EVALUATION AGREEMENT

This **Evaluation Agreement** (the "Agreement"), effective as of the 18th of January, 2022 (the "Effective Date"), sets forth the terms and conditions under which ████████████████████████, , a Delaware corporation with an address at ████████████████████████ ("Supplier") will provide to: Metropolitan Transportation Authority ("MTA") a New York public authority and public benefit corporation with, with offices at 2 Broadway, New York, NY 10004 ("Customer") an evaluation copy of Supplier's software product(s) and corresponding Hardware as listed on the attached Exhibit A ("Product"). The purposes of the Agreement are for evaluation and testing of Supplier's Product by Customer ("Pilot"). Any API access and shall be subject to API documentation and the limited, nontransferable, license to use them shall run concurrently with that of the Products herein. Supplier and Customer agree that the specific conditions pertaining to this Pilot are as follows:

1.   Grant of License: Supplier grants to Customer, during the Term of this Agreement as specified in Section 4 below, a nontransferable, nonexclusive limited right to use the Software, or access the service in the case of SaaS, for the Pilot. This right is subject to the following additional specific agreements and covenants by Customer concerning the use of the Software:

- the Software is for Customer's use, benefit, and access, and Customer shall not sell or transfer any copies of the Software, shall not re-license, rent or lease the Software, nor permit third party access, nor use the Software for commercial time-sharing or service bureau use;
- Customer shall not make copies of the Software except as reasonably necessary to accomplish the Pilot;
- Customer shall not modify or cause or permit the disassembly, reverse compilation, or reverse engineering of the Software, except as otherwise specified by law;
- Customer hereby acknowledges that Customer does not acquire any rights in the Software, express or implied, other than those specified in this Agreement and, further, that Supplier owns all right, title and interest in and to its Products and any work product and analytics resulting therefrom and the use hereunder. Customer shall retain all rights, title, and interest in and to the data it submits to be used with the Products.

Notwithstanding the restrictions herein, Customer may provide access to the Products to its agents and consultants ("Consultants") for purposes of the Pilot in accordance with this Agreement. Customer is responsible for its Consultant's compliance with this Agreement.

2.   Pilot Fees: The fee to Customer for evaluating the Product, utilizing the Product and Hardware, and installing and uninstalling (including shipping and handling) the Product during the Evaluation Period shall be $0.

3.   Confidentiality. Each party (the "Receiving Party") acknowledges that it may receive from the other (the "Disclosing Party") Confidential Information relating to the Disclosing Party in accordance with the terms and conditions of the mutual Non-Disclosure Agreement executed by the Parties. Such information shall belong solely to the Disclosing Party and includes, but is not limited to: the terms of this Agreement and other technical, business, marketing and financial information, and any data not previously known that could reasonably be considered confidential or proprietary. The Product and all technical information relating thereto shall be considered confidential information of Supplier. Customer data shared as part of the evaluation of the Product shall be considered Confidential Information of Customer.

4.   Term: This Agreement shall commence on the Effective Date and terminate upon the end date set forth in Exhibt A. Either party may terminate this Agreement upon 5 business days prior written notice to the other party for any reason. Upon expiration or termination of this Agreement, (a) upon request each party shall immediately return or destroy all confidential information of the other party, (b) upon request, provide written certification that the foregoing obligations have been completed, and (c) all rights and obligations of the parties hereunder shall immediately cease except for the obligations described in Sections 3, 6, 7, and 10 which shall survive and remain effective. Upon the Effective Date, Supplier and Customer will agree upon the evaluation start date with an assessment period of 15 business days, or longer as indicated on Exhibit A (the "Assessment Period"), which may be extended upon mutual agreement of the parties. Supplier shall provide installation, usage training, and de-installation services, including the return of any Hardware, at no charge to Customer in conjunction with this evaluation of the Product. . Upon completion of the Evaluation Period, at Customer's sole discretion, Customer may purchase the Product or may complete the evaluation and request that Supplier uninstall the Product at no charge to Customer. Nothing in this Agreement shall be construed to be a commitment of Customer to purchase the Product or any part thereof. Customer is responsible for any damage to hardware while in its possession.

5.   Technical Support: Supplier will provide Customer with documentation and technical support necessary to install and administer the Product.

6.   Limited Warranties: THE PRODUCT IS PROVIDED "AS IS" WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

7.   Limitation of Liability: EXCEPT FOR BREACHES OF SECTION 1 AND INDEMNIFICATION, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR BENEFITS, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, BREACHES OF SECTION 1, AND OBLIGATIONS OF INDEMNIFICATION, NEITHER PARTY'S LIABILITY FOR DAMAGES RELATING IN ANY WAY TO THIS AGREEMENT OR THE CONDUCT OF THE PARTIES IN FURTHERANCE HEREOF UNDER ANY LEGAL THEORY, WHETHER CONTRACT, TORT, PRODUCT LIABILITY, BREACH OF IMPLIED DUTY OR OTHERWISE SHALL EXCEED THE GREATER OF ONE HUNDRED THOUSAND DOLLARS ($100,000) OR THE AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER.

8. **Governing Law:** This Agreement shall be governed by the laws of the State of New York, U.S.A.

9. **Pilot Report**: Supplier may use Customer's data as necessary to provide the Product/service for evaluation hereunder, and to create a report ("Pilot Report") and to evaluate the performance of the Product solely for the purpose of sharing such results, data, and Pilot Report with Customer.

10. **Intellectual Property Indemnification.** Supplier shall, at its own expense, indemnify, defend and hold Customer including its officers, director and employees harmless from and against any and all claims, costs, fees, damages, liabilities and expenses (including reasonable attorneys' fees) arising from any third-party claim, action, suit or proceeding to the extent based upon (i) any actual or alleged infringement, of the patent, copyright, trade secret, trademark or other intellectual property or trade secrets of any third party by Supplier or Supplier's products or ii) any claim relating to personal injury or property damage caused by Supplier's performance hereunder. If the Product becomes, or in Supplier's opinion is likely to become, the subject of an infringement claim, Supplier may, at its option and expense, either (a) procure for Customer the right to continue using the Product, (b) replace or modify the Product so that it becomes non-infringing, or (c) accept return of the Product and terminate this Agreement upon written notice to Customer. Customer shall, at its own expense, indemnify, defend and hold Supplier including its officers, director and employees harmless from and against any and all claims, costs, fees, damages, liabilities and expenses (including reasonable attorneys' fees) arising from any third-party claim, action, suit or proceeding to the extent based upon any customer data provided by Customer to Supplier to be used in the Pilot.
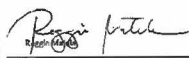
    a. **Security Sensitive Information.**

        i. "Security Sensitive Information" ("SSI") means any documents and other materials designated as such that contain data that is capable of compromising the security or integrity of the MTA security systems and/or infrastructure, including information that would allow an individual to duplicate, skim, counterfeit, or otherwise hack MTA systems or individual accounts within the MTA systems; and that are confidential or sensitive in nature and must not be disclosed to the public, whatever the form or storage medium, disclosed prior to, or subsequent to, the date hereof. The SSI that is covered by this SSI NDA is any information including, but not limited to, the MTA email communications systems; MTA IT security operating procedures and emergency services plans; IT security system locations, and other materials related to MTA security systems that is provided by, or on behalf of, the MTA.

        ii. The Contractor shall not disclose the SSI to anyone, without the prior written consent of the MTA and submission of an up-to-date Recipient Disclosure List (Schedule 1), as further described below, and then only after any such third party has agreed to keep such SSI confidential via and Acknowledge (Schedule 2). The Contractor agrees to take all reasonable steps to protect the confidentiality of and avoid disclosure or use of SSI in order to prevent it from falling into the public domain or the possession of unauthorized persons. The Contractor will, at a minimum, password protect and encrypt all SSI that is stored by the Contractor in electronic format. The Contractor acknowledges its understanding that the transmission process for SSI is subject to change as per the direction of the MTA Chief Information Security Officer. Notwithstanding anything to the contrary, the Contractor further agrees to comply with all applicable federal, state, local, and foreign data protection laws, and all other applicable regulations and directives in connection with its collection, access, use, storage, disposal, and disclosure of SSI.

        iii. The Contractor shall maintain a list of all of its personnel and any other third parties to whom the Contractor needs to disclose SSI, and such list shall include each individuals' name, title, reason for disclosure, and SSI anticipated to be disclosed (the "Recipient Disclosure List"), attached hereto as Schedule 1. The MTA must approve each individual listed on the Recipient Disclosure List prior to SSI being disclosed to such by the Contractor. Each approved individual must complete an Acknowledgement of the Contractor's Duty of Confidentiality (the "Acknowledgment"), attached as Schedule 2, to be submitted by the Contractor to the MTA Liaison prior to an individual receiving access to the SSI. The Contractor represents and warrants that (i) it has included on Schedule 1 hereto a Recipient Disclosure List that consists of those personnel and third parties to whom the Contractor intends to disclose SSI during the Term, (ii) it has provided a copy of its Duty of Confidentiality to all individuals listed in Schedule 1 and that such persons have completed the Acknowledgement, and (iii) it shall update the Recipient Disclosure List in writing, and provide any such updated Recipient Disclosure List to the MTA Liaison for written approval prior to disclosing any SSI to any personnel and third parties not on the then-current version of the Recipient Disclosure List or otherwise deviating from the information included on the Recipient Disclosure List (e.g., providing new SSI to a previously-identified individual). Failure to (a) maintain an updated Recipient Disclosure List, (b) secure an Acknowledgement from every individual on the Recipient Disclosure List, and (c) provide updates to the Recipient Disclosure List to the MTA will constitute a breach of this Agreement.

b. **Notices.** The Receiving Party will promptly notify the Disclosing Party in writing in case of any misuse or misappropriation of Confidential Information that may come to the Receiving Party's attention. The Contractor will notify the MTA within 72 hours of its knowledge of any misuse, misappropriation, or disclosure of PII and/or SSI.

c. **Treatment of Confidential Information, PII and SSI upon Termination.** Upon expiration or sooner termination or expiration of this Agreement for any reason, or otherwise promptly upon the Disclosing Party's request, the Receiving Party shall at its sole cost and expense and at the Disclosing Party's direction either: (i) return to the Disclosing Party all Confidential Information, PII and SSI (including copies and other derivatives of the same) in the Receiving Party's, as well as the above-mentioned individuals and entities, possession, custody, or control, or (ii) irrevocably destroy such Confidential Information (including copies and other derivatives of the same) and certify in writing to such destruction.

d. **No Transmission of Confidential Information, PII or SSI Outside of the United States.** In no event shall the Contractor transmit, transfer, or otherwise store MTA Confidential Information, PII and SSI outside of the United States without the MTA's prior written approval, which can be withheld or withdrawn for any reason.

e. **MTA IT Security Requirements.**
   i. As a public entity, the MTA is required by law, rule, or regulation to include certain provisions in agreements that it enters into with third parties, including provisions relating to the New York State Finance Law (collectively, the "Required Legal Provisions"). Notwithstanding anything to the contrary, if any Required Legal Provision is not included in this Agreement, or included incorrectly, then this Agreement shall be deemed amended so as to include the Required Legal Provision in the required form, and such Required Legal Provision shall be binding on the MTA, and the Contractor.

   ii. The Contractor's provision of the Solution requires compliance with New York State and MTA IT Security requirements and regulations for physical and electronic data security and industry best practices, whichever is more stringent. The MTA will provide any IT security requirements to the Contractor prior to execution of this Agreement. such will be provided to the Contractor by the MTA, and memorialized in a Schedule 3 (Security Requirements) to this Agreement.

11. **Assignment.** Neither party shall assign nor transfer any rights or obligations under this Agreement without the written consent of the other party, provided that a party may assign the Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets. Notwithstanding the foregoing, neither party may assign nor transfer any of its rights or obligations under this Agreement to a direct competitor of the other party.

12. **Entire Agreement:** ,Except where specifically stated otherwise herein, this Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. Except for Supplier-generated letters granting an extended Term and Assessment Period, this Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party. This Agreement shall also supersede all terms of any unsigned, "shrink wrap" or "click through" license included in any package, media or electronic version of Product provided under this Agreement. The parties may sign and deliver this Agreement by facsimile transmission or by electronic signature (i.e. Docusign). Each party agrees that the delivery of this Agreement by facsimile will have the same force and effect as delivery of original signatures.

EXECUTED BY: METROPOLITAN TRANSPORTATION AUTHORITY

Signature: _____

Name: Reggie Matela
Title: All-AgencyAssistant Deputy Chief Procurement Officer
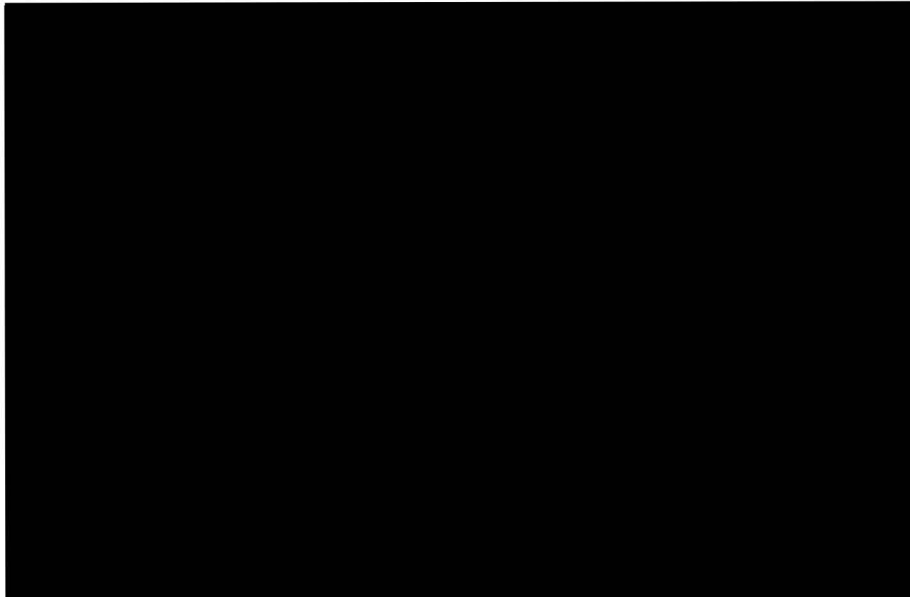   MTA Procurement

Date: 01/14/2022

Exhibit A

SOFTWARE AND HARDWARE TO BE DELIVERED TO CUSTOMER

ESTIMATED ASSESSMENT PERIOD START DATE: JANUARY 18, 2022
ESTIMATED ASSESSMENT PERIOD END DATE: APRIL 17, 2022
EMAIL ADDRESS (FOR SOFTWARE KEY DELIVERY INFORMATION): michael.lee@mtahq.org

	Users
	Unlimited Connections for Pilot
	Quantity
	1

CUSTOMER INFORMATION:

Name:	Michael Lee
Organization:	Metropolitan Transportation Authority
Address 1:	2 Broadway,
Address 2:	Office 24-14 B
City:	New York,
State:	NY
Zip:	10004
Email Address:	Michael.lee@mtahq.org