

AGREEMENT BETWEEN

_____ **AND**

THE CAPE ANN TRANSPORTATION AUTHORITY (CATA)

THIS AGREEMENT is made as of _____, 2026 by and between _____, a private company, with its principal place of business at _____ ("Contractor") and the Cape Ann Transportation Authority, at 3 Pond Road, Gloucester, MA 01930 ("Agency").

- A. Agency advertised a Request for Proposal for Automatic Passenger Counters March 11, 2026, requesting proposals from qualified vendors to provide Agency with an Automatic Passenger Counter system to accurately count passengers as they board and alight, recording the data as a function of individual stops, routes, and runs, and associated software and hardware support. The Request for Proposal, together with all attachments and amendments, is referred to herein as the "RFP" incorporated as **Appendix A**.
- B. In response to the RFP, Contractor submitted to Agency a proposal dated _____, 2026. This proposal, together with all attachments, is referred to herein as the "Proposal" incorporated herein as **Appendix B**.
- C. Agency and Contractor now desire to enter into an Agreement for Contractor to provide Automatic Passenger Counter system and associated software and hardware support for Agency, in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

1. PARTS OF THE AGREEMENT: ORDER OF PRECEDENCE

This Agreement shall include the RFP and the Proposal, which are incorporated herein by this reference. In the event of any conflict or inconsistency between the provisions of this Agreement, and any document incorporated, the terms of this Agreement shall have precedence and apply over any other terms. In the event of any conflict or inconsistency between the provisions of the RFP and the Proposal, the terms of the RFP shall have precedence and apply over the terms of the Proposal.

2. SCOPE OF SERVICES: TERM

Contractor shall commence work upon Agency issuance of a written Notice to Proceed and, upon such issuance, Contractor shall provide the goods and services in accordance with, and at the price set forth in, Contractor's Proposal. The terms of the Agreement shall begin on the date set forth in the first paragraph above and end on the detailed purchase of hardware, software, related equipment, and acceptance by the Agency as reflected in **Appendix C**.

3. TRANSFER OF TITLE: RISK OF LOSS

All products will be shipped to Agency. Risk of loss and title to all equipment shall pass to Agency, free of encumbrances, after receipt by Agency, inspection, and acceptance at the time of delivery.

4. ACCEPTANCE

The goods and services shall be deemed accepted, and any attempt by Agency to reject an order or shipment of goods shall be waived and not enforceable, unless Agency has promptly inspected the goods and services, and written notice from Agency of any defect has been received by Contractor within thirty (30) days following any delivery of goods or performance of services. Goods may not be returned without obtaining written authorization and shipping instructions from an authorized representative of Contractor.

5. FORCE MAJEURE: DELIVERY

To the extent that either party is not able to perform an obligation under this Agreement due to fire, flood, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, acts of terrorism, any law or order of any governmental agency, or other cause beyond that party's reasonable control, that party may be excused from such performance so long as such party provides the other party with prompt written notice describing the condition and takes all reasonable steps to avoid or remove such causes of nonperformance and continues performance whenever and to the extent such causes are removed. Any shipping dates are predictions made by Contractor of the times by which it is likely the products will be shipped; however, due to the difficulties inherent in predicting future delivery dates, Contractor does not promise, guarantee or otherwise obligate itself to have the products shipped on or before that time and shall not be liable in damages or otherwise, nor shall Agency be relieved of its performance, because of failure to meet them.

6. CONFIDENTIALITY

"Confidential Information" shall mean any information owned by a party, including any and all proprietary technical, financial and business information, design, manufacturing, customer information, personnel information, new product developments, and general business plans of any kind whatsoever, regardless of whether furnished in oral, visual, written and/or other any tangible and intangible embodiments thereof, whether or not patentable. All such Confidential Information shall be treated by the receiving party as confidential and proprietary. The receiving party (a) shall safeguard and keep all Confidential Information confidential, (b) shall use the Confidential Information only in furtherance of the Agreement, and (c) shall not disclose such Confidential Information to any other person, firm or entity except (i) to those of its employees, officers, managers, members or representatives (collectively, "Representatives") who have a need to know such Confidential Information to provide the services provided herein, (ii) as allowed by the express, written consent of the disclosing party or (iii) as compelled by applicable law or a court of competent jurisdiction (provided that the receiving party provides the disclosing party with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy). The receiving party shall be responsible for all actions and omissions of its Representatives. Upon the termination or expiration of this Agreement, receiving party shall return all Confidential Information to the disclosing party; however, the receiving party may retain Confidential Information as may reasonably form a part of the governance record of the receiving party, and as necessary to comply with document retention requirements or policies.

7. CHANGES

Agency may request changes at any time to the scope of services described in this Agreement by submitting a written order for such changes to the Contractor. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in compensation. Any agreed-upon changes shall be expressed in a written supplement to this Agreement signed by both parties prior to implementation of such changes.

8. INDEMNIFICATION AND HOLD HARMLESS

- a. Contractor expressly agrees to indemnify and hold harmless Agency and all of its officers, employees, agents, or otherwise, from any loss, damages, costs, charges, or expenses whether to persons or property, including any costs, expenses, or attorney's fees in the defense of any claims therefore, which Agency may incur by reason of any act, action, neglect, omission, or default on the part of Contractor.
- b. In case any suit be brought against Agency on account of any negligent act, action, neglect, omission or default of Contractor, Contractor hereby covenants to assume the defense thereof and pay any and all costs, charges, attorney's fees and other expenses and Contractor shall pay any and all judgments that may be incurred by or obtained against, Agency except any judgments for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Agency and/or its agents and employees.
- c. It is further provided that no liability shall attach to the Agency by reason of entering into this contract, except as expressly provided herein.

9. CONSEQUENTIAL DAMAGES

Except where and to the extent that any such exclusion or limitation of liability would be unlawful, void or unenforceable at law, neither Party (directly or through its insurers) hereto shall be liable to the other Party for any indirect, contingent, or consequential loss or damage whatsoever or howsoever arising suffered by that other Party as a result of, arising out of in connection with a failure by any Party to perform (either properly or at all) its obligations under the Contract.

10. LIMITATION OF LIABILITY

Any action for breach of contract or otherwise must commence within six years after the cause of action accrues.

11. TERMS OF PAYMENT

Invoices shall be submitted to Agency at: CATA, 3 Pond Road, Gloucester, MA 01930 or via email to webbf@cantran.com.

Agency shall pay all invoices within thirty (30) calendar days after the invoice date. The payment terms for this Agreement are set forth in **Appendix C**.

12. RELATIONSHIP OF PARTIES

The relationship of the parties hereunder is that of independent contractors, and neither party shall be considered to be a partner, joint venture, employer or employee of the other under this Agreement. Neither party has any authority whatsoever to bind the other party in any transaction or make any representations on behalf of the other party.

13. WARRANTY

For a period of one year from the date of delivery and acceptance by Agency of goods or performance of services by Contractor pursuant to this Agreement, Contractor warrants to Agency, the goods manufactured by Contractor to be free from defects in material and workmanship and the services performed by Contractor to be in accordance with the specifications of this Agreement. If within such period it shall be found any goods are defective or any services are nonconforming, such goods shall be repaired or replaced and such services corrected or a substitute obtained at no additional cost to the Agency. This warranty shall not apply to (i) any loss or damage resulting from normal wear and tear or alteration, misuse, abuse or (ii) improper installation, operation or maintenance by Agency or a third party.

14. ACCESS TO SITE

Agency shall ensure that Contractor and its Subcontractors have reasonable access to the Site as necessary for Contractor and its Subcontractors to perform the Work in accordance with this Agreement starting on the Effective Date and until the end of the Warranty Period.

15. INSURANCE

- a. During performance hereunder, Contractor shall maintain the following insurance, which shall be full-coverage insurance not subject to self-insurance provisions, and Contractor shall not of its own initiative cause such insurance to be canceled or materially changed during the term of this Agreement:
 1. Comprehensive Commercial General Liability insurance of at least \$5,000,000 Per Occurrence;
 2. Automotive Liability of at least \$1,000,000 combined single limit;
 3. Bodily Injury of at least \$2,000,000;
 4. Property Damage of at least \$2,000,000;

5. Employer's Liability of at least \$1,000,000.
 6. Workers' compensation to be supplied by the Contractor before any work is performed at the Agency
- b. Prior to commencement of any work hereunder, Contractor shall furnish to Agency broker-issued certificate(s) of insurance showing the required insurance coverage for Contractor and further providing that:
1. Agency is named as an additional insured on Comprehensive General Liability and Automobile Liability insurance with respect to performance hereunder; and
 2. The coverage shall be primary and noncontributory as to any other insurance with respect to performance hereunder; and
 3. Thirty (30) days prior written notice of cancellation or material change in coverage is given to the Agency.
- c. "Occurrence", as used herein, means any event or related exposure to conditions which result in bodily injury or property damage.

16. INTELLECTUAL PROPERTY; SOFTWARE MATTERS

Notwithstanding any other provision in this Agreement, Contractor retains title to all intellectual property, patents, trademarks, know-how, copyrights, software, engineering work product, designs, models, production prints, drawings, work products, technical data, and other information and documents that relate to the goods and services sold to Agency. Unless specified by Contractor in writing to the contrary, all such intellectual property, information and documents disclosed or delivered by Contractor to Agency are to be deemed proprietary to Contractor and shall be used by Agency solely for inspecting, installing, operating and maintaining the goods and services sold to Agency and not used by Agency for any other purpose. All software under this Agreement is licensed, and all subscription services under this Agreement are provided, to Agency pursuant to Contractor's standard Subscription and License Agreement. All software support services under this Agreement are provided to Agency pursuant to Contractor's standard agreement for software support services.

17. NOTICES

All communications relating to the day-to-day activities of the project shall be exchanged between Agency Project Manager and the Contractor's Project Manager. All other notices and communications necessary or desirable to be given to the other party's legal representative shall be in writing and given by mailing the same postage prepaid, addressed as follows:

If to Agency: Felicia Webb, 3 Pond Road, Gloucester, MA 01930; 978-283-1886 ext 105;
webbf@cantran.com

If to the Contractor:

With a copy to: Contracts Manager at the above address

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given (a) one business day after deposited with a reputable overnight courier service or (b) three business days after deposited in the United States Mail to the address provided above.

18. WAIVER

The parties understand and agree that no failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.

19. APPLICABLE LAW: VENUE, DISPUTES, REMEDIES

This Agreement shall be interpreted under the laws of the Commonwealth of Massachusetts, without reference to its conflicts of laws provisions. Any litigation between the parties shall be brought in the state or federal courts of the Commonwealth of Massachusetts. If any disputes arising in the performance of this Agreement are not resolved by mutual agreement of the parties, the decision of one party will not bind the other party without such other party's agreeing to such decision in writing. Each party may pursue any and all remedies, available to it at law and equity, except as limited or disclaimed by this Agreement.

20. COMPLIANCE WITH LAWS

Contractor shall at all times comply with any and all applicable federal, state, and local laws, regulations, ordinances, executive orders, rules, or orders, including any Federal Transit Administration rules or regulations flowed down to Agency or otherwise generally applicable to the purchase of the goods and services under this Agreement.

21. BINDING ON SUCCESSORS

All of the terms, provisions, and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

22. ENTIRE AGREEMENT; MODIFICATION

This Agreement constitutes the complete agreement between the parties and supersedes (a) any prior written or oral communications regarding the subject matter hereof and (b) any purchase orders issued by Agency for products or services that are covered under the scope of this Agreement. This Agreement may be modified or amended only by written instrument signed by both the Contractor and Agency.

23. SEVERABILITY

In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

24. SAFEGUARDING INFORMATION

Contractor agrees that confidential information obtained from the Agency shall not be disclosed except upon the written consent of Agency. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement. Agency agrees to keep confidential all information declared confidential where denoted within the original proposal and where trade secret materials are described and shall not disclose them to any third party without Contractor's previous written agreement unless required by law.

25. TERMINATION

1. Termination for Convenience. Agency may terminate this Agreement at any time for convenience by providing Contractor written notice specifying therein the termination date which shall not be sooner than sixty (60) days from the issuance of said notice. Upon receipt of said notice, Contractor shall cease to incur additional expenses in connection with this Agreement. Upon such termination, Contractor shall be entitled to compensation for fees and charges accruing prior to the termination date.

2. Termination for Cause. If at any time during the term of this Agreement either party determines that the other has breached the terms of this Agreement, that party shall notify the party in breach in writing stating therein the nature of the alleged breach and directing the party in breach to cure such breach within ten (10) days of such notice. If the party in breach fails to cure said breach within ten (10) days, the other party may, at its election at any time after the expiration of said ten (10) days, terminate this Agreement by giving written notice thereof to the party in breach specifying the effective date of the termination. Upon receipt of said notice, in the event of breach by Contractor, Contractor shall cease to incur additional expenses in connection with this Agreement. Upon the date specified in said notice, this Agreement shall terminate. Such termination shall not prejudice or waive any rights or action which the parties may have against each other up to the date of such termination. Upon such termination, Contractor shall be entitled to compensation for fees and charges accruing prior to the termination date.

3. Termination for Lack of Funding. Agency shall cancel this Agreement and any renewal thereof with sixty (60) days' written notice to Contractor if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year, beginning July 1st, succeeding the current fiscal year.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the date first above written.

Cape Ann Transportation Authority

Name: Felicia S. Webb

Date: _____

Contractor:

Date: _____