

## TRANSIT TECH LAB PROOF OF CONCEPT AGREEMENT

[REDACTED], (“Contractor”) hereby agrees to participate in a proof of concept project (“POC”) for The Port Authority of NY & NJ (“Port Authority” or the “Authority”) subject to the terms and conditions set forth in this Transit Tech Lab Proof of Concept Agreement (“Agreement”).

1. The Contractor shall (and shall compel the Contractor’s officers, employees, agents, contractors, guests, invitees and those doing business with the Contractor hereunder to observe and comply with any and all present and future: (a) governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to the Contractor’s activities hereunder; (b) Port Authority facility rules and regulations; and (c) Port Authority security procedures.

2. The term of this Agreement shall be for a period of **eight (8) weeks** commencing on the date that the Port Authority identifies as the commencement date for the POC, subject to earlier termination as may be provided herein.

3. The Contractor agrees that it shall receive no payment or other compensation or reimbursement for the performance of any of its obligations which are part of the POC or that are set forth in this Agreement or in its Scope of Work, attached hereto as Attachment A (“Scope of Work”). The work to be performed pursuant to the Scope of Work shall take place at [REDACTED] and such other locations as the Port Authority and Contractor may mutually agree from time to time.

4. This Agreement may be terminated by the Port Authority without cause upon five (5) days’ notice; however, the Port Authority may immediately terminate this Agreement if the Contractor fails to observe or are not in compliance with any of the terms and conditions of this Agreement. Termination shall not relieve the Contractor of any obligations which have accrued on or prior to termination.

5. The Contractor shall not sell, assign, pledge, or otherwise transfer this Agreement or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the Port Authority. This Agreement shall be binding upon, and/or inure to the benefit of, all Contractor’s partners, partnerships, subsidiaries, parent corporations and affiliates, and all of its and their respective predecessors, successors, assigns, heirs, legal representatives, officers, directors, shareholders, agents and employees.

6. Neither the Commissioners of the Port Authority, nor any officer, agent, or employee thereof, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted breach, thereof.

7. This Agreement shall be construed in accordance with the laws of the State of New York. Contractor agrees that any action at law or equity arising out of this Agreement, including to enforce of the terms of this Agreement or to seek a remedy for breach thereof, shall be brought in a court of competent jurisdiction located in the County of New York of the State of New York.

8. The Contractor and the person signing this Agreement on behalf of the Contractor, jointly and severally represent and warrant that such individual has the full and complete legal authority and capacity to bind Contractor to all of the terms and conditions contained in this Agreement and to perform all of the work required or contemplated by the Scope of Work.

9. This Agreement does not constitute Contractor as the agent or representative of the Port Authority for any purpose whatsoever. It is hereby acknowledged and agreed that Contractor, in performing its services hereunder, is, and shall at all times be, an independent contractor and the officers, agents, and employees of Contractor shall not be or be deemed to be agents, servants or employees of the Port Authority.

10. Any information given to the Port Authority before, with or after submission of the Agreement on Terms of Discussion (attached hereto as Attachment B), either orally or in writing, is not given in confidence and may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever except as otherwise set forth in the Agreement On Terms of Discussion.

11. Subject to the terms and conditions of this Agreement, Contractor grants to the Port Authority a non-exclusive, non-transferable license to use all the software required, if any, for the work described herein and in the Scope of Work. The software shall at all times remain the property of the Contractor. The Port Authority shall not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the software. Upon expiration or termination of this Agreement, the Port Authority shall cease any and all use of the software provided by Contractor hereunder and shall remove all installations of the software from its systems and/or devices. Contractor hereby waives, for the duration of this Agreement, any other terms and conditions of any end user license agreement or other license agreement it may have governing the use of its software.

12. A. If there is any third-party or open source software contained within any Contractor software being provided hereunder, the right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks, copyrights and trade secrets, collectively hereinafter referred to as "Intellectual Property Rights", in the performance of the work, shall be obtained by the Contractor without separate or additional compensation. Where the services under this Agreement require the Contractor to provide materials, equipment or software for the use of the Port Authority or its employees or agents, the Port Authority shall be provided with the Intellectual Property Rights required for such use without further compensation than is provided for under this Agreement.

B. All preexisting information or documentation including computer programs or code including source code, of the Contractor, utilized by the Contractor hereunder in the performance of his services hereunder shall be deemed licensed to the Port Authority for the duration and purposes of this Agreement, but shall remain the property of the Contractor.

C. When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Port Authority, the Contractor shall make available to the designated Port Authority representative all such passwords and codes.

D. Third party software not specially prepared for the purpose of this Agreement but utilized by the Contractor hereunder in the performance of his services hereunder shall be licensed to the Contractor and the Port Authority for the duration and purposes of this Agreement but shall remain the property of said third party.

E. All above-described software in this Section 12 shall be furnished by the Contractor without compensation.

13. A. If in accordance with this Agreement the Contractor furnishes research, development or consultative services in connection with the performance of the work and if in the course of such research, development, or consultation patentable or copyrightable subject matter or trade secrets or other proprietary matter is produced by the Contractor, its officers, agents, employees, subcontractors, or suppliers, not custom software, the Port Authority shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity related to this Scope of Work. Promptly upon request by the Port Authority,

the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to the Port Authority, but it is expressly understood and agreed that as between the Contractor and the Port Authority the license herein provided for shall nevertheless arise for the benefit of the Port Authority immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. Such license may be transferred by the Port Authority to its successors, immediate or otherwise, in the operations of or ownership of any facility now or hereafter operated by the Port Authority or the Port Authority but such license shall not be otherwise transferable.

B. The right of the Port Authority as well as the Contractor to use all patented material, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction as well as any copyrightable matter, trade secrets or other proprietary matters, shall be obtained by the Contractor without separate or additional compensation whether the same is patented or copyrighted before, during or after the performance of the work.

C. Both parties agree that anything developed in accordance with the terms hereof shall only be used within the Scope of Work, as defined herein.

14. A. The Contractor shall reimburse, indemnify and hold harmless the Port Authority, its Commissioners, Directors, agents, servants, officers, representatives and employees (collectively, the "Port Authority Indemnitees") from and against all loss and expense incurred in the defense, settlement or satisfaction of any claims and demands, just or unjust, of third persons (including Contractor's agents, servants, officers, representatives and employees) arising out of or in any way connected to or alleged to arise out of or alleged to be in any way connected with the Agreement and all other services and activities of the Contractor under this Agreement and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise out of or are in any way connected to the Contractor's operations or to its performance of work under this Contract, or arise out of the acts or omissions of the Contractor, the Port Authority, its Commissioners, Directors, agents, servants, officers, representatives or employees, third persons (including Contractor's agents, servants, officers, representatives and employees), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Agreement.

B. If so directed, the Contractor shall at its own expense defend any Claim, even if such Claim is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of any court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, directors, officers, agents or employees, their affiliates, successors and/or assigns, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

C. The Contractor shall promptly and fully inform the Port Authority of any claims or disputes for infringement or otherwise, whether existing or potential, of which it has knowledge relating to any Intellectual Property used, developed or licensed in connection with the performance of the work or otherwise in connection with this Agreement.

D. If the Port Authority be enjoined from using any of the facilities which form the subject matter of this Agreement the Port Authority may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply, temporarily or permanently, facilities not subject to such injunction and not infringing any proprietary rights and if the Contractor shall fail to do so, the Contractor shall, at its expense, remove all such facilities and refund the cost thereof to the Port Authority

and otherwise equitably adjust compensation and take such steps as may be necessary to ensure compliance by the Port Authority with such injunction, to the satisfaction of the Port Authority.

**15.** THE PORT AUTHORITY MAKES NO WARRANTIES, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, AND INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CONTRACTOR HEREBY RELEASES THE PORT AUTHORITY AND ITS OFFICERS, COMMISSIONERS, EMPLOYEES, CONTRACTORS, AND CONSULTANTS (COLLECTIVELY, THE "RELEASED PARTIES") FROM ANY AND ALL LIABILITY FOR LOSS, HARM, DAMAGE, INJURY, COST OR EXPENSE WHATSOEVER WHICH MAY OCCUR IN CONNECTION WITH OR PARTICIPATION IN THE POC.

**16.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE RELEASED PARTIES SHALL NOT BE LIABLE FOR DAMAGES OR LOSSES OF ANY KIND, INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF THE POC OR THIS AGREEMENT WITH SOLE AND EXCLUSIVE EXCEPTION THAT THE PORT AUTHORITY SHALL BE RESPONSIBLE FOR DAMAGES CAUSED BY ITS EXCEEDING THE SCOPE OF THE LICENSES GRANTED TO IT IN SECTION 11 (a "Port Authority License Violation"), ALL AS SPECIFIED AND EXPRESSLY LIMITED IN SECTION 17. IN NO EVENT SHALL THE RELEASED PARTIES' TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION EXCEED FIVE DOLLARS (\$5.00), WITH THE EXCEPTION THAT THE LIMIT OF LIABILITY OF THE PORT AUTHORITY FOR PORT AUTHORITY LICENSE VIOLATIONS SHALL BE NOT EXCEED ONE MILLION DOLLARS (\$1,000,000.00).

**17.** The Port Authority Information Security Handbook ("Handbook") can be found at, <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of Port Authority information considered Protected Information ("PI"), as defined in the Handbook, if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI.

**18.** Contractor may provide the Port Authority with Confidential Information (defined herein) in connection with the POC. Confidential Information means information in any form that meets the following two criteria: the information (a) is not publicly available, and (b) is marked or otherwise identified as "CONFIDENTIAL" ("Confidential Information"). The Port Authority shall not disclose or use the Contractor's Confidential Information except as expressly permitted under this Agreement and shall at all times exercise reasonable care to safeguard such Confidential Information. The Port Authority's obligation of confidentiality and non-use shall not apply where the information (that would otherwise qualify as Confidential Information): (i) is or after the latest signature date on this Agreement becomes publicly available or part of the public domain through no fault of the Port Authority; (ii) was in the Port Authority's possession at the time of receipt; (iii) is received from a third party without restriction and without breach of an obligation of confidentiality to the Contractor; or (iv) was independently developed by the Port Authority without reliance on the Contractor's Confidential Information. The Port Authority is entitled to disclose Confidential Information as necessary pursuant to any court order, or lawful requirement of a governmental agency or arbitrator (collectively, a "Disclosure Order"), or when disclosure is required by operation of law, including disclosures pursuant to any applicable securities laws and regulations. The Port Authority shall use reasonable efforts to notify the Contractor of a Disclosure Order, and reasonably cooperate with the Contractor (at the Contractor's expense), in protecting against or minimizing disclosure under the Disclosure Order, or in obtaining a protective order. The Port Authority agrees to protect the confidentiality of Contractor's Confidential Information for a period of twelve (12) months after the

expiration or termination of this Agreement or until such information is no longer confidential, whichever is sooner.

19. Notwithstanding anything in this Agreement, Contractor acknowledges that the Port Authority's obligations under this Agreement are subject to the provisions of its Access to Port Authority Public Records Policy, and any amendments thereto. The Port Authority's Access to Port Authority Public Records Policy (the "Policy") can be found at <http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>. The Port Authority shall notify Contractor promptly, in writing, of any and all public records requests or similar requests received regarding the information. Contractor will respond within five (5) business days and inform the Port Authority of Contractor's approval or disapproval of disclosure, explaining the grounds for any disapproval. In the event that Contractor disapproves of disclosure, the Port Authority will not object to Contractor's contesting such disclosure through legal proceedings, including seeking a protective order with respect thereto.

20. The Port Authority's Contractor's Integrity Provisions, a copy of which is located at <http://www.panynj.gov/business-opportunities/pdf/PA3764A.pdf>, are hereby made a part of this Agreement.

21. The Port Authority has adopted a Code of Ethics for Port Authority Vendors (the "Code"). The Code is hereby made a part of this Agreement. The Code can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

22. Contractor hereby acknowledges and agrees that it is performing the Work required pursuant to this Agreement with no expectation of compensation, contract, advertisement, endorsement, favor or further business. Nothing herein shall prevent the Port Authority from taking any actions or exercising any procurement options that it would otherwise have the right to do and Contractor is aware that they may not be the only provider of solutions under evaluation. In a manner consistent with its policies and procedures, the Port Authority may, at its sole discretion, elect to seek to evaluate and/or procure other solutions or may further elect to select no solution at all.

23. Contractor shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Port Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless Contractor first obtains the written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable. Notwithstanding such provision, the Port Authority generally will not object to a Port Authority contractor or subcontractor describing factual information that accurately describes the goods provided to, or services performed for, the Port Authority by such contractor or subcontractor or subconsultant in connection with a publicly known Port Authority agreement, and permission is not required when such information will be conveyed in bid or proposal documents for work with other entities.

24. At the conclusion of the POC, the Port Authority may, at its sole discretion: (1) decline to move forward with the Contractor; (2) extend the POC; (3) invite the Contractor to participate in a pilot program to continue demonstration of its products and services; or (3) proceed with any type of procurement permitted by the Port Authority's Procurement Guidelines at which time the Port Authority's procurement policies and procedures will apply.

**[CONTRACTOR'S NAME]**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A – Scope of Work**

**ATTACHMENT B – AGREEMENT ON TERMS OF DISCUSSION**