Amount	ACI Reference	Action
<b>Primer: Coge Construction Company LLC</b>						
J.M.S. Construction, Inc.	\$2,500.00	10/06/2016	003	\$2,500.00	Nb	
J.M.S. Construction, Inc.	\$1,500.00	02/06/2016	002	\$1,500.00	Nb	
J.M.S. Construction, Inc.	\$36,000.00	02/04/2016	001	\$36,000.00	Yes	
<b>Total: \$39,900.00</b>						
<b>Primer: Coppersmith Construction &amp; Design Corp.</b>						
J.M.S. Construction, Inc.	\$45,000.00	11/16/2017	1204	\$58,000.00	Nb	
J.M.S. Construction, Inc.	\$1,500.00	18/09/2017	1235	\$1,500.00	Nb	
J.M.S. Construction, Inc.	\$1,000.00	06/05/2017	15	\$1,000.00	Nb	
J.M.S. Construction, Inc.	\$5,070.00	07/14/2016	9494	\$5,620.00	Nb	
J.M.S. Construction, Inc.	\$75,000.00	08/10/2016	305	\$75,000.00	Yes	
J.M.S. Construction, Inc.	\$45,000.00	04/23/2016	213	\$45,000.00	Yes	
J.M.S. Construction, Inc.	\$30,000.00	02/07/2016	3469	\$30,000.00	Yes	
J.M.S. Construction, Inc.	\$100,500.00	01/01/2016	05	\$188,500.00	Yes	
<b>Total: \$328,820.00</b>						
<b>Primer: Corporate Construction Inc.</b>						
J.M.S. Construction, Inc.	\$7,525.00	02/16/2018	87	\$7,525.00	Nb	
J.M.S. Construction, Inc.	\$5,845.00	01/19/2018	89	\$5,645.00	Nb	
J.M.S. Construction, Inc.	\$5,000.00	02/21/2017	32	\$5,000.00	Nb	
J.M.S. Construction, Inc.	\$50,000.00	03/07/2016	101	\$50,000.00	Yes	
J.M.S. Construction, Inc.	\$25,000.00	12/19/2015	100	\$25,000.00	Yes	
J.M.S. Construction, Inc.	\$7,500.00	11/30/2015	99	\$7,500.00	Yes	
<b>Total: \$198,870.00</b>						

- PRiSM Prime, Tier 2 and Sub Reporting will be provisioned for an annual capacity of 300 Prime and Subcontractor Reporters.

## Prompt Payment

### Trust Capabilities and Benefits

Rhode Island DOT was the PRiSM Center of Excellence Collaborator during the release of the PRiSM Prompt Payment module. It offers dashboards, attainment, and a payment grid which allows staff to easily monitor US DOT Prompt Payment policy by analysis, alerts and reports of non-compliance. PRiSM assists the clients in managing and analyzing actual prime payment dates against the applicable subcontractors' scope of work and payments. The module manages retainer payments as well as final payment to primes and subcontractors.

- Analyze and reconcile prime payment against each sub payment
- PRiSM Closed-loop Acknowledgement automates subcontractor verification of payment and alerts compliance staff to late payments
- Non-compliance reports for prime violating prompt payment policy
- Manage complaints filed and record resolution
- PRiSM Prompt Payment will be provisioned for an annual capacity of 100 contracts.

## Concessions Management and Concessions Compliance

PRISM centralizes your agreement information for car and non-car rental concession services, and streamlines the processes for tracking agreement renewals, revenue, and suppliers.

- identifying the Airport Concession Disadvantaged Business Enterprises (ACDBE) and reporting participation commitments.
- prime and sub concessionaires submit gross revenues reports
- allows concessionaires to report over web ensures that your sales concession data
- preparation of the Federal Aviation Administration data report and annual Uniform ACDBE Commitment and Participation report.
- PRiSM Concessions Management will be provisioned for an annual capacity of 50 locations/units.

## PRiSM Certified Payroll (Davis Bacon)

### Trust Capabilities for Labor/Certified Payroll Management

- Easiest and most intuitive way to capture employee utilization
- Primes, subcontractors, and contract compliance staff input employee profiles
- Captures employee hire information for ethnicity, gender, wage, residency, other demographics
- Primes and subcontractor submit and/or import certified payroll directly to PRiSM
- Contractors authorize payroll with electronic signature
- Track labor hours by ethnicity, gender, zip code, income, residency, and other demographics

The screenshot displays a 'Weekly Payroll Report' window. At the top, it identifies the contractor as 'Development Corporation' and provides fields for 'CONTRACTOR'S LICENSE NO.', 'SPECIALTY LICENSE NO.', and 'ADDRESS'. Below this is a 'PER WEEK WORKING SCHEDULES' table with columns for 'Day', 'Hour', and 'Rate'. The main body of the report is an 'EMPLOYEES' table with columns for 'Name', 'SSN', 'Ethnicity', 'Gender', 'Wage', and 'Residency'. The report concludes with a 'STATEMENT OF COMPLIANCE' section, which includes a 'well Number 87' and a 'No. K4459-00003C'. A legend at the bottom left explains the symbols used in the report: 'L' for 'Lump sum', 'S' for 'Salaried', 'C' for 'Contractor', and 'R' for 'Regular'. A note at the bottom states: 'All other deductions, withholdings and other payments shall be not included or reported by providing appropriate forms to regulatory body.'

- ⚓ PRiSM automatically audits submitted payrolls and filters payroll submissions that are inconsistent with the Davis Bacon prevailing wages and warnings
- ⚓ Easy analysis of Apprentice to Journeyman ratios by project
- ⚓ Efficient workflow to manage payroll submission errors and corrections
- ⚓ Track history of certified payrolls and resubmission
- ⚓ Automated notices to contractors having delinquent payroll reports
- ⚓ Calculate penalties for vendors whose payrolls fail the audit
- ⚓ Collect restitution payments from contractors and conduct on-site inspections and capture results
- ⚓ Interview contractor personnel and validate their pay rates, job category, and other information
- ⚓ *PRiSM Certified Payroll will be provisioned for an annual capacity of \$10 Million in contracts and one US DOL County Wage Determination*

## OPTIONAL MODULES

### **PRiSM Bid Tracking and Sub Plan Manager**

- ⚓ Bidders may submit electronic sub utilization plans to Opportunity Portal for each solicitation having program goal requirements
- ⚓ Bidders may submit Good Faith Effort Documentation
- ⚓ Automated pre-evaluation of Goal against Bidder Commitment
- ⚓ Staff evaluation Sub Plans captured in system
- ⚓ Integration to supplier profile facilitates quick and easy prime and sub DBE certification
- ⚓ Validation of Commercially Useful Function
- ⚓ Notification to buyer staff of Sub Plan Evaluation Results

### **PRiSM Performance Scorecard**

Proactively track prime and sub payment transactions and generate attainment scorecard.

### **PRiSM Spend Manager**

The PRISM Spend Manager collects what we call Non-Contract payments. These payments are sourced from the client's financial system and identified

- cash payment
- direct check for small purchases
- vouchers

Non-contract payments also include credit card transactions which are typically secured from bank files. The volume of these payments adds up quickly and often represents diverse spend that was unaccounted for or missed opportunity to make direct purchases from XBE firms. PRiSM enables clients to capture payments and include the attainment with its reporting.

## Data and Security

### **PRiSM Data and System Security**

Our comprehensive Enterprise Security capability in PRISM's environment facilitates a highly secure application and prevents and/or deter inadvertent data loss and system attacks. We continuously monitor and enhance our security measures as new security threats are identified.

**Encryption and Key Management** PRISM utilizes industry-standard authentication methodologies for granting secure authorized access to all systems and applications. Our security methods follow all best practices and include:

1. SSL (Secure Sockets Layer issued by Verisign)
2. Digital Server Certificates
3. MD 5 Data Encryption

Sensitive information, such as passwords and tax ids, are encrypted in the database and user sessions using SSL. Additionally, vendor tax ids are hidden from unauthorized staff or vendors during open vendor searches.

**Firewalls and Routers** Our internet service provider, AWS, leverages Cisco's Web Network Services software and Content Switching devices to implement redundant Internet connectivity, site-level security with robust firewall rule sets, and wire-speed denial-of-service (DoS) prevention.

**Identity Management/User Provisioning** Client's control their users' access by username and password and also limit authorization based on the user's role. Client's also control user access to PRISM through the administration of its user list and grant appropriate access to each user based on their security level within PRISM. This level of workflow allows administrators to specify a sequence of events to add users based on the users' roles and the approval within the PRISM enterprise.

**Network Security** PRISM leverages Cisco and Oracle technologies to provide an enterprise network backbone that facilitates secure and high-performance computing. As a result, PRISM is integrated with industry-leading technology in securing data and internet traffic/sessions. This coupled with PRISM's network infrastructure and Network Operating Center (NOC), creates a significant security infrastructure to prevent unauthorized data access internally and externally.

**Automated Security Auditing** PRISM employs Oracle's Data Vault Security components to provide automated web-based auditing of all record modification actions. PRISM also scans its audit log to detect contiguous unsuccessful application logins and has programmed functionality to automatically flag unsuccessful attempts red. Other record-modifying actions are also automatically colored for easy detection by Clients and our PRISM professionals.

### **Facility Security**

Our offices have access controls on each doorway to provide a centralized point of management. All external doorways are locked 24/7/365, require badge access, and are protected by alarms. The external doors to the main building are locked between 9 p.m. – 7 a.m. ET. Additionally, our Security Authentication system is audited quarterly.

Our data center features access controls on each doorway to provide a centralized point of management. Only employees have access, and the data center main entrance features a geometric hand scanner and pin authentication, requiring a valid handprint for admittance. Only authorized employees are granted access into the data center.

## Security Cameras

The data center facility and Amazon Web Services offices are monitored by multiple security cameras.

- Multiple cameras in the data center. A camera monitors each row of server racks.
- Each door in the data center is monitored.
- Each external door in the facility is monitored.
- Camera data is recorded by a DVR and kept on a retention schedule.
- Cameras are monitored real-time by the OSC 24/7/365.

## Elite 4D Implementation & Set-up

PRiSM Project Members have experience implementing PRiSM SaaS Projects; are trained experienced in the PRiSM 4D Implementation methodology, hands-on PRiSM Project Management system, and are certified PRiSM Trainers. Our cross-functional teams provide full and duplicate resources for each sub-task in the 4D Implementation Plan; thus, providing the back-up resources, availability and ensure its project will execute with precision and timely.

The Standard Implementation Project duration is 45 - 60 days and includes all the necessary tasks required for the basic implementation of PRiSM (out of the box) which includes:

- Deployment of Licensed PRiSM Modules and Configured Data (Industry, Wages, etc.)
- Training and documentation for SMEs and primary users
- Configuration of PRiSM Modules for specific business needs
- QA/Testing of Functionality
- Training Presentation Source Material including online tools to be provided
- Verification of PRiSM Processes with client specific Pilot Data
- Use of Standard Interfaces to input Vendor, Contracts and Payment Data into PRiSM

## Client Services and Support

### **PRiSM Client Services and Support**

PRiSM Client Services and Support initiates after implementation where the Trust and PRiSM Team meet monthly for 3 months to validate the configurations and contract management processes now empowered by PRiSM capabilities. The processes and/or configurations are tweaked as necessary and finalized. The Trust is transitioned to the PRiSM CARES Support Program.

After the initial 90 Day Period, PRiSM Support will be handled Online through the PRiSM Support Website or by phone.

**Help Desk** PRiSM Help Desk is available Monday – Friday, 8:00 AM – 6:00 PM EST. It is intended as a convenient way to get answers to questions that cannot be answered through training and or online documentation. If consulting or custom work is required to resolve a Help Desk item that is not the result of a system bug, authorization, PRiSM provides a SOW for consideration.

**Support Ticket** PRiSM Support Site provides clients a convenient ticket submission and tracking for all PRiSM issues and help desk needs. Once a ticket is submitted, the user receives an email confirmation, updates as the ticket progresses to resolution and finally an email confirmation once the ticket is resolved.

**News and Knowledgebase** offers PRiSM product updates, articles, and other information that clients access to stay up-to-date and get “self-help” with answers to questions. The Knowledgebase includes robust training videos and presentations that are accessible on-demand

for all staff to review. All client staff and vendors have access to the Knowledgebase.

### PRISM CARES Program

The PRISM CARES Program goes beyond software support and gives PRISM Clients the opportunity to ACHIEVE MORE Diversity Program performance by maximizing use of the PRISM capabilities and thereby earning a return on its investment. Beyond the PRISM Support, PRISM Clients has a designated PRISM Professional administering the following CARES plan. Best of all, the CARES Program is included with PRISM Subscription.



In an Annual CARES Planning meeting, PRISM Team leads Clients in a **Consultation** to review its goals, identify ways it may leverage system capabilities to achieve the goals, and define a CARES Action Plan. Expends Three (3) Points Per Service Hour.

CARES Reviews are conducted throughout to year where PRISM Team reviews and updates the CARES Action Plan. PRISM **Advisory** keeps Clients abreast of changes in industry policy that may be forthcoming and impact its operations and its business community. We also introduce Clients' staff to the product roadmap so that it can plan for introducing PRISM services and enhancements. Expends Two (2) Points Per Service Hour.

PRISM **Reporting** capabilities are expansive and continue to evolve with each product release. PRISM Team publishes notifications of new releases for the product and reporting. Expends One (1) Point Per Service Hour.

PRISM CARES also gives Clients' staff access to **Education** available through the PRISM University. PRISM Clients' new and existing employees are empowered to leverage the PRISM platform capabilities. Expends One (1) Point Per Service Hour.

PRISM **Support** is a call, email or web chat away. Clients' designated PRISM Professionals develop a meeting cadence to manage and review support postings. These meetings are also the forum for Clients to address any questions and open support requests. Expends One (1) Point Per Service Hour.

*The Trust will have 25 CARES Points per year. CARES Requests are initiated and submitted via the PRISM Support Center. The CARES Points expended will vary by the requested service.*



**EXHIBIT B – SCHEDULE OF FEES**

DESCRIPTION	PART NO.	PROVISION	QUANTITY	PRICE	EXTENSION
<b>ANNUAL SUBSCRIPTION</b>					<b>\$ 35,911.00</b>
On-line Vendor Registration	PCM-SW-MOD-VR1	Up to 100 Registrations	1	B5G1	
Vendor Search and Directory	PCM-SW-MOD-VM1	Up to 2,500 Vendors	1	\$ 3,635.00	\$ 3,635.00
Goal Management	PCM-SW-MOD-AQGM1	Up to 100 Solicitations	1	\$ 3,635.00	\$ 3,635.00
Contract and PO Manager	PCM-SW-MOD-KM1	Up to 100 Contracts	1	\$ 3,635.00	\$ 3,635.00
Subcontractor Management	PCM-SW-MOD-CSK1	Up to 100 Contracts with Goal	1	\$ 3,635.00	\$ 3,635.00
Project Management	PCM-SW-MOD-CPM1	Up to 50 Project Task Orders	1	\$ 3,635.00	\$ 3,635.00
Concessions Management	PCM-SW-MOD-CO1	Up to 50 Concessions	1	\$ 3,635.00	\$ 3,635.00
Sales/Concessions Compliance Manag	PCM-SW-MOD-RVCON1	Up to 50 Concessions	1	\$ 3,635.00	\$ 3,635.00
Prompt Payment Management	PCM-SW-MOD-PMPT1	Up to 100 Contracts	1	\$ 3,635.00	\$ 3,635.00
Prime, Tier 2 and Sub Reporting	PCM-SW-MOD-SUBRPT1	Up to 100 Reporters	1	\$ 3,635.00	\$ 3,635.00
Prevailing Wage Payroll Tier 1	PCM-SW-MOD-CPR1	Up to \$10 Million	1	\$ 3,196.00	\$ 3,196.00
Outreach Management	PCM-SW-MOD-OM1	Up to 100 Outreach Campaign	1	B5G1	
<b>ANNUAL SUBSCRIPTION FEE</b>	<i>Anniversary Offering - Valid Through December 31st</i>			Year 1	<b>\$ 25,138.00</b>
<b>ANNUAL SUBSCRIPTION FEE</b>	<i>Three Year Discount</i>			Year 2	<b>\$ 32,320.00</b>
<b>ANNUAL SUBSCRIPTION FEE</b>	<i>Three Year Discount</i>			Year 3	<b>\$ 32,320.00</b>
<b>SET-UP SERVICES (One Time Charge)</b>					
PRISM Elite 4D Implementation	PCM-SVC-ADM-PL			\$14,000.00	\$ -
	<i>Anniversary Offering -Waived Set-up with 3 Year Term Contract</i>				
				<b>SUBTOTAL</b>	<b>\$ 89,778.00</b>
				<b>TAX</b>	<b>\$ -</b>
				<b>TOTAL</b>	<b>\$ 89,778.00</b>

**SETUP AND IMPLEMENTATION FEES:**

**Budget & Planning Estimate for PRISM DBE & ACDBE and Prevailing Wage System, dated October 12, 2023.**

Implementation Services	Base Set-up Fees	Consulting Hours
Project Management	\$4,800.00	24
Define Phase: Policy and Configuration Definition	\$3,000.00	15
Design Phase: Software Configuration	\$5,000.00	32
Deploy Phase: Training	\$1,200.00	8
Demonstrate Phase:		4
	<b>\$14,000.00</b>	

**SYSTEM, CONSULTING, AND SUPPORT SERVICES FEES**

System, Consulting and Support Services	Service Fees	Consulting Days
Data Transformation	<b>Not Applicable</b>	
Business Transformation	<b>Not Applicable</b>	

**PAYMENT OF FEES FOR SET-UP/SERVICES LISTED ABOVE:**

Payment of the Set-up and Services Fees and the initial hosting fees (“Initial Hosting Fees”) will be paid per the following schedule, upon execution of this Hosting and Services Agreement:

Days after the Project Initiation

- Initial Hosting Fees (Year 1) 30 Days
- Implementation and Installation Services 60 Days
- System and Consulting Services 0 Days

**Total Fees: \$14,000**

This set of fees are waived if the Agreement is executed by December 31, 2023.

**ADDITIONAL PROVISIONS**

Hosting pricing is based on an Initial Term of thirty-six (36) months, for Service Provider’s standard server configuration, security and 24 hour backup/disaster recovery, described in Option 1, Exhibit D, ASP Hosting Options. Service Provider will provide, if requested, additional pricing tailored to specific server, security and/or backup requirements.

In the event that the Initial Term is not completed (other than for material breach of the Agreement by Service Provider), the Trust may owe an Early Termination Fee in the amount of the difference between the full price of services and the discounted rate for the period the Trust utilized Service Provider services





## EXHIBIT C – FORM OF CERTIFICATE OF INSURANCE

ISSUE DATE _____	<b>OKLAHOMA CITY AIRPORT TRUST CERTIFICATE OF INSURANCE</b>	PROJECT OR CONTRACT NUMBER _____		
PRODUCER	NOTE: THIS CERTIFICATE CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER FOR USE TO AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY POLICIES BELOW, EXCEPT AS SHOWN BELOW.			
ADDRESS	<b>COMPANIES AFFORDING COVERAGE</b>			
INSURED	COMPANY A LETTER			
	COMPANY B LETTER			
	COMPANY C LETTER			
	COMPANY D LETTER			
	COMPANY E LETTER			
ADDRESS				
COVERAGES: THIS IS TO CERTIFY THAT THE INSURANCE POLICIES LISTED BELOW HAVE BEEN ISSUED TO THE INSUREDS, FOR THE POLICY PERIOD INDICATED HEREIN. THE POLICIES SHOWN IN THIS CERTIFICATE ARE DEEMED PRIMARY TO ANY INSURANCE CARRIED BY THE INSUREDS FOR THE SPECIFIC LOCATION, PROJECT OR EVENT.				
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS
<b>GENERAL LIABILITY</b> <input type="checkbox"/> OCCURRENCE <input type="checkbox"/> CLAIMS MADE AND TAIL COVERAGE <input type="checkbox"/> CONTRACTUAL LIABILITY Ded./SIR \$ _____				GENERAL AGGREGATE BODILY INJURY (Per Person) PROPERTY DAMAGE (Per Accident) EACH OCCURRENCE MEDICAL EXPENSES (Any One (1) Person) COMBINED SINGLE LIMIT
<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per Person) BODILY INJURY (Per Accident) PROPERTY DAMAGE
<b>WORKERS COMPENSATION AND EMPLOYER LIABILITY</b> Standard Compliance for the State of Oklahoma				EACH ACCIDENT DISEASE - POLICY LIMIT DISEASE - EACH EMPLOYEE
<b>VALUABLE PAPERS INSURANCE</b> (if required by Contract)				
<b>EXCESS LIABILITY</b> (if required by Contract)				EACH OCCURRENCE AGGREGATE
<b>OTHER</b> (if required by Contract)				
DESCRIPTION OF OPERATION(S)/VEHICLES/SPECIAL ITEMS THE CITY OF OKLAHOMA CITY AND THE OKLAHOMA CITY AIRPORT TRUST ARE ADDITIONAL INSUREDS, WITH RESPECT TO LIABILITY CONTRACTUAL LIABILITY INCLUDED.				
<b>CERTIFICATE HOLDER(S)</b> The City of Oklahoma City and The Oklahoma City Airport Trust 7100 Terminal Drive, Unit 937 Oklahoma City, OK 73159-0937		<b>CANCELLATION</b> IT IS AGREED THAT NONE OF THESE POLICIES WILL BE CANCELLED OR CHANGED EXCEPT IN THE APPLICATION OF THE AGGREGATE LIABILITY LIMIT PROVISIONS, SO AS TO AFFECT THE INSURANCE DESCRIBED IN THIS CERTIFICATE UNTIL AFTER 30 DAYS PRIOR WRITTEN NOTICE OF SUCH CANCELLATION, REDUCTION IN COVERAGES OR NONRENEWAL FOR NONPAYMENT OF PREMIUM HAS BEEN DELIVERED TO THE CERTIFICATE HOLDER. AUTHORIZED REPRESENTATIVE SIGNATURE _____ TELEPHONE NUMBER _____		

**CERTIFICATE OF INSURANCE EXPLANATION OF  
THE CITY OF OKLAHOMA CITY AND PARTICIPATING TRUST(S)**

The Certificate Holder(s) require the use of this Certificate of Insurance as evidence that the insurance requirements of the contract have been complied with and will continue as long as the contract is in force. The City and/or Trust rely on this Certificate as proof of compliance with the insurance requirements agreed upon. The City and/or Trust must be advised of any cancellation or nonrenewal of the insurance coverages required or any reduction in the coverages provided, in compliance with the contract, as shown in the Certificate of Insurance. Thirty (30) days prior written notice of cancellation, reduction in coverages (other than an aggregate limit provision reduction) or nonrenewal for nonpayment of premium must be provided to the City and/or Trust so that the City and/or Trust may take appropriate action.

Many certificates of insurance are received by the City and its Trusts and many contain statements claiming that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example is "Should any of the above described policies be canceled before the expiration date hereof, the issuing company will endeavor to mail (number of days) days written notice to the named holder, but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives." This is unacceptable.

The City and Trust have the right of notice of cancellation, nonrenewal and reduction of coverage, as a requirement in the contract. The City and Trust rely upon the Certificate of Insurance as evidence of contract compliance.

The authorization requirement (that the authorized representative signing the Certificate of Insurance provide written acknowledgment by the insurance company or companies to the City and/or Trust) is written proof that the person signing the Certificate is legally authorized by the insurance company or companies to obligate them, as shown in the Certificate.

The City and/or Trust must have positive evidence in the form of the Certificate of Insurance that the insurance requirements of the contract have been met and will continue to be met without interruption during the term of the contract. Neither the named insured nor its insurance company may attach any endorsement(s) or rider(s) to the insurance policy or this Insurance Certificate that change or modify the insurance requirements, obligations, or additional insured status of the Trust or City in any manner. To the extent the insurance policy or any endorsement or rider is inconsistent with the contractual insurance obligations, the contractual agreement between the insured and the Trust and/or City shall control.

No activity will begin until the insurance Certificate is received. Your cooperation in providing the City and/or Trust with acceptable evidence of insurance compliance will prevent confusion and delay.

## EXHIBIT D – HOSTING AND SERVICES AGREEMENT

### HOSTING AND SERVICES AGREEMENT

#### 1. The System.

1.1 Definitions. Terms not otherwise defined herein are defined in **Exhibit C**, attached, and incorporated herein by reference.

1.2 Provision of System. Trust engages Service Provider to provide the System for Trust to access and use under the terms and conditions set forth in one or more **Exhibits A-x** (where x is the sequential number of orders for services hereunder) and under the terms and conditions set forth herein.

1.3 Data Center and Service Standards. The System shall be kept and maintained by Service Provider at the Data Center. Service Provider shall be solely responsible for the setup, configuration, operation, and management of all computer systems, hardware, software, and data at the Data Center used by Service Provider to provide the System. Service Provider shall maintain the Service Standards as described in **Exhibit B** (including but not limited to any safeguards required by applicable law). Service Provider shall not be responsible for non-compliance with Service Standards to the extent that such non-compliance results from the actions or inactions, or criminal or reasonably unforeseeable intentional acts, of any Trust or third party. Scheduled Maintenance on the System shall not be considered Service Standards non-compliance.

#### 1.4 Implementation and Logon Access.

(i) Implementation Schedule. Service Provider and Trust shall promptly after the Effective Date schedule a meeting for a time and place convenient to both parties to develop a mutually agreeable Implementation Schedule. Service Provider shall use its reasonable commercial efforts to complete Implementation in accordance with the Implementation Schedule; *provided however*, that Trust agrees to amend and/or extend the Implementation Schedule upon Service Provider's reasonable request in the event Service Provider encounters unforeseen circumstances during Implementation or in the event Trust requests material or untimely changes in the content, structure, or configuration of the System.

(ii) Go Live Date. After Implementation is completed and Service Provider has received payment of the Initial Hosting Fee and all Setup Fees, Service Provider shall begin the provision of the System as set forth in Exhibit(s) A-D. Upon Trust's request, Service Provider shall also provide Trust a unique user name and preliminary password. Trust may then log on to the Website and select a unique Trust password. Trust may incur the Initial Hosting and Setup Fees (see Section 4 Fees) beginning on the Go Live Date, which date shall in no event be later than the date of any use of the System for business purposes other than to test for compliance with Implementation requirements. Service Provider is not responsible for loss, misuse or other negligence concerning usernames and passwords in the possession, custody, or control of Trust.

(iii) Terms of Use. All persons logging into the System shall agree to the Terms of Use as posted on the Website; provided however that such Terms of Use shall not modify this Agreement and as between Trust and Service Provider, this Agreement shall supersede and control over the Terms of Use.

1.5 Security. Service Provider shall employ commercially reasonable technological or other security measures as required by applicable law to maintain the security and privacy of Proprietary Information and Personal Information. Additionally, the parties agree to enter into a mutually acceptable amendment to this Agreement to the extent necessary to timely comply with applicable federal laws and regulations.

1.6 Support. Service Provider shall provide Trust with telephone and electronic mail software support as set forth in **Exhibit A**. Service Provider shall follow all support priority and escalation procedures and electronic support systems established by Service Provider in the Documentation or on the Website. Trust shall designate points of contact as Trust's sole contact with Service Provider regarding technical support obligations including Implementation, data input, archival, critical form/report generation, and database maintenance support.

1.7 Enhancements. Service Provider may, on a schedule determined by Service Provider, update or enhance the System. During the Term, such updates and enhancements shall be automatically made available to Trust through Scheduled Maintenance at no additional cost.

1.8 Additional Services. Trust may request and Service Provider may provide, subject to Service Provider's written consent, Additional Services, which shall be fully described in one or more additional **Exhibit A**. All Additional Services are billed at Service Provider's standard, published rates as of the date such Additional Services are contracted, unless otherwise set forth in writing in the applicable Exhibit A-D.

2. Trust Obligations and Acknowledgements. Unless otherwise provided in a separate written agreement between the parties, Trust shall be solely responsible for: (i) providing data and information necessary for the provision of the System as necessary to make effective use of the System; (ii) providing accurate and timely information to Service Provider regarding the data used in the System; (iii) maintaining the confidentiality of all user names and passwords and secure access to all user names and passwords only to Authorized Persons; and (iv) performing work and providing cooperation necessary to permit Service Provider to meet the milestones and timely implement the System, including but not limited to performing those acts set forth in any applicable statement of work, schedule or other agreement between the parties, and in the Agreement.

### 3. Subscription License; Proprietary Rights.

3.1 Software and Documentation. During the Term, Service Provider grants to Trust a nontransferable and nonexclusive license and right to: (i) access the System using authorized user names and passwords solely for the purpose of using the System for Trust's internal business operations in accordance with the number of access licenses and the Documentation as provided herein; and (ii) reproduce the Documentation solely for use as provided therein. No other rights are granted herein and all other rights are reserved, as specified in more detail in Section 10 Reservation of Rights below.

3.2 Ownership Acknowledgment. All rights and property interests, including but not limited to patents, copyrights, Trade Secrets, trademarks, and other proprietary rights recognized under applicable law in or relating to the System and all modifications, adaptation, derivative works, and enhancements thereto, are owned exclusively by Service Provider and/or its licensors, and all such rights not expressly granted herein are reserved to Service Provider. Notwithstanding the above, Service Provider shall not acquire through this Agreement any ownership interest in Personal Information or in any Trust provided data or software or Trust provided intellectual property rights.

3.3 Trademarks. No party will use in any manner the Marks of the other party without the express written permission of that other party, which consent may be withheld in the sole and absolute discretion of such other party. Notwithstanding the above, either party may publicly display, copy, or reproduce the Marks of the other party solely in accordance with the purpose and intent of this Agreement; provided however that neither party shall alter, modify, or revise any Mark of the other party.

3.4 Account Information and Data. Service Provider does not own any Trust Data. Vendor data entered directly to System is owned by Services Provider and made available to Trust for usage in its operations and reporting in the System. Trust, not Service Provider, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Trust Data, and Service Provider shall not be responsible or liable for Trust's direct or indirect acts or omissions resulting in the deletion, correction, destruction, damage, loss, or failure to store any Trust Data. In the event this Agreement is terminated (other than by reason of Trust's breach), Service Provider will make available to Trust a file of the Trust Data within 30 days of termination provided all outstanding invoices issued to Trust have been fully paid. Service Provider will notify Trust of any breach and Service Provider reserves the right to withhold, remove and/or discard Trust Data, without limitation, if Trust does not remediate the breach within ten (10) calendar days after notice thereof. Upon termination for cause, Trust's right to access Trust Data immediately ceases, and Service Provider shall have no obligation to maintain or forward any Trust Data, unless

applicable law specifically requires such retention or access, in which case Service Provider shall comply with applicable retention and data access laws, rules and regulations.

3.5 Acceptable Uses. Trust may not use the System to: (i) send unsolicited commercial email or otherwise duplicative or unsolicited messages in violation of applicable laws; or (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third-party privacy rights. Both parties will make commercially reasonable efforts and shall not intentionally: (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents, or programs; (iv) interfere with or disrupt the integrity or performance of the System or the data contained therein; or (v) attempt to gain unauthorized access to the System or its related systems or networks.

### 4. Termination.

4.1 Post-Termination Obligations. Upon any termination of this Agreement:

(i) *Proprietary Information*. So long as the Trust's account is current at the time of termination and the Service Provider is not in Default, each party shall immediately return to the other, or at such other party's written election, destroy copies of, all the other party's Proprietary Information. The party returning or destroying copies of such materials shall provide to the other party a signed written statement under oath certifying that it has returned or destroyed all of the other party's Proprietary Information and that such party does not retain in its possession any copies of the other party's Proprietary Information in hardcopy or electronic format. Notwithstanding the above, each party shall be permitted to retain for its records one archival copy of all Proprietary Information solely for purposes of defense of such party in the event of subsequent litigation or third party claims arising out of or related to this Agreement, or compliance with applicable law. Such archival copy shall be destroyed on the earlier of the execution of a written release between the parties, or after six years from the effective date of termination. The confidentiality and security obligations of this Agreement shall survive termination and continue in perpetuity as to all such retained Proprietary Information.

(ii) *Personal Information*. Service Provider shall execute a data inspection of the electronic databases containing Personal Information provided by Trust, so that upon completion of a data scrub of such Personal Information, all such Personal Information in all live electronic databases owned or operated by Service Provider will be rendered inaccessible by any user of the databases other than Service Provider and its employees or agents, provided that, such agents are bound by non-disclosure obligations that are at least as restrictive as those in this Agreement. Additionally, if feasible, Service Provider shall return or destroy all Personal Information that Service Provider still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible or applicable

law requires such information to be retained in Service Provider's reasonable good faith determination, Service Provider shall limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

(iii) *License terminates.* Trust shall immediately cease all use of the System, and all rights and licenses granted by Service Provider hereunder to Trust shall immediately cease. Trust shall promptly notify all Authorized Persons of the termination of this Agreement.

(iv) *No refunds.* Trust shall not be entitled to any refund of any Fees or Expenses and shall remain liable for all amounts due up to and including the termination date, including if applicable, the Early Termination Fee (as defined in the Agreement), if applicable; provided however that if Service Provider is determined by a court of law to have been in material breach of this Agreement, Trust shall be entitled to a refund of any prepaid amounts at the time of the termination.

(v) *Survival of Terms.* The provisions of Sections 1.3 Data Center and Service Standards and 1.5 Security (only as necessary to protect the confidentiality of retained Proprietary Information and Personal Information), 3.2 Ownership Acknowledgement, 3.3 Trademarks, 1 Post-Termination Obligations, 5 Fees (to the extent of any unpaid amounts), and Sections 6 through and including 11 shall continue and survive in full force and effect to the extent so provided therein.

## 5. Fees.

5.1 Setup Fee. The Setup Fee shall be the amount due and payable at the time specified on **Exhibit A**. In the event Service Provider encounters unforeseen difficulties or Trust requests material or untimely changes in the content, structure or configuration of the System during Implementation which results in increased costs of Implementation, Service Provider may reasonably request that Trust submit an additional Setup Fee in an amount necessary to cover such increased costs, but shall not to exceed One Hundred Thousand Dollars (\$100,000.00) for the total amount for the Agreement. Such additional Setup Fee shall be due and payable within ten (10) days of Service Provider's written request therefor.

5.2 Fees. Should the scope of services change for any reason beyond the scope originally agreed upon, Trust and Service Provider may execute amendments to increase the Fees, but shall not to exceed One Hundred Thousand Dollars (\$100,000.00) for the total amount for the Agreement, *provided* that Service Provider delivers to Trust written notice of any such Fees increase not less than sixty (60) days prior to the effective date of such increase. All Fees and Expenses are non-refundable unless a provision herein or in an incorporated Exhibit expressly provides otherwise.

5.3 Expenses. In addition to Fees, Trust shall reimburse Service Provider within the time specified on **Exhibit A** for applicable actual Expenses, but shall not to exceed One Hundred Thousand Dollars (\$100,000.00) for the total amount for the Agreement. Service Provider shall not exceed any

budgeted or stated Expenses. Receipt for Expenses will be provided to Trust. Service Provider shall not be liable for any failure to comply with the Service Standards or other breach of this Agreement proximately caused by Trust's refusal to promptly, under the circumstances of the request, approve any Expense recommended by Service Provider.

## 5.4

5.5 Security Measures. Without limiting the obligations specified above, Recipient agrees to implement the following security steps in order to protect the confidentiality and security of Proprietary Information of Discloser: (i) implement internal procedures to limit, control and supervise the use of Discloser's Proprietary Information; (ii) make Discloser's Proprietary Information available only to Recipient's employees, agents and contractors who comply with the non-disclosure obligations set forth herein; (iii) notify Discloser in writing of any suspected or known breach of the obligations and/or restrictions set forth herein; and (iv) use those security procedures it uses for its own Proprietary Information which it protects against unauthorized disclosure, appropriation or use, but not less than reasonable security procedures.

## 6. Personal Information.

6.1 Privacy Policy. Service Provider has developed a policy for the System setting forth Service Provider's procedures regarding its use and disclosure of Trust data, Trust Confidential Information and Personal Information. Service Provider shall provide Trust with thirty (30) days prior written notice upon any material modification, amendment, or supplement to the Privacy Policy. Notwithstanding anything herein to the contrary, Service Provider shall not be held liable for any improper use or disclosure of Personal Information by anyone not under Service Provider's specific direction or control.

6.2 Use and Disclosure. Except as otherwise restricted by this Agreement, Service Provider may use or disclose Trust Confidential Information and Personal Information to the Trust to provide services to Trust and as otherwise as required by applicable law.

## 7. Warranties and Covenants.

7.1 Both Parties. Each party covenants that: (i) it has the power and authority to execute and deliver this Agreement and has taken all necessary corporate action to authorize the execution and delivery of this Agreement; (ii) this Agreement is and shall be the legal, valid and binding obligation of such party, enforceable in accordance with its terms.

7.2 Trust. Trust will: (i) timely and perform its obligations under this Agreement; (ii) use the System in compliance with all applicable federal and state laws, rules and regulations; (iii) not post on or provide for the System any material that infringes the trademarks, copyrights or other intellectual property rights of third parties or that violates a right of privacy or constitutes defamation; (iv) comply with all Documentation provided by Service Provider; (v) not alter, recast, revise, modify, translate, reformat, reverse engineer, compile, disassemble or decompile the System or any portion thereof; (vi) make no representations to Authorized Persons or

7.3 third parties regarding the System or Service Provider's services that are not expressly authorized to be made in this Agreement; (vii) not use Service Provider's Marks in any manner except as permitted under this Agreement; and (viii) cooperate with Service Provider in its provision of the System including providing such technical assistance and information as reasonably requested by Service Provider.

7.4 Service Provider. Service Provider warrants and/or covenants that Service Provider: (i) owns or has acquired sufficient rights to all proprietary interests in the System necessary to grant the licenses set forth herein; (ii) shall maintain the System in compliance with all applicable federal and state laws, rules and regulations; (iii) shall promptly post on the System all information and materials provided by Trust for posting, including all updates and amendments to such information and materials; (iv) the System will operate in accordance with the Service Standards; and (v) to the knowledge of Service Provider, the software necessary to provide the System contains no virus, Trojan horse, worm, or other software routines designed either to permit unauthorized access by third parties or to disable, erase, or otherwise harm any data supplied by Trust.

7.5 Disclaimer. OTHER THAN AS EXPRESSLY SET FORTH ABOVE, NEITHER SERVICE PROVIDER NOR TRUST MAKES ANY OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WHETHER ORAL OR WRITTEN, AND SERVICE PROVIDER EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, ANY IMPLIED WARRANTY AGAINST INFRINGEMENT AND ANY IMPLIED WARRANTIES ARISING UNDER ANY APPLICABLE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT OR OTHER APPLICABLE LAW. THERE IS NO WARRANTY THAT THE SYSTEM OR ANY EFFORTS OR INFORMATION PROVIDED BY SERVICE PROVIDER WILL FULFILL ANY OF TRUST'S PARTICULAR PURPOSES OR NEEDS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SERVICE PROVIDER SHALL NOT BE LIABLE FOR THE QUALITY OR ACCURACY OF INFORMATION PROVIDED BY TRUST OR THIRD PARTIES FOR OR VIA THE SYSTEM NOR FOR ANY INACCURATE RESULTS DUE TO SERVICE PROVIDER'S PROCESSING OF ANY SUCH DATA. EXCEPT FOR THE EXPRESS WARRANTIES HEREIN THAT THE SYSTEM WILL PERFORM IN ACCORDANCE WITH THE SERVICE STANDARDS, SERVICE PROVIDER MAKES NO GUARANTEE OR WARRANTY OF TIMELINESS OF DELIVERY OF THE SYSTEM TO, OR PROCESSING OF ANY INFORMATION OR DATA PROVIDED BY, TRUST.

## 8. Indemnification.

8.1 Infringements. If a claim is made by a third party that use of the System or any portion thereof infringes a U.S. patent, copyright, trademark or Trade Secret ("Intellectual Property"), upon receipt of Trust's written notice of such claim, Service Provider will have the option, in Service Provider's sole discretion, to: (i) replace the System with software or a system that is non-infringing, (ii) modify the System to make it non-infringing, or (iii) remove same and refund to Trust all Fees paid to Service Provider on behalf of Trust for same after deduction of an appropriate charge based on use by Trust prior to such removal. Notwithstanding the above, Service Provider shall indemnify, defend and hold harmless Trust and the City against claims by any such third party that the System or a portion thereof infringes a U.S. Intellectual Property Right, unless the infringement results from Trust's negligent or willful misconduct not authorized by or permitted by Service Provider. The obligations of this Section 8.1 shall be Service Provider's sole obligations in the event that such third party infringement claim is made against Trust or the City, and Trust shall have no other recourse against Service Provider; *provided however* that this limitation of remedy shall not apply if Service Provider engaged in willful misconduct or acted with gross negligence.

## 9. LIMITATION OF LIABILITY.

9.1 SUBJECT TO SECTION 9.3 BELOW: (i) TRUST'S SOLE REMEDY IN THE EVENT OF A CLAIM AGAINST SERVICE PROVIDER FOR BREACH OF SECTIONS 1.2 THROUGH 1.8, AND 7.4(ii), 7.4(iii) AND 7.4(iv) SHALL BE FOR SERVICE PROVIDER TO REPAIR, REPLACE OR OTHERWISE CORRECT THE SYSTEM; AND (ii) IN NO EVENT WILL SERVICE PROVIDER, ITS SUBSIDIARIES AND/OR ASSOCIATED COMPANIES, BE LIABLE TO TRUST UNDER THIS AGREEMENT OR OTHERWISE, REGARDLESS OF THE FORM OF CLAIM OR ACTION, IN AN AMOUNT THAT EXCEEDS THE AGGREGATE AMOUNT OF TWO TIMES THE FEES ACTUALLY PAID TO SERVICE PROVIDER UNDER THIS AGREEMENT DURING THE PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM; AND (iii) IN NO EVENT WILL SERVICE PROVIDER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBSIDIARIES OR ASSOCIATED COMPANIES BE LIABLE FOR ANY DAMAGES OF ANY KIND TO ANYONE OTHER THAN TRUST AND THE CITY UNDER THIS AGREEMENT OR OTHERWISE, REGARDLESS OF THE FORM OF CLAIM OR ACTION.

9.2 SUBJECT TO SECTION 9.3 EXCEPTIONS BELOW, IN NO EVENT WILL EITHER PARTY, ITS SUBSIDIARIES OR ASSOCIATED COMPANIES BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR COSTS (INCLUDING LEGAL FEES AND EXPENSES), OR LOSS OF GOODWILL OR PROFIT IN CONNECTION WITH THE SUPPLY, USE OR PERFORMANCE OF OR INABILITY TO USE THE SYSTEM OR ANY PORTION

THEREOF, LOSS OF DATA, FALSE OR ERRONEOUS INFORMATION TRANSMITTED VIA THE INTERNET OR IN CONNECTION WITH ANY CLAIM ARISING FROM THIS AGREEMENT, EVEN IF SUCH PARTY, ITS SUBSIDIARIES OR ASSOCIATED COMPANIES WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS.

9.3 Exceptions. The limitations of liability set forth in Sections 9.1 and 9.2 above shall not apply: (i) where the Trust has acted with gross negligence or engaged in willful misconduct; (ii) to third party claims, except for the City, for which the Trust is seeking the benefit of the limitation owes a duty of indemnity under the Agreement or Section 8; (iii) to claims that are actually covered by insurance, in which case such claims shall be limited to the actual insurance coverage less any deductible which is paid solely by the Service Provider; or (iv) to claims made for material breach by a party of Confidential Information or Section 6 (Privacy). Notwithstanding any other provisions, no liability of Service Provider shall arise for failure to provide the System if due to any cause beyond Service Provider's reasonable control and which cannot be provided by utilizing timely commercially reasonable efforts.

9.4 No action arising out of this Agreement, regardless of form, may be brought by either party or any third party more than three (3) years after the date the cause of action accrued; provided however that this provision shall not affect or limit any longer time to bring an action provided in any statute, rule, regulation or order applicable to the claim being made.

10. **Reservation of Rights.** Service Provider and Trust reserve all rights not expressly granted herein. Except as set forth in this Agreement, no express or implied license is granted to Trust regarding the System, including but not limited to any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, adapt, disassemble, decompile or reverse engineer any software, create derivative works based on, or obtain possession of any source code of, or technological material relating to, the System or any portion thereof. Service Provider expressly reserves the right to terminate an Authorized Person's use of the System for default of the Terms of Use without terminating this Agreement and without liability to Trust. However, if the Service Provider terminates the Trust's Authorized Persons' System use for all users, then the Service Provider shall remit all Trust Data to the Trust and the Trust will be under no obligation to the Service Provider to pay any future Fees, Expenses or costs. Service Provider, Trust, and their permitted successors or assigns, are the sole intended beneficiaries of this Agreement, there are no other intended beneficiaries of this Agreement, and no such unintended beneficiary or third party shall have the right to sue on or enforce this Agreement. The parties expressly agree that other Authorized Persons are not intended beneficiaries of this Agreement. Without limiting the foregoing, Trust shall

not (except as expressly permitted in this Agreement) (i) license, sublicense, sell, resell, transfer, assign, distribute, provide as a service bureau or software-as-a-service or otherwise commercially exploit or make available to any third party the System in any way; (ii) use Service Provider's Confidential Information, the System, or any knowledge gained of the functionality of the System, to make derivative works based upon the System or otherwise to attempt to duplicate in any material respect the functionality of the System; or (iii) create Internet "links" to the System or "frame" or "mirror" any content on any other server or wireless or internet-based device. Trust shall not allow sharing of access credentials or access rights but may reassign such rights from time to time to new Authorized Persons.

## 11. Miscellaneous.

11.1 Relief. Each party acknowledges that any violation of the confidentiality or intellectual property provisions of this Agreement will cause irreparable injury to the other party. Therefore, in addition to any other available remedies and damages, such other party shall be entitled to an injunction to restrain the violation thereof by the breaching party, its subsidiaries, agents, servants, employees, and all personnel acting for or with it (without the requirement to post a bond or security). Nothing herein shall be construed as prohibiting a non-breaching party from pursuing any other available remedy for breach or threatened breach of this Agreement, including actual damages and reasonable attorney's fees.

11.2 Force Majeure. If either party's performance of this Agreement, other than the payment of monies, is prevented, restricted or interfered with by reason of Force Majeure, such party shall, upon giving prior written notice to the other party, be excused from performance to the extent of the Force Majeure, provided that the party so affected shall use its best efforts to avoid, or remove the causes of Force Majeure, and shall continue performance hereunder with the utmost dispatch whenever the Force Majeure is removed. Notwithstanding the foregoing, if the Force Majeure continues for a period of one hundred eighty (180) calendar days or more, the unaffected party may, on written notice to the party affected, terminate this Agreement, and neither party shall have any further obligation to the other save for payment of all monies due and payable and for those provisions hereunder which survive termination of this Agreement. Provided that if the Service Provider is able to perform by utilizing commercially reasonable alternative methods, then the Service Provider is not freed of any performance obligations required by this Agreement.

## SERVICE STANDARDS

Service Provider is committed to providing the highest quality services to Trusts (and Authorized Persons). The following guarantees are part of such commitment and demonstrate Service Provider's willingness to stand behind our internal processes, our network and the quality of our service, as described below.

### I Availability Guarantees. Subject to Force Majeure as defined in the Agreement and Scheduled Maintenance:

- A. **Hardware Availability.** Service Provider guarantees that all Service Provider-owned or provided hardware operated and maintained ("Hardware") will be operational at least 99.0% of the time in each calendar month for standard services. Upon receiving a Request, Service Provider will calculate the duration of any Hardware Unavailability to Trust.
  - B. **Core Applications Availability.** Service Provider guarantees that the set of hosting applications and services that Trust has access to from Service Provider and are being operated and maintained by Service Provider on behalf of Trust ("Core Applications") will be operational at least 99.0% of the time in each calendar month for the Term. Core Applications Unavailability will be deemed to exist if one or more of the Core Applications purchased by Trust is Unavailable at Service Provider's Internet boundary and does not respond to Service Provider's Core Applications monitoring systems. Upon receiving a Request, Service Provider will calculate the duration of any Core Applications Unavailability to Trust.
  - C. **Power Availability.** Service Provider guarantees to supply redundant AC power ("Power") to its Hardware at least 99.0% of the time in each calendar month. Upon receiving a Request, Service Provider will calculate the duration of any Power Unavailability to Trust.
  - D. **Service Provider Data Center Network Availability.** Service Provider guarantees to supply Trust with Service Provider Data Center Connectivity at least 99.0% of the time in each calendar month. Upon receiving a Request, Service Provider will calculate the duration of the Data Center Connectivity Unavailability to Trust.
  - E. **Backbone Network Availability.** Service Provider guarantees at least 99.0% redundant Backbone Network uptime in each calendar month. Unavailability because of outages or other problems experienced by the backbone connectivity provider/manager will not apply against Service Provider's Guarantee of Backbone Network Availability. Upon receiving a Request, Service Provider will calculate the duration of the Backbone Network Unavailability to Trust.
- II **Outage Notification Guarantee.** Service Provider guarantees that it shall contact Trust's designated technical contact by email (unless the email is known to be down, and then by phone) or telephone number, provided in writing to Service Provider, within one (1) hour after the occurrence of any Unavailability affecting any Availability Guarantee resulting in Trust's complete inability to access the System despite attempts to properly log onto the system that comes to the knowledge of Service Provider. Not less than forty-eight (48) hours prior to a scheduled service interruption, Service Provider will use its best efforts to notify Trust's technical contact by email of such scheduled interruption in service and the nature of such interruption. Such notice shall be effective for all purposes herein, despite any failure of Trust to receive such notice for any reason, including problems with or failures of Trust's e-mail system(s) or erroneous contact information provided by Trust or any other reason.
- III **Internet Latency and Packet Loss Upstream Contribution.** Service Provider has agreements with upstream internet service providers, which may include service level guarantees from such providers concerning average monthly packet transmission rates and packet loss between the Backbone Network and the network owned or operated by the upstream provider from which the packets are received and sent (there are no guarantees on latency or packet loss past upstream providers with which Service Provider has agreements). In the event of a substantial degradation in service due to substantial in-network latency or packet loss for which Service Provider can make a claim against its upstream providers and receive credits, Service Provider agrees to pass through the net credit, pro rata to the Trust if it's affected by such degraded service. In this paragraph "net credit" refers to the total credit actually received from the upstream provider(s) resulting from the claim, less any direct costs incurred by Service Provider resulting from diagnosis and resolution of such issue (predominantly employee overtime but may include other direct costs associated with the specific event).
- IV **Call Center.** Through continual monitoring and evaluation, Service Provider will ensure that it employs the resources to meet the following Guarantees as to its provision of Call Center Services: a monthly average of 45 seconds of "hold time" per caller and a "dropped call" rate not to exceed a monthly average of 5%.
- V **Requests for Information.** Requests for information received by Service Provider's customer service department through product support site shall be responded to based upon the service level denoted in the table below. The response provided will set forth the amount of time estimated to resolve and/or further address the inquiry. Service Provider shall make concerted commercially reasonable efforts to remediate and resolve critical issues, where Trust's service is inoperable, within 48 – 72 hours. Trust Services shall provide technical support services Monday through Friday from 8:00 a.m. to 8:00 p.m. EST, except on holidays and emergency closings.

Issue Type	Routine	Emergencies
Response Times (during business hours)	4 Business Hours	1 Business Hour
Response Times (after business hours)	Next day by noon	Next day by 9 AM EST
Contact Person	Solution Advisor	Trust Services Manager

VI **Material Failure to Provide Services.** Service Provider's failure to provide the Services shall be deemed a material failure for purposes of Section 4.2.2 of the Subscription Agreement if any of the following have occurred:

- A. **Unavailability:** Unavailability equal to or greater than eight (8) consecutive hours in each of two (2) consecutive calendar months.
- B. **Outage Notice:** Failure to timely provide the guaranteed outage notice for three (3) or more outages in any given thirty (30) day period.
- C. **Breach:** Service Provider fails to provide Services as required by the Agreement.

VII **System Security.** Service Provider shall employ reasonable, industry standard techniques to ensure the security and privacy of information provided by Trust, including: (i) encryption for all transmissions between the browser of Trust and Service Provider's web server is dependent upon the user's browser - SSL 128-bit encryption will be used for browsers with such capabilities, SSL 40-bit encryption will be used for browsers with 40-bit capacity; (ii) automatic user session termination at the expiration of a time period established by Service Provider; (iii) the assignment and selection of unique user names and passwords for restricted access to the Services; (iv) protocol isolation of the database from the web servers; (v) redundant firewalls to ensure system network isolation from unauthorized requests; and (vi) industry standard disaster recovery procedures and file security procedures.

- A. The Data Center containing Service Provider's servers is in a secure building with two independent security perimeters, which each use a different locking mechanism, independently keyed. The Data Center shall be equipped with facilities to allow alternate sources of power and cooling in the event of a failure of the main systems. System backups are run at least once daily, are password protected and maintained in a separately locked cabinet.
- B. Each user is assigned a user name by Service Provider, but is permitted to select its own unique password. Access to information contained on the database (including Personal Information) is restricted depending upon the identity of the user. The Services also permit each user to prepare printable reports of the information to which such user has access.

C. **Guaranty:** If any unauthorized person obtains unauthorized access to Trust's Proprietary Information or Personal Information referring or relating to any Employee of Trust or any dependent of such Employee on the System (unless the attack occurs as a result of the negligence or willful misconduct of a Trust or a third party), Service Provider will: (i) report all such conduct to the appropriate authorities, and pursue the arrest and prosecution of such persons to extent reasonable under the circumstances; (ii) provide a detailed report to the Trust of the method of attack, what systems were compromised, the information that was accessed, and all other pertinent information; and (iii) take reasonable effort under the circumstances to retrieve all information that was compromised and maintain the security of the data.

**EXHIBIT C**  
**To the Service Provider/Trust Hosting and Services Agreement**

**DEFINITIONS**

"**Additional Services**" shall mean services offered by Service Provider and related to the System as more fully described on **Exhibit A**.

"**Authorized Persons**" shall mean an employee of the Trust who accesses or use the System for Trust's business purposes within the restrictions and limitations of the rights granted in the Agreement.

"**Confidential Information**" means in respect of Service Provider, the System, all software provided in connection with the System (including both source and object code) and discussions between the parties concerning such software, all user names and passwords for accessing the System, the Documentation, all amendments, enhancements and derivative works to such software and/or materials; and in respect of both parties, it also means the terms and conditions of this Agreement, and information, other than Trade Secrets, that is of value to the Discloser and is treated as confidential. Confidential Information in respect of Service Provider specifically shall not include Personal Information.

"**Trust Data**" means (a) data that Trust or Authorized Persons have input into the System; (b) transactional data; and (c) information about Trust (or vendors or customers of Trust).

"**Data Center**" shall mean a secure testing and operating environment with connectivity and management sufficient to allow Service Provider to comply with the Service Standards, as more fully described in **Exhibit B**.

"**Discloser**" refers to the party disclosing Proprietary Information under this Agreement, whether such party is Service Provider or Trust and whether such disclosure is directly or through Discloser's employees or agents.

"**Documentation**" shall mean all information provided by Service Provider describing the features, basic use and operation of the System.

"**Expenses**" shall mean all reasonable out-of-pocket expenses incurred by Service Provider that are directly related to Service Provider's performance of this Agreement.

"**Fees**" shall mean the fees charged by Service Provider and incurred by Trust for provision of the System and Additional Services as more fully described in **Exhibit A**.

"**Force Majeure**" shall mean nonperformance of this Agreement by a party during such period of time that the performance is rendered commercially impracticable, illegal, or impossible arising out of or caused by, directly or indirectly, the following forces which are beyond its control war, revolution, civil commotion, riot, fire, flood, disaster, acts of public enemies, blockade or embargo, strikes, any law, order, proclamation, regulation, ordinance, demand or requirement.

"**Go Live Date**" shall mean the date on which the System is first made available for log in by Trust's Employees or such earlier date as set forth in **Exhibit A**, provided however that the Go Live Date shall in no event be later than earlier of (a) the date a Trust first logs on to the Website for purposes of actual business use; (b) Project Initiation & Completion of Milestones has been completed by Service Provider; or (c) ninety (90) calendar days after the Effective Date, regardless of whether Service Provider has completed implementation and installation services, unless the failure of Service Provider to complete implementation and installation services is primarily the result of Service Provider's breach of its obligations (in which case the 90 day period in item (c) of this definition shall be extended for the number of days that Service Provider is in breach of its obligations hereunder).

"**Implementation**" shall mean Service Provider's services in establishing

online access for the Trust to the Website and System and cooperating with Trust to establish such interfaces with Trust's current computer software and systems consistent with the transfer of data files in a format selected by Trust that is reviewed and approved by Service Provider so as to allow Trust to make effective use of the System as contemplated by this Agreement.

"**Implementation Schedule**" shall mean the mutually agreeable timeline developed by the parties for Service Provider's Implementation of the Website, as amended or modified by the parties under Section 1.4 of the Agreement.

"**Marks**" shall collectively mean the trademarks, tradenames, trade dress, servicemarks or other identifying symbols of a party, whether or not registered.

"**Personal Information**" shall mean all personally identifiable information referring or relating to a natural person or an entity.

"**Proprietary Information**" shall mean all of a given party's Trade Secrets and Confidential Information.

"**Recipient**" refers to the party receiving any Proprietary Information under this Agreement, whether such party is Service Provider or Trust and whether such disclosure is received directly or through Recipient's employees or agents.

"**Scheduled Maintenance**" shall mean routine, scheduled maintenance on the System during non-peak usage periods.

"**Service Standards**" shall mean those service level standards as more fully set forth on **Exhibit B**.

"**Setup Fee**" shall mean the fee charged to Trust for Implementation as more fully described in **Exhibit A**.

"**Supplier Information**" means demographic and identifying information about suppliers that are available in the System.

"**System**" means the Data Center and the hardware and software components used to provide Trust access to the Service Provider's software functions as described in Exhibit(s) A-(x).

"**Term**" shall mean the length of time from the Effective Date through the effective date of a termination of this Agreement in accordance with its terms.

"**Terms of Use**" shall mean the terms and conditions of use of the System as set forth in the online user agreements and privacy policy developed by Service Provider.

"**Unavailability**" for purposes of the "Availability Guarantees" shall not include unavailability due to Scheduled Maintenance or other planned outages; packet loss; substantial in-network packet latency, equipment or software upgrades; unavailability arising from a Trust service request; any action performed by Service Provider in order to maintain or improve Service Provider's services; any Trust equipment, circuit, application, software, code, hardware device failure or malfunction; acts or omissions of Trust or other users of the System; planned or unplanned Service Provider upstream provider outages; or other reasons outside of Service Provider's reasonable control, such as Force Majeure.

"**Vendor Data**" shall mean data entered into the PRISM system by a third-party vendor that does not apply, impact, or otherwise relate to the Trust, such as name, address, payments, invoice information."

"**Website**" shall mean the worldwide web page(s) Service Provider permits Trust to access and use in connection with the System.

**ASP Hosting Configuration**

PRISM Configuration will be Application Service Provide and hosted as:

- PRISM Hosted Facility; or
- Trust Hosted Facility.