



Amendment No. 1
to
Contract No. 5600 NS15000022
for
Electronic Vehicle Inspection System (EVIR) Software License, Maintenance, and Data Storage
between
Zonar Systems, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 29, 2018 through April 28, 2019. Two (2) options will remain.
- 2.0 The total contract amount is increased by \$52,895.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 04/29/2015 – 04/28/2018	\$158,685.00	\$158,685.00
Amendment No. 1: Option 1 – Extension 04/29/2018 – 04/28/2019	\$52,895.00	\$211,580.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Printed Name: MICHAEL KING
Authorized Representative

Sign/Date:

Printed Name: Bartley Tyler
Authorized Representative

Zonar Systems, Inc.
18200 Cascade Avenue South
Seattle, WA 98188

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Financial Service Department
Purchasing Office
124 W. 8th St., Austin, Texas, 78701

April 29, 2015

Zonar Systems, Inc
Jeff Wells
18200 Cascade Avenue South
Seattle, WA 98188

Dear Mr. Wells:

The City has approved the execution of a contract with your company for electronic vehicle inspection system (EVIR) Software license, maintenance, and data storage.

Responsible Department:	Watershed Protection Department
Department Contact Person:	Donna-Lee Bliss
Department Contact Email Address:	Donna-Lee.Bliss@Austintexas.gov
Department Contact Telephone:	(512) 974-2530
Project Name:	Electronic Vehicle Inspection System (EVIR) Software license, maintenance, and data storage
Contractor Name:	Zonar Systems, LLC
Contract Number:	MA-5600-NS150000022
Contract Period:	April 29, 2015 through April 28, 2018
Extension Options	Three 12-month option
Dollar Amounts:	Not to Exceed \$158,685.00 for the initial contract term, and \$52,895.00 for each extension option

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Shawn M. Willett

Shawn M. Willett
Corporate Contract Compliance Manager
IT Contract Management and Procurement Team
City of Austin, Purchasing Office

cc: Donna-Lee Bliss

CONTRACT BETWEEN THE CITY OF AUSTIN

And

ZONAR SYSTEMS, INC.

For

ELECTRONIC VEHICLE INSPECTION SYSTEM (EVIR) SOFTWARE LICENSE, MAINTENANCE, AND DATA STORAGE

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Zonar Systems, Inc. ("Contractor"), having offices at 18200 Cascade Ave S, Seattle, WA 98188.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Jeff Wells, Phone: 480-921-2869, Email Address: jeff.wells@zonarsystems.com. The City's Contract Manager for the engagement shall be Donna Lee Bliss, (512) 974-2530, Email Address: donna-lee.bliss@austintexas.gov. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid an annual not-to-exceed amount of \$52,895, for all fees and expenses. This annual not-to-exceed amount includes funding for annual service fees and funding for fleet growth.

Invoices.

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of**

the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Address:	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.2.3 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.4 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.5 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.5.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.5.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 **Final Payment and Close-Out.**

3.6.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.6.2 The making and acceptance of final payment will constitute:

3.6.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

Term of Contract. This Contract shall be in effect for an initial term of thirty six (36) months and may be extended thereafter for up to three (3) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.2.1 Upon expiration of the contract, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.1 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.2 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.3 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.4 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.5 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Contractor To Package Deliverables.** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the

container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5.2 **Shipment Under Reservation Prohibited.** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5.3 **Title & Risk of Loss.** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

5.4 **Right Of Inspection And Rejection.** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

5.5 **No Replacement Of Defective Tender.** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

5.6 **Special Tools & Test Equipment.** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

5.7 **Equal Opportunity.**

5.7.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.7.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.8 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.9 **Delays.**

5.9.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.9.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.10 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.10.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.10.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.10.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.11 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be

proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.12 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 **Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

7.5 **Right To Audit.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform

thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Elisa Folco, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Zonar Systems, Inc.

ATTN: Jeff Wells, Contract Manager

18200 Cascade Ave. S.

Seattle, WA 98188-City, State Zip Code

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City

shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.22 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.23 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.24 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.25 Non-Solicitation.

7.25.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.25.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

7.25.3 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's.

7.25.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor

7.26 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.27 Incorporation of Documents. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

ZONAR SYSTEMS, INC.

By: [Signature]
Signature

Name:

MIKE KOS
Printed Name

Title:

General Counsel

Date:

4/24/15

CITY OF AUSTIN

By: [Signature]
Signature

Name:

Shawn M. Willett
Printed Name

Title:

Corporate Purchasing Manager

Date:

April 27, 2015

List of Exhibits

Exhibit A	Zonar Pricing Agreement
Exhibit B	Zonar Hardware Lease/Purchase and Data Services Agreement
Exhibit C	Non Discrimination Certification, Section 0800

Exhibit A
Zonar Pricing

Parks and Recreation



18200 Cascade Ave S
Seattle, WA 98188

Voice: 206.878.2459
Fax: 206.878.3082

SERVICE QUOTE

Service Quote Number:
SC004596

Service Quote Date:
03/16/15

Page:
1

Sold To:
City of Austin Parks and Recreation Attn: Accounts Payable 2525 S Lakeshore Blvd Austin, TX 78741-1757 USA

Ship To:
Wireless Communications Attn: George Maldonado City of Austin Parks and Recreation 1006 Smith Road Austin, TX 78721

Customer ID	Customer P.O.	Payment Terms
AUS1162	AUS1162 QUOTE	Net 30 Days
SalesPerson	Shipping Method	Due Date
Ryan Clifford	FEDEX GROUND	10/01/15

Order Qty	Item	Description	Unit Price	Discount %	Extension
		Parks and Recreation			
27	EVIR002-S <i>Renewal</i>	09/2014-08/2015 Billed on SI224338 EVIR CSA Inspection GSM Service Service From: 09/01/14 to 08/31/15	143.88		3,884.76
23	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/15 to 08/31/16	143.88		3,309.24
23	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/16 to 08/31/17	143.88		3,309.24
23	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/17 to 08/31/18	143.88		3,309.24
23	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/18 to 08/31/19	143.88		3,309.24
23	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/19 to 08/31/20	143.88		3,309.24
23	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/20 to 08/31/21	143.88		3,309.24
		Recurring Annual Service Quote			
		This Quote is Based on an Initial Term of Three (3) Years, After Which the Term Can be Renewed Upon Mutual Agreement For Up to Three (3) Additional One-Year Periods			

Subtotal:	23,740.20
Total Sales Tax:	0.00
Invoice Discount:	0.00
Total:	USD 23,740.20

Watershed Protection



18200 Cascade Ave S
Seattle, WA 98188

Voice: 206.878.2459
Fax: 206.878.3082

SERVICE QUOTE

Service Quote Number:
SC004597

Service Quote Date:
03/16/15

Page:
1

Sold To:
City of Austin Watershed Protection Attn: Accounts Payable 505 Barton Blvd Fl 12 Austin, TX 78704-1400 USA

Ship To:
City of Austin Attn: Israel Benavides 6301 Harold Ct Austin, TX 78721 USA

Customer ID	Customer P.O.	Payment Terms
AUS0236	AUS0236 QUOTE	Net 30 Days
SalesPerson	Shipping Method	Due Date
Ryan Clifford	FEDEX	10/01/15

Order Qty	Item	Description	Unit Price	Discount %	Extension
		Watershed Protection			
92	EVIR002-S <i>Renewal</i>	09/2014-08/2015 Billed on SI224336 EVIR CSA Inspection GSM Service Service From: 09/01/14 to 08/31/15	143.88		13,236.96
92	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/15 to 08/31/16	143.88		13,236.96
92	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/16 to 08/31/17	143.88		13,236.96
92	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/17 to 08/31/18	143.88		13,236.96
92	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/18 to 08/31/19	143.88		13,236.96
92	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/19 to 08/31/20	143.88		13,236.96
92	EVIR002-S <i>Renewal</i>	EVIR CSA Inspection GSM Service Service From: 09/01/20 to 08/31/21	143.88		13,236.96
		Recurring Annual Service Quote			
		This Quote is Based on an Initial Term of Three (3) Years, After Which the Term Can be Renewed Upon Mutual Agreement For Up to Three (3) Additional One-Year Periods			

Subtotal:	92,658.72
Total Sales Tax:	0.00
Invoice Discount:	0.00
Total: USD	92,658.72

In addition to the Annual Service Fee's, City of Austin has included an additional annual amount of \$35,000 for Fleet Growth for a total not to exceed annual amount of \$52,895.

Exhibit B



ZONAR HARDWARE LEASE/PURCHASE AND DATA SERVICES AGREEMENT

P.O. # _____
Quote # _____
Contract # _____

Zonar Systems, Inc.
18200 Cascade Ave. S., Suite 200
Seattle, WA 98188
Telephone: 206.878.2459
Fax: 206.878.3082
Website: www.zonarsystems.com

CUSTOMER INFO:

Company Name: City of Austin – Watershed Protection
Telephone: 512-974-1540 Fax: 512-974-1760
Email:
Address: 505 Barton Springs Rd Fl 12, Austin, TX 78704-1400
Market Segment: Public

Data Retention:

CSA - EVIR Data Retention -

Rolling Period: ☐ 3 Months ☐ 12 Months

GTC - GPS & Other Data Retention -

Rolling Period: ☐ 6 Months ☐ 12 Months

Includes Hardware Lease:

☐ Yes ☒ No

This Lease, Purchase, and Services Agreement is effective as of _____, 2015 ("Effective Date") and entered into between the City of Austin—Watershed ("Customer"), and Zonar Systems, Inc., a Washington Corporation ("Zonar"). The Parties agree that the following terms and conditions shall apply to Customer's lease and/or purchase of equipment and purchase of services from Zonar, whether procured directly from Zonar or from a Zonar authorized reseller, and Customer's access to and use of Zonar's service and software offerings.

1. **DEFINITIONS:** The following capitalized terms shall have the meanings ascribed to them below:

- "Agreement" means this Lease, Purchase, and Services Agreement (including any Orders submitted by Customer and accepted by Zonar under this Agreement, any Quotes included or referenced in such Order, and Exhibits A-C), which together form a single agreement.
- "Bundled" means any Leased Hardware (unless this Agreement identifies specific hardware associated with a bundled service package as being provided as promotional *NoCapEx* Hardware where title is intended to transfer to Customer).
- "Data" means any and all files, information, data or other content generated by Customer that is collected and stored in Zonar's systems in connection with its delivery of the Services. Data does not include information that Zonar collects for relationship management purposes, such as contact, billing, customer relationship management, service delivery, performance measuring, and compliance monitoring or Aggregated User Data (defined below in Section 16).
- "Hardware" means any equipment provided by Zonar or its agents to Customer under this Agreement.
- "Order" means the submission by Customer to Zonar of a written order for Hardware or Services under this Agreement, utilizing Zonar's standard sales order form (each a "Quotation" or "Quote") or any other mutually agreeable form (e.g., a purchase order).
- "Parties" means Zonar and Customer.
- "Party" means either of Zonar or Customer, as applicable.
- "Services" means Zonar's fleet telematics data service offerings, which may include the automated collection of data from enrolled vehicles (such data includes one or more of time card data, inspection data, location data, diagnostic data, idle data, and/or driver behavior data); automated data transmission from enrolled vehicles to a secured hosted data center; monthly storage of collected data; automated exception based analysis of the data; online access to the hosted data; online access to the hosted fleet analytics software; 24/7 customer support; and/or any other services that Zonar makes available to Customer for purchase under this Agreement.
- "Service Fees" means the amounts payable by Customer for use of the Services, and any other fees or charges specified as payable by Customer in an Order. Service Fees also includes any payments for use of Leased Hardware.
- "Software" means any computer software and associated documentation provided by Zonar or its agents to Customer or otherwise made available by Zonar or its agents (e.g., the GTC web-based portal and hosted fleet analytics software) to Customer under this Agreement. Software also includes any software and/or firmware loaded on, included with or otherwise provided for use with Hardware.
- "Terms of Use" means the terms and conditions applicable to use of the Services, which are incorporated into this Agreement.
- "Third Party Offerings" means any third party branded Hardware, Software or Services that Zonar, acting as a reseller, makes available to Customer for lease, purchase, license, or use under this Agreement (such Offerings often relate to applications for Zonar's 2020 Tablet).
- "Third Party Terms" means the additional and/or different terms and conditions (e.g., software license agreements and/or terms of service) applicable to Customer's use of the Third Party Offerings, which shall be provided to Customer if Customer desires to utilize such Third Party Offerings. Current offerings and terms are noted in Exhibit A, although new offerings may be added from time to time.

- “Zonar Offerings” means the Zonar-branded Hardware, Software and Services that Zonar makes available to Customer for lease, purchase, license, or use under this Agreement, including, without limitation, the Ground Traffic Control™ fleet telematics data collection and administration service (“GTC”), EVIR™ vehicle inspection service, and Z Pass™ and Z Pass+™ student ridership tracking services.

2. HARDWARE. Hardware may be purchased (“Purchased Hardware”) or leased/bundled (“Leased Hardware”) by Customer under this Agreement, as specified in the Order applicable to such Hardware. Additional terms and conditions apply to Leased Hardware, as set forth in Exhibit B. Title to Leased Hardware will be retained by Zonar, and title to Purchased Hardware will be transferred to Customer in the manner described below. All Purchased Hardware to be delivered by Zonar or its agents to Customer under this Agreement shall be shipped FOB origin, such that title transfers to Customer when such Hardware is made available to Customer at Zonar’s premises. Without affecting the transfer of title, Zonar shall, as an additional Service included in the Quote as shipping charges, arrange for insured shipment of such Hardware to Customer via a common carrier of Zonar’s choosing, and will assist Customer with any claims against such a carrier for lost or damaged shipments. Unless Customer has purchased Hardware installation Services from Zonar or its agents under an Order, Customer shall be solely responsible for the proper installation of all such Hardware. Unless specifically noted otherwise in a Quotation, GPS units are subject to a \$25 activation fee (which also applies to any reactivation after a unit has been turned off).

3. SERVICES. Subject to Customer’s timely payment of all applicable fees and expenses and compliance with all material terms of this Agreement, Zonar and/or its agents shall provide the Services to Customer during the Service Term as defined below. As of the Effective Date, the following services are included with each GTC Service subscription: Service activation, 24/7 access to the GTC web-based portal and associated web-based Software applications, email & phone support, Software upgrades made generally available to Service Customers, daily account monitoring, and all associated wireless data charges. Customer acknowledges that it has read and shall comply with the Terms of Use at all times when accessing and using the Services. Customer acknowledges that Zonar in its sole discretion may update and change the features and functionality of the Services from time to time, with or without notice.

~~The service term (and any lease term, collectively referred to as the “Term”, noting that the minimum period for any Term including Leased Hardware is 3 years) shall be for a period of three (3) years following commencement of Service billing. Service billing shall commence as follows:~~

- For Hardware that is shipped to Customer by Zonar or its agents on or before the 15th day of a month, Service billing shall commence on the first of the month following Hardware shipment.
- For Hardware that is shipped to Customer by Zonar or its agents after the 15th day of a month, Service billing shall commence on the first day of the second month following Hardware shipment.

If, for any reason, the billing for Services is deferred beyond the above defined commencement date, the Service billing commencement date shall be the date of the first invoice for Service that the Customer pays in full.

4. SOFTWARE AND SERVICE ACCESS LICENSES. All Software is licensed, not sold. Subject to Customer’s timely payment of all applicable fees and expenses, and compliance with all material terms of this Agreement and, if applicable, any Third Party Terms, Zonar grants to Customer during the Term a limited, non-transferable license, without rights to sublicense, to access and use the Software solely in connection with Customer’s use of the Services and solely for Customer’s internal business purposes. Except for the limited license conveyed Customer under this Agreement, Zonar and its suppliers shall retain all right, title, and interest in and to all copyrights, trademarks, service marks, trade secrets, patents, patent applications, mask works, moral rights, contract rights, and all other proprietary rights embodied in the Zonar Offerings and Third Party Offerings, including, without limitation, any improvements or derivatives of such offerings. Customer acknowledges that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Customer represents that (1) it is not, and is not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law. The Software and accompanying documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by the U.S. Government shall be governed solely by the terms and conditions of this Agreement. Except as otherwise expressly provided in this Agreement, Customer shall have no right, title or interest in or to any intellectual property relating to the Zonar Offerings and/or Third Party Offerings and shall not (a) modify, adapt, alter, translate, or create derivative works from any Software, (b) merge or otherwise combine any Software with other software not expressly approved in writing by Zonar, or (c) copy, reproduce, modify, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or algorithms of any Software. Customer will not violate or contest Zonar’s or its suppliers’ proprietary rights related to any Zonar Offering and/or Third Party Offering. Additional and/or different terms and conditions may apply to Third Party Offerings, which shall be presented to Customer either prior to or at the time of delivery of such Third Party Offerings. To the extent such Software or any services are part of a Third Party Offering, Customer acknowledges that it has reviewed and agreed to all applicable Third Party Terms prior to use of the Software or services.

5. TERMS OF USE FOR ZONAR PRODUCTS AND SERVICES.

5.1 CUSTOMER OBLIGATIONS. Customer shall be solely responsible for the following: (a) Obtaining and maintaining Internet access to Zonar's web based applications through an Internet service provider, including any permissions or authorizations required for such connection; (b) All hardware and software necessary to enable such a connection; (c) Ensuring that only authorized persons have access to Zonar's web based applications by keeping Customer's password and all other means and methods for accessing Zonar's web based applications absolutely confidential; (d) Ensuring that any training documentation relating to Zonar's web based applications, the security of Zonar's web based applications, the encryption methods used and all or any other security features are kept absolutely confidential; (e) Ensuring that the use of the Zonar's web based applications by Customer is under the control and authority of a proper and adequately trained employee; (f) For Customers using Zonar's EVIR Service, ensuring that Customer-designated end users of the Zonar Offerings comply with the terms the ID Agreements set forth in Exhibit C; (g) Unless otherwise specified in an Order, installing, using, maintaining and removing the Hardware according to Zonar's specifications; (h) For Hardware leased from Zonar, safeguarding the Hardware from loss or damage; (i) Preventing anyone other than an authorized representative of Zonar to perform any work on the Hardware; and (j) In the event Zonar will be providing installation or maintenance services with respect to Zonar Offerings and if Customer is not the owner of the property upon which such Zonar Offerings are to be installed, Customer shall obtain the written consent of the owner of the premises and/or property for Zonar personnel and/or its agents to enter the premises for the purposes of installing, maintaining and retrieving the same. Except to the extent covered under Zonar's limited warranty, Customer is responsible for all Hardware damaged, destroyed, lost, or stolen while in Customer's possession and shall be liable for the cost of repair or replacement of the Hardware and will remain responsible for payment of Service Fee during any such repair or replacement period.

5.2 ELECTRONIC SIGNATURES FOR ZONAR'S EVIR SYSTEM. Customer acknowledges that implementing a federally compliant electronic inspection system requires adherence to standards for electronic signatures. It is Customer's responsibility to understand and comply with those requirements. Zonar recommendations for using Zonar's EVIR system are set forth in the ID Agreement form attached as Exhibit C.

5.3 WIRELESS DATA POLICIES. (a) Customer understands and agrees that Customer has no contractual relationship with a wireless carrier and Customer is not a third-party beneficiary of any agreement between Zonar or a Zonar Agent and a wireless carrier. Customer understands and agrees that the underlying wireless carrier shall have no legal, equitable or other liability of any kind to Customer. (b) Subject to FCC Number portability rules, Customer has no property or other rights in any Number assigned to it and Customer understands that any such Number can be changed from time to time. (c) Customer agrees that Zonar and/or wireless carrier shall not be responsible for interruption of service for any reason or the inability to use the service caused by Force Majeure. (d) Customer understands and agrees that the liability and obligation of Zonar to Customer for services may be controlled and limited by a wireless carrier's tariff, if any, and the laws, rules and regulations of the Federal Communications Commission and other United States or foreign governmental authorities which from time to time have jurisdiction. (e) In no event shall Zonar and/or wireless carrier be liable for the failure or incompatibility of any equipment utilized by Customer in connection with the Service.

6. AGREEMENT TERM AND TERMINATION. ~~This Agreement shall begin on the Effective Date and shall remain in effect throughout the Term (as defined in Section 3), and any renewals thereof. The Term shall automatically renew for additional one-year periods, unless either Party provides the other Party with written notice of its intent not to renew at least thirty (30) days prior to the expiration of the then current Term. Upon renewal of any Term, the fees and charges payable by Customer, including any Service Fees are subject to change upon 30 days' written notice by Zonar. If Customer attempts to terminate early, or fails to make any payment when due or otherwise violates any material term or condition of this Agreement, Customer may be declared in default by Zonar upon written notice and failure to cure for 15 days following delivery of such notice. Upon declaration of default, all amounts due under this Agreement during the entire Term, including with respect to unexpired portions of the Term, shall accelerate and become immediately due and payable, and also including, without limitation, the cost to repair or replace damaged Hardware (if such Hardware was not purchased outright), interest, and costs/expenses of collection. Zonar shall also have the right to terminate this Agreement and seek any other remedy permitted under law. Upon termination of the Term, Customer shall immediately cease use of the Software, Services, Data (unless Customer has purchased continuing Data retention Services) and any Zonar Confidential Information, and return any Leased Hardware to Zonar in accordance with the process specified in Exhibit B. The following Sections of this Agreement shall survive its termination, howsoever occurring: Agreement §4.7 and 9-16.~~

7. ORDER PROCESS AND PAYMENT TERMS. Customer shall initiate Orders by submitting to Zonar or one of its authorized resellers a mutually agreeable ordering document (e.g. Zonar's then-current order form), which must include or reference a Zonar-provided Quotation. All Orders submitted by Customer shall be subject to acceptance by Zonar at its corporate offices in Seattle, WA, USA and shall not be binding on Zonar until the earlier of written confirmation or shipment by Zonar and, in the case of acceptance by shipment, only as to the portion of the Order actually shipped. Customer may not revoke Orders once accepted by Zonar. Customer shall pay (in U.S. dollars) all invoices issued under this Agreement by wire transfer to Zonar's designated bank, by check, or by any other method acceptable to Zonar within 30 days from the date of Zonar's invoice. All Service Fees and other charges payable by Customer under this Agreement are exclusive of taxes and are not subject to set off or reduction. Customer shall be responsible for payment of any taxes accruing as a result of the activities occurring under this Agreement (e.g., without limitation, sales and use taxes), other than taxes applicable to Zonar's gross income. Service Fees applicable to any renewal of a Term shall be due and payable in advance on the date of such renewal. Any amounts not paid by Customer when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less, and Customer shall be responsible for all costs and expenses, including attorney's fees, incurred by Zonar in connection with

the collection of any delinquent amounts. Zonar shall be entitled to withhold performance and suspend the Services until all amounts due are paid in full.

8. CONTROLLING TERMS. All Zonar Offerings leased, licensed or purchased by Customer under this Agreement shall be subject to its terms and conditions. Additional terms also apply to end users of the Z Pass+ service, as set forth in applicable portions of the Terms of Use and accessible on Zonar's website at <https://www.ZPassplus.com>, and to the extent that Customer provides any Data associated with Z Pass and/or Z Pass+ to its end users (such as parents) via any mechanism other than the online portal(s) provided by Zonar in connection with its delivery of the Services, Customer shall ensure that such end users have read and accepted the Z Pass+ terms prior to providing such Data. The terms of this Agreement related to Order submission, delivery, pricing, payment or taxes shall not apply to any orders for Zonar Offerings that are placed by Customer with a Zonar authorized reseller. Customer shall establish such terms independently with the authorized reseller. Any terms or conditions appearing on the face or reverse side of any Customer purchase order, acknowledgment, or confirmation that are different from or in addition to those required hereunder shall not be binding on the Parties, even if signed and returned, unless both Parties agree in a separate writing to be bound by such different or additional terms and conditions.

9. CONFIDENTIALITY. Each Party shall retain in confidence all information transmitted to it by the other Party pursuant to or in connection with this Agreement that the disclosing Party identifies as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"), and will make no use of such Confidential Information except under the terms and during the term of this Agreement. Information disclosed by either Party, in any form, regarding that Party's products, pre-release products, Hardware, Software, Services, marketing and business plans and financial information, and any passwords provided by the Party to the other, shall be that Party's Confidential Information. The Parties shall treat the terms and conditions of this Agreement as confidential; however, either Party may disclose such information as follows: (a) in confidence to its immediate legal and financial consultants as required in the ordinary course of that Party's business and (b) pursuant to any applicable law, regulation, or court order requiring a Party to disclose such information; provided however, that the receiving Party shall promptly notify the disclosing Party in writing prior to making any such disclosure, in order to facilitate the disclosing Party's efforts to protect its Confidential Information. The receiving Party's obligations under this Section shall extend for five (5) years following the disclosure of the Confidential Information, irrespective of the termination of this Agreement. Confidential Information shall not include information that the receiving Party can establish: (i) has entered the public domain without the receiving Party's breach of any obligation owed to the disclosing Party; (ii) is rightfully received by the receiving party from a third Party without confidentiality restrictions; (iii) is known to the receiving Party without any restriction as to use or disclosure prior to first receipt by the receiving Party from the disclosing Party hereunder; or (iv) is independently developed by the receiving Party.

10. LIMITED WARRANTIES.

10.1 Purchased Hardware (Please see Exhibit B for Warranty terms for Leased Hardware). Zonar warrants that the serialized (i.e., tracked by Zonar using unique serial numbers) Hardware elements of any Zonar Offerings delivered by Zonar or its agents to Customer under this Agreement shall be free from all material defects in workmanship under normal use and service. Zonar's warranty period for such serialized Hardware (V Series GPS units, ZTrak GPS units, EVIR 2010 handheld's, 2020 Tablets, Z Pass readers) is as follows: V3 Series GPS Product Line – 5 Years (V3 only; V3R (ruggedized version), V3i (EU/international version), V2J, and earlier Zonar GPS products have 1 year warranties); EVIR and all other Serialized Hardware – 1 Year. The warranty period runs from the date of shipment, and any replacement hardware provided under warranty will be covered under warranty for the remainder of the warranty term based on the shipment date for the original equipment. Provided that such Hardware is used and handled as intended and in accordance with this Agreement, and that Customer provides Zonar with notice within the applicable warranty coverage period, as Customer's sole and exclusive remedy, Zonar will replace any failed or functionally impaired Hardware with equivalent Hardware in terms of performance and functionality. This warranty does not apply to ancillary components and ordinary wear items (e.g., batteries, cables brackets, cradles, etc.) and any Hardware that has been misused, altered, willfully abused or that has been subject to water or other environmental damage or that has been damaged due to improper installation by Customer or its agents. Hardware installations must follow Zonar's equipment-specific installation guidelines to qualify for the foregoing warranty. If Hardware is determined by Zonar to be damaged due to any of the aforementioned causes, Customer will be charged the price of a refurbished unit plus shipping and handling. Return of any Hardware requires a Return Material Authorization ("RMA") number. All RMA's must be pre-authorized by Zonar Customer Care at: E-mail: Customercare@zonarsystems.com. Phone: 1 877 THE EVIR.

10.2 Software. Zonar warrants that the Software elements of any Zonar Offerings delivered by Zonar or its agents to Customer under this Agreement shall perform in all material respects in accordance with published technical specifications for a period of 90 days from the date of shipment or if web-based, the date such Software was first made available to Customer. Provided that such Software is installed in accordance with Zonar's instructions and used in an unmodified form, in accordance with applicable specifications and the terms of this Agreement, as Customer's sole and exclusive remedy, Zonar will either repair the non-conforming Software or replace or re-present any nonconforming Software with conforming Software.

10.3 Services. Zonar warrants that the Services elements of any Zonar Offerings will be performed in a good, workmanlike manner and, for a period of 30 days from the date of delivery, such Services will conform in all material respects to applicable technical specifications. As Customer's sole and exclusive remedy for any failure of the Services to meet the foregoing limited remedy, Zonar will promptly re-perform such Services.

11. DATA RETENTION. Customer acknowledges that unless it purchases additional Data retention services, Zonar will have the right to purge all Data as follows: (a) Subject to purge after 3 months, 6 months, or 12 months, as elected by Customer in the check boxes on the upper portion of the first page of this Agreement. If no boxes are checked, Zonar will have the right to purge Inspection Data after 3 months and GPS Data after 6 months. Customer further acknowledges that regulations may mandate specific Data retention requirements for inspection Data and/or GPS Data, and it is Customer's sole responsibility to understand those requirements, and to export and archive its Data if the Data retention period offered by Zonar is not sufficient to meet such retention requirements; (b) Customer shall be solely responsible for printing data and inspection reports for vehicles involved in an accident; (c) Unless Zonar specifically agrees in writing otherwise, I/O Data, ZAlert Data, Z Pass card scan Data, diagnostic Data, fault code Data, and message Data, can be purged by Zonar according to the retention period selected for GPS Data. From time to time, Zonar may offer new types of Data services, and such new Data services may have different data retention periods, to be defined in a corresponding service specification for that offering, and; (d) Customer understands and agrees that Zonar is not required to retain Data except as provided in this Section 11 or in a separate written agreement. Unless Customer has made other arrangements in writing with Zonar, all Data submitted using Zonar's web based applications may be purged as provided above.

12. DISCLAIMERS. THE LIMITED WARRANTIES SET FORTH IN SEC. 10 ABOVE ARE APPLICABLE SOLELY TO THE ZONAR OFFERINGS & ARE MADE PERSONALLY TO CUSTOMER IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. AS BETWEEN ZONAR & CUSTOMER, THE THIRD PARTY OFFERINGS ARE PROVIDED "AS IS". CUSTOMER ACKNOWLEDGES THAT WARRANTIES (IF ANY) WITH RESPECT THIRD PARTY OFFERINGS ARE AS REFLECTED IN THE THIRD PARTY TERMS, & IT SHALL LOOK SOLELY TO THE MANUFACTURER, PUBLISHER OR OTHER THIRD-PARTY PROVIDER(S) OF SUCH THIRD PARTY OFFERINGS FOR SUPPORT WITH RESPECT TO ANY PERFORMANCE OR WARRANTY ISSUES, OR OTHER NON-CONFORMANCE WITH THE THIRD PARTY OFFERINGS. CUSTOMER ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR ITS USE OF DATA AND ZONAR EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE ACCURACY, COMPLETENESS OR SUFFICIENCY OF SUCH DATA. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH ABOVE, ZONAR MAKES NO WARRANTY THAT THE HARDWARE, SOFTWARE OR SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ERROR FREE OR OTHERWISE MEET CUSTOMER'S EXPECTATIONS. ZONAR ALSO EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY & FITNESS FOR A PARTICULAR PURPOSE, & ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

13. LIMITATION OF REMEDIES AND DAMAGES. EXCEPT WITH RESPECT TO EITHER PARTY'S OBLIGATIONS APPLICABLE TO CONFIDENTIAL INFORMATION, AND CUSTOMER'S DELIBERATE MISUSE OR MISAPPROPRIATION OF ZONAR'S INTELLECTUAL PROPERTY RIGHTS, AND CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, USE OF THE ZONAR OFFERINGS OR THE THIRD PARTY OFFERINGS, OR (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER THIS AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT. ZONAR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE SERVICE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE PRIOR TWELVE (12) MONTHS, IF ANY. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER ZONAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

14. OTHER LIMITATIONS. Zonar's licensors and suppliers shall have no liability of any kind under this Agreement and Customer shall not be an implied participant or third party beneficiary under any agreements between Zonar and its licensors and suppliers. Customer acknowledges that it is solely responsible for its use of Data, controlling its employees', contractor's and other permitted designees access to the Software, Hardware and Services, reviewing inspection reports, and taking appropriate action with respect to vehicles for which inspection reports have been submitted using the Services. Customer acknowledges that the accuracy of Data may be dependent on the accuracy of information provided by vehicle drivers or other individuals using Hardware or Software on Customer's behalf. Customer is solely responsible for instructing such individuals in the proper use of equipment, execution of inspections and delivery of legally acceptable electronic signatures in compliance with US law regarding commercial vehicle inspection and repair records, if applicable. Zonar shall have no liability whatsoever with respect to Data, except in the case of gross negligence or intentional misconduct by Zonar or its employees. Zonar shall have no liability for any nonperformance or delay in performance caused by any event reasonably beyond its control, including, but not limited to labor disputes, natural disasters and other acts of God, and war. The suppliers of the Third Party Offerings shall have the right to enforce the terms of this Agreement, solely to the extent necessary to enforce applicable Third Party Terms.

15. INDEMNIFICATION. Customer shall defend, indemnify and hold Zonar harmless from and against (a) any claim, cause of action, demand, cost, expense (including attorneys' fees), loss suit, proceeding, damage and liability of any kind ("collectively, Claims") asserted or initiated by a third party arising out of or relating to Customer's use of or inability to use the Hardware, Software, Services or Data, and (b) any Claims asserted or initiated by Customer or any third party to the extent arising out of relating to any unauthorized or illegal use of the Software, Hardware, Services or Data by any individual or entity other than Zonar, including, without limitation, the owner, operator, or insurer of any vehicle or equipment for which the Hardware, Software, Services or Data are used, and any by any individual or entity claiming injuries or damages arising from the use of any vehicle or equipment for which the Hardware, Software, Services or Data are used. The preceding language does not apply to any claim that Zonar products or services violate the intellectual property rights of any third party, so long as such products and services are used as intended and not combined with any technology not provided by Zonar, and where the claim does not arise because of such a combination.

16. INTELLECTUAL PROPERTY: Zonar retains all right, title and interest and all related intellectual property rights in and to the Zonar Offerings and Zonar's Confidential Information, including any corrections, enhancements, updates or other modifications, including custom modifications, thereto, whether made by Zonar, Customer or any third party. Except as expressly set forth herein, no express or

implied license or right of any kind is granted to Customer regarding the Zonar Offerings or the Third Party Offerings or any part thereof. Under no circumstances shall Customer sell or transfer any purchased Hardware or licensed Software, reconstruct or repair such Hardware or Software, or reverse engineer or otherwise attempt to learn the trade secrets, know how or other intellectual property embodied therein. At all times during and after the termination or expiration of this Agreement, Customer and its employees and agents shall maintain the confidentiality of trade secret information. Customer shall not disclose any such proprietary information concerning Zonar Products (Hardware and Software), including any flow charts, logic diagrams, user manuals and screens, to persons not an employee of Customer without the prior written consent of Zonar. Customer agrees that Zonar may collect data regarding Customer's use of the Service and analyze, use and disclose such data in an aggregated format ("Aggregated User Data") for Zonar's business purposes; provided such Aggregated User Data is not personally identifiable or Customer identifiable.

17. MISCELLANEOUS: ~~This Agreement (including the attached Exhibits and referenced Quotes) constitutes the entire agreement between Zonar and Customer with respect to the subject matter hereof, and supersedes all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the Parties with respect thereto. The failure of either Party to exercise in any respect any right provided for herein will not be deemed a waiver of any provision of this Agreement or of any subsequent breach of the same and no waiver of any provision of this Agreement will be effective unless made in writing. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Except with respect to Zonar's right to modify the Terms of Use, this Agreement may not be modified or amended except by a written instrument executed by both Parties. The Parties are independent contractors. Customer may not assign this Agreement in whole in part without Zonar's prior written consent. This Agreement shall be interpreted under the laws of the State of Washington, and, in the event of any controversy or claim arising out of or relating to this Agreement or the breach or interpretation thereof, the Parties shall submit to the exclusive jurisdiction of and venue in the Superior Court of King County, Washington, or the Federal District Court for the Western District of Washington, and their respective appellate courts; provided, however, that Zonar may seek to obtain injunctive or equitable relief for breach or threatened breach by Customer of any provision of this Agreement in any court of competent jurisdiction. Facsimile or scanned signatures will be deemed originals.~~

READ AND AGREED
03Feb2015

Zonar Version

CUSTOMER

Signature: _____ Print Name: _____ Title: _____ Date: _____

ZONAR

Signature: _____ Print Name: _____ Title: _____ Date: _____

EXHIBIT A

Links to Third Party Terms for 2020 Tablet Apps

Navigation App

ALK CoPilot Software

Please note that these terms are controlled solely by ALK, and Zonar has no ability to negotiate these terms. From time to time ALK may change these terms. The most current version of the ALK EULA can be found at: <http://www.copilotlive.com/us/eula.asp>

SCHOOL DISTRICT ACKNOWLEDGMENT & PERMISSION FOR STUDENT BUS RIDERSHIP TRACKING

(Z PASS SPECIFIC TERMS OF USE FOR SCHOOLS):

If Customer is a public school district in the United States ("District") and has purchased the Z Pass Service, then District acknowledges and agrees to the following:

- District is subject to the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), a federal law that protects the privacy of student education records ("FERPA");
- District collects, uses, maintains, and discloses student education records, including school bus usage and location data ("FERPA Data") in accordance with FERPA;
- District has outsourced certain services/functions with regard to FERPA Data that would otherwise be performed by District personnel to Zonar, including collecting FERPA Data regarding school bus usage data, school bus location data, and student ridership data, and disclosing that FERPA Data to a student's parent or guardian upon request (collectively, the "Z Pass Service"), and;
- Zonar's Privacy Policy is consistent with the District's own policies for protection of FERPA Data.

Zonar Systems, Inc. ("Zonar") acknowledges and agrees to the following:

- Zonar is acting as a contractor to the District in performing the Function, either directly, under the terms of a contract between the District and Zonar, or indirectly, through another District contractor such as a school bus contractor;
- Zonar's maintenance, use, and disclosure of FERPA Data which it collects or has access to is performed in accordance with Zonar's Privacy Policy.
- Zonar uses reasonable methods to ensure that only individuals with a legitimate educational interest (as to a particular student, such individuals include that student, that student's parent/guardian, and the District (collectively, "Permitted Recipients")) have access to that student's FERPA Data in Zonar's possession or control.
- Zonar uses reasonable methods to ensure that no third parties, with the limited exception of third parties expressly authorized by a student's parent/guardian (each an "Authorized Third-Party Recipient"), have access to that student's FERPA Data in Zonar's possession or control.

District hereby grants Zonar express permission, in accordance with the above, to collect, access, use, and disclose to Permitted Recipients and Authorized Third-Party Recipients, the FERPA Data described above.

EXHIBIT B:

Additional Terms and Conditions Applicable to Leased/Bundled Hardware

1. Lease Term. As noted in Section 3, the Term for any Agreement including Leased Hardware shall be for a period of 3 years following commencement of Service billing (also as described in Section 3 above). Upon expiration, the Term shall automatically renew for additional one-year periods, unless otherwise terminated as described in Section 6 above. Zonar retains title to leased Hardware. Leased Hardware can include V-Series GPS units, ZTrak GPS units, EVIR 2010 handheld's, 2020 Tablets, and Z Pass readers. The Leased Hardware being provided to Customer will be identified in the Quote and summarized in Section 18 of the main body of this Agreement.

2. Title. Title in the leased Hardware shall at all times remain with Zonar. Zonar may enter Customer's property to repossess the leased Hardware if Service Fees are not received in full by their due dates.

3. Lease Payments. Unless otherwise specified in an applicable Order, lease payments for use of the Leased Hardware shall be included in the Service Fees (whether separately stated or included as a component of a lump sum). Service for Leased Hardware cannot be turned on and off during the Term, but Leased Hardware can be moved from one vehicle to a different vehicle. Customer must notify Zonar when such movement occurs.

4. Return of Hardware. Upon expiration or termination of the Term for any Agreement including Leased Hardware, Customer shall be solely responsible, at its own expense, for the de-installation, packing, rigging and delivery of the Leased Hardware, in an unencumbered state, back to Zonar, at a location specified by Zonar (if no such location is specified, then Zonar's headquarters location as of the date of termination, as identified on Zonar's public facing website, www.zonarsystems.com, which currently is 18200 Cascade Ave, Seattle, WA 98188). Should Customer not return the Leased Hardware at the end of the Term, the Term shall be extended for successive three (3) month periods, and Customer shall continue to pay Service Fees with respect to such Leased Hardware, subject to the right of either Party during each such extension to terminate the extended Lease Term upon thirty (30) days' written notice. Upon such a termination, Customer shall promptly deliver the Leased Hardware to Zonar or its agents. If Customer fails to return the Leased Hardware upon Zonar's demand, Customer shall pay Zonar, as the reasonable measure of Zonar's damages and not as a penalty, the then current list price for functionally equivalent Zonar Hardware. Any Leased Hardware that is returned in inoperable condition, or which exhibits more than ordinary wear and tear, will be subject to the Stipulated Loss Value defined below.

5. Net Lease. Each lease of Leased Hardware under an Order is a "net lease." Therefore, Customer's obligation to pay all Service Fees and/or other sums due and payable, with respect to the Leased Hardware and Customer's rights to such payments, shall be absolute and unconditional and not subject to any abatement, reduction, setoff, counterclaim or other defense for any reason whatsoever, including, but not limited to, any claims which Customer may have against any third party or Zonar. It is a primary purpose of Zonar in entering into such lease(s) to claim all available tax benefits of ownership with respect to the Leased Hardware under the pricing and term of this Agreement. Therefore, Customer acknowledges and agrees that (i) no right, title or interest in the Leased Hardware has been or is intended to be passed to Customer, other than the right to maintain possession and use of the Leased Hardware for the Term and any extensions thereto under the terms and conditions of the Agreement; (ii) Customer has not taken and shall not take at any time during the Term and any extensions thereto any action which shall cause Zonar to lose any tax benefits of ownership; and (iii) the Stipulated Loss Values (defined below) are intended to provide recovery by Zonar of any such lost tax benefits of ownership.

6. Loss of Leased Hardware. Customer shall bear the entire risk of the Leased Hardware being lost, destroyed or otherwise rendered permanently unfit or unavailable for use from any cause whatsoever (an "Event of Loss") after such Leased Hardware has been received by customer shipped by Zonar or its agents. If an Event of Loss shall occur with respect to any Leased Hardware, Customer shall promptly and fully notify Zonar thereof. On the Service Fee payment date following such notice, Customer shall pay to Zonar an amount equal to the Service Fee or other payments applicable to such Leased Hardware then due and payable, plus a sum equal to the Stipulated Loss Value of such Leased Hardware as of that date. "Stipulated Loss Value" shall be determined by the then current list price for functionally equivalent Zonar Hardware. Upon payment of the Stipulated Loss Value, Zonar will provide Customer with replacement units of the Leased Hardware, at no additional charge other than the remaining Service Fees and or lease or rental fees applicable to the replaced Leased Hardware.

7. Insurance. Customer at its own election can self-insure the Leased Hardware, or can obtain and maintain, at its own expense, property damage and liability insurance and insurance against loss or damage to the Leased Hardware including, without limitation, loss by fire (including so-called extended coverage), theft and such other risks of loss as are required on the type of Leased Hardware leased hereunder and by the businesses in Customer is engaged. Regardless of whether Customer purchases such insurance, Customer will be liable to Zonar for any Leased Hardware losses, including any losses in transit when such Leased Hardware is being returned to Zonar after termination of the Term, based on the Stipulated Loss Value defined above.

8. Possession, Pledge. Without the prior written consent of Zonar, Customer shall not (i) sublease the Leased Hardware, provided that Customer may, without such consent permit, any parent or subsidiary of Customer to use the Leased Hardware in the ordinary course of business; (ii) create or incur any lien or encumbrance with respect to the Leased Hardware; or (iii) permit the Leased Hardware to be removed outside of the United States or Canada.

9. Warranty. Zonar warrants that the serialized (i.e., tracked by Zonar using unique serial numbers) Leased Hardware elements of any Zonar Offerings delivered by Zonar or its agents to Customer as a leased item under this Agreement shall be free from all material defects in workmanship under normal use and service throughout the Term. Provided that such Leased Hardware is used and handled by Customer as intended and in accordance with this Agreement, and that Customer provides Zonar with notice within the applicable warranty coverage period, as Customer's sole and exclusive remedy, Zonar will replace any failed or functionally impaired Leased Hardware with equivalent Leased Hardware in terms of performance and functionality. This warranty does not apply to ancillary components and ordinary wear items (e.g., batteries, cables brackets, cradles, etc.) and any Leased Hardware that has been misused, altered, willfully abused or that has been subject to water or other environmental damage or that has been damaged due to improper installation by Customer or its agents. Leased Hardware installations must follow Zonar's equipment-specific installation guidelines to qualify for the foregoing warranty. If Leased Hardware is determined by Zonar to be damaged due to any of the aforementioned causes, Customer will be charged the price of a refurbished unit plus shipping and handling. Return of any Leased Hardware requires a Return Material Authorization ("RMA") number. All RMA's must be pre-authorized by Zonar Customer Care at: E-mail: Customercare@zonarsystems.com. Phone: 1 877 THE EVIR.

EXHIBIT C

ID Issuance and Use Procedures for Electronic Signatures in the Zonar Commercial Vehicle Safety Inspection System

1. Introduction

This document outlines policies and practices recommended by Zonar Systems to its Customers, for issuance and use of Zonar ID Cards and UserIDs to electronically sign commercial vehicle inspection and repair records in the Zonar EVIR™ System. Zonar recommends that its Customers consistently follow careful procedures in the issuance and use of ID Cards and UserIDs that create electronic signatures on vehicle inspection records and repair certifications, in order to enhance the accuracy of those records and the accountability of Drivers and Motor Carriers for the records they create.

Under the federal law, an “electronic signature” is “an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” The Zonar EVIR™ System associates a unique Driver ID number or UserID with each record created or modified in the Zonar EVIR™ System, thereby allowing system users to electronically sign inspection and repair records.

2. The Electronic Signature Process in the Zonar System.

The Zonar EVIR™ System provides a process to accomplish the three signature steps necessary for complete management of vehicle inspection and repair records under the requirements of FMCSA regulations (CFR 396.11 and 396.13). The Driver electronically signs each inspection record, the Motor Carrier or its agent (the “Certifier”) electronically signs a repair certification, and the Driver signs an acknowledgement of the review of the repair certification.

The EVIR™ system uses two types of identity credentials to electronically sign records. All Drivers use a Driver ID Card to uniquely identify themselves in the system. All Certifiers use a UserID, in the form of a unique login name protected by a secret password.

Each Driver receives a Driver ID card containing a data chip that stores a unique ID number for the individual Driver to whom the card is issued. Whenever a Driver uses the Zonar EVIR™ System to conduct a vehicle inspection, the Zonar Handheld Device (the “Device”) reads the Driver ID card to login the Driver to the Device, to create an inspection record. The Device automatically stores the Driver’s unique ID number with each record created by the Driver.

When the Driver has used the Device to complete all required actions for an inspection report, the Device will ask the Driver to certify as follows: “I certify the report submitted is true and accurate.” The Driver provides his/her signature on the certification by using the Device’s “Yes” command, and the Device stores all inspection data inputted by the Driver as a completed non-alterable inspection record, including the Driver’s unique ID number. The complete, electronically-signed inspection record is then ready for upload from the Device to the Zonar computer-based record management system (part of the EVIR™ System).

Whenever a Driver creates a record that lists a defect or deficiency that would affect the safety of operation of the vehicle or result in its mechanical breakdown, the record is then accessed by the Certifier who is responsible for assuring that proper corrective action is taken on behalf of the Motor Carrier. Once corrective action is completed, the Certifier accesses the database portion of the Zonar EVIR™ System using a unique login name that serves as a UserID for signing the certification record. The Certifier must enter the login name, and an associated secret password created by the Certifier, to enter the system and make a repair certification. Privileges associated with a UserID may include the ability to enter a repair certification, but do not allow the Certifier to modify any of the content of the original inspection record submitted by the Driver. After accessing a repair record, the Certifier’s name is automatically entered in a non-editable field in the “Corrective Action” section of the record, so that it cannot be modified. The Certifier then certifies either “Above defects corrected” or “Above defects need not be corrected for safe operation of the vehicle” (other repair notes may be entered by the Certifier, as well as additional comments regarding the corrective action. The entries mentioned here are those that constitute a completed repair certification under CFR 396.130). The repair certification is stored as a permanent, non-alterable record containing the name of the Certifier.

Using the EVIR™ Handheld Device, the Driver reviews the last vehicle inspection record together with the repair certification. Whenever a Driver conducts a vehicle inspection on a vehicle for which the last inspection noted a defect or deficiency, the EVIR™ Device will ask the Driver for an acknowledgement that, “I have reviewed the previous report and accept the certification of repairs.” If the Driver provides this acknowledgement, using the “Yes” command on the EVIR™ Device, the record of the acknowledgement is stored in the “Corrective Action” section of the last inspection report, including an electronic signature by the Driver using the unique ID number from the Driver’s ID card.

3. Recommended ID Issuance Processes

Driver ID cards and UserIDs are issued to individual Drivers and Certifiers by the Zonar Customer that owns, operates or is otherwise responsible for assuring proper inspections and repairs for commercial vehicles managed with the Zonar EVIR™ System. The Customer is responsible for assuring that each Driver ID card is issued to the Driver assigned to the card (i.e., that the ID card holding the unique ID number assigned to a particular Driver is received and used only by that designated Driver). Each Driver ID card is imprinted with the Zonar ID card number that is embedded in the data chip contained in the card.

Likewise, the Customer is responsible for assuring that each UserID is issued to the Certifier whose name is associated with that UserID. Zonar recommends the following issuance process to its Customers:

- Upon or before delivery of an ID Card to a Driver, Customer assigns the ID Card to the Driver by entering into the Zonar EVIR™ System the name of the Driver and the ID card number.
- Upon delivery of the Driver ID card to the Driver, each Driver signs a Zonar ID Card User Agreement (see attached agreement). The Customer can deliver the ID Card and the User Agreement to the Driver together, so that both the Driver and the Customer can confirm that the Driver has received the ID Card with the ID Card number assigned to that Driver.
- The Customer or the Driver can print the Driver's name in ink on the ID Card at the time of issuance.
- The Customer assigns a login name and temporary password to each Certifier. Upon receipt of this login information, the Certifier signs a UserID agreement (see attached agreement). The Certifier is instructed, and agrees under the terms of the UserID agreement, to change the temporary password to a secret password of the Certifier's own choosing, prior to creating any repair certification records in the Zonar EVIR™ System.
- Customer should provide a copy of the User Agreement for the Driver or Certifier to retain in his or her own records.

4. ID User Agreements

ID user agreements with the Zonar system are designed to inform Drivers and Certifiers of the responsibilities surrounding use of the ID Card or UserID as a signature tool in the Zonar EVIR™ System. The agreements also help Customers establish procedures for careful control of the IDs used for signature processes in the Zonar system.

The ID Card User Agreement records the Driver Name, Driver CDL Number, Driver ID Card Number, ID Card Issuer and Phone, and Date of Issuance for each ID Card issued to a Driver. The UserID agreement records similar information for each Certifier. Each agreement also contains a list of acknowledgments and responsibilities undertaken by each Driver or Certifier in using ID Card or UserID. The Customer maintains in its records the signed User Agreements for all Drivers and Certifiers to whom IDs are issued.

Zonar recommends that the Customer provide a copy of the User agreement to each Driver or Certifier at the time of issuance of the ID Card or UserID. This provides the Driver or Certifier with a record of the responsibilities associated with use of the ID, and contact information to assist the Driver or Certifier in obtaining revocation of the ID if it is lost or stolen.

5. ID Revocation Procedure

Customers should appoint a person or persons authorized to receive ID Card or UserID revocation requests, to handle revocation of IDs in the Zonar EVIR™ System, and to issue new IDs to Drivers and Certifiers, if necessary, after revocation of an old ID. Often, it is expected that this person will be the same person who handles the original issuance of the ID Card or UserID. Enabling prompt revocation and reissuance of IDs will help to assure that Drivers and Certifiers can carry out their responsibilities under the User Agreements.

Contact information for the person(s) handling this role may be included in the User Agreement, but Customers may also communicate this information through other normal channels, such as Human Resources, Zonar system administrator(s), or other persons with whom Drivers and Certifiers regularly have contact in connection with their use of the Zonar EVIR™ System.

Customers should also revoke ID Cards and UserIDs upon termination of a Driver's or Certifier's contractual or employment relationship with the Customer. Revocation of the ID Card Number or UserID (login name) from the Zonar EVIR™ System prevents any further use of the terminated Driver's or Certifier's ID for signatures on inspection or repair records, while preserving those records created by the Driver or Certifier that already exist in the system.

Copyright 2002 Zonar Systems, Inc. This document is copyrighted by Zonar Systems and is provided for the intended recipient's review only. Permission to otherwise copy, electronically reproduce, or reprint this document, in part or in whole, is expressly prohibited unless prior written consent is obtained from Zonar Systems

Zonar EVIR™ Safety Inspection System ID Card User Agreement

Driver Name: _____

Driver CDL Number: _____

Zonar ID Card Number: _____

ID Card Issuer: _____

Issuer Contact Person: _____ **Issuer Phone:** _____

Date of Issuance: _____

Driver understands, acknowledges and agrees to the following representations and responsibilities to the ID Card Issuer in connection with the Driver's use of the Zonar ID Card:

1. Driver has received the ID Card with the ID Card Number listed above.
2. Driver will use the ID Card for the sole purpose of electronically identifying the Driver as the person conducting vehicle inspections using the Zonar System.
3. Each use of Driver's ID Card to create an inspection record in the Zonar system constitutes an electronic signature by the Driver certifying that:
 - the information contained in the inspection record is true and accurate; and
 - the Driver has created and signed the vehicle safety inspection record in accordance with Federal Motor Carrier Safety Administration regulations CFR 396.11 and 396.13 and other applicable federal and state regulations, and in accordance with all other policies and procedures required by the ID Card Issuer.
4. Driver is responsible for the content of all inspection records created in the Zonar system using the Driver's ID Card. Driver shall keep the ID Card within Driver's sole possession and control, and shall not allow any other person to conduct vehicle inspections using the ID Card. If Driver suspects or discovers that Driver's ID Card has been used by another person to create an inspection record in the Zonar system, Driver shall immediately notify the ID Card Issuer.
5. If Driver suspects or discovers that the ID Card has been lost or stolen, Driver shall immediately notify the ID Card Issuer so that the ID Card can be revoked and a new ID Card issued to Driver.
6. Driver has received a copy of this agreement to retain in Driver's own records.

Driver: _____ **Date:** _____

Signature

EXHIBIT C
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 24th day of April, 2015

CONTRACTOR

Authorized
Signature

Title

Zohar Systems
[Signature]
VP, HR

CITY OF AUSTIN
FSD - PURCHASING OFFICE

CERTIFICATION OF EXEMPTION

DATE: 2/26/14	DEPT: Watershed Protection and Parks & Recreation Depts
TO: Purchasing Officer or Designee	FROM: Donna Lee Bliss
BUYER:	PHONE: 512-974-2530

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase.

(Please check which exemption you are certifying)

- | | |
|---|--|
| <ul style="list-style-type: none"><input type="checkbox"/> a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality<input type="checkbox"/> a procurement necessary to preserve or protect the public health or safety of municipality's residents<input type="checkbox"/> a procurement necessary because of unforeseen damage to public machinery, equipment, or other property<input type="checkbox"/> a procurement for personal, professional, or planning services<input type="checkbox"/> a procurement for work that is performed and paid for by the day as the work progresses<input type="checkbox"/> a purchase of land or right-of-way<input type="checkbox"/> a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive | <ul style="list-style-type: none">replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits<input type="checkbox"/> a purchase of rare books, papers, and other library materials for a public library<input type="checkbox"/> paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements<input type="checkbox"/> a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters |
|---|--|

a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212

- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal

government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391 services performed by blind or severely disabled persons

- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
☐ electricity
☐ advertising, other than legal notices
Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

Sole Source replacement for expired CT5600*52 with Zonar Systems for hardware and software for vehicles to be added, and annual software maintenance. Zonar Systems is the sole supplier of the Electronic Vehicle Inspection Reports(s) (EVIRTM) System [US Patents 6,671,646,6,804,626 and 7,117,121, System and Process to Ensure the Performance of Mandated Safety Inspections.]

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City.

This vendor was selected by Fleet as the recommended system for electronic inspection of motor vehicles.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Zonar Systems for 6 years (initial 3 year term plus 3 each 1 year extension options which will cost approximately \$211,421.76.

Recommended Certification

Donna-Lee Bliss
Originator

2-26-15
Date

Approved Certification

[Signature] 3/11/2015
Department Director or designee Date

[Signature] 3/13/15
Assistant City Manager / General Manager
or designee (if applicable) Date

Purchasing Review
(if applicable)

[Signature] 4/13/15 [Signature]
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

11/14/12