

**Agreement
Between the University of Maryland,
Center for Advanced Transportation Technology
and the**

**Regarding Participation In
The Capital Wireless Information Net**

1. Parties and Purpose

This Agreement is entered into by the University of Maryland, Center for Advanced Transportation Technology (CATT) on behalf and for the benefit of the Capital Wireless Information Net ("CapWIN") and _____ ("Agency"), for the purpose of establishing the terms and conditions for participation in and use of the CapWIN System. Therefore, in consideration of the mutual promises set forth herein, the parties hereby agree as follows:

2. Scope

- a. CapWIN is a regional interoperable communications project designed to enhance emergency and critical incident response communications by integrating transportation and public safety data system users from governmental agencies in the State of Maryland, the Commonwealth of Virginia and the District of Columbia. Agencies participating in CapWIN can readily access and effectively share and use information and data with other CapWIN participating agencies.
- b. Agency users will be activated and allowed to access the CapWIN SYSTEM after all procedural requirements, terms and conditions, and certifications have been filed, authorized and executed.

3. The CapWIN System

The CapWIN System is a multi-state, inter-jurisdictional, interoperable wireless mobile data system that facilitates the secure sharing of data resources among participating transportation and public safety agencies. It provides multi-host access to authorized mobile users of agencies within its operational area, including direct mobile-to-mobile, base-to-base, mobile-to-base and base-to-mobile communications across geographical, jurisdictional and agency boundaries. The CapWIN System and its user agencies will comply with all

security requirements imposed by applicable State and Federal authorities regarding the transportation of sensitive information via a wireless network.

CapWIN has implemented the CapWIN System by providing mobile computing and data computing capabilities and incident management support functions through a message hub and global directory. Upon agreement among the three subject jurisdictions and CapWIN, a link to select law enforcement agency databases in Maryland, Virginia and the District of Columbia is made available through a common CapWIN System interface to eligible law enforcement Agencies. As additional system capabilities, functions or data sources are implemented by CapWIN, they may be made available to Agency, subject to any additional terms and conditions required by CapWIN. It is, however, understood and agreed that system design, operating capabilities and other functions are in the sole discretion of CapWIN and subject to change.

Agency represents that it is a public safety agency eligible to participate in CapWIN, and it is interested in accessing the CapWIN System in accordance with the terms and conditions of this Agreement.

4. CapWIN Management and System Operations

CapWIN Management. Direction and leadership is currently provided through an organizational structure that includes a Board of Directors, and Committees composed of representatives of agencies from Maryland, Virginia and the District of Columbia. CapWIN management support is provided through the Center for Advanced Transportation Technology (“CATT”) of the University of Maryland, College Park (“UM”).

Subscription Fee. Agency will be assessed an annual Subscription Fee based on the number of devices on which an agency installs the CapWIN software. The Subscription Fee will support CapWIN costs associated with maintaining CapWIN general responsibilities as identified in Section 5(a) of this agreement.

Agency agrees to pay CapWIN a Subscription Fee in accordance with the most current fee schedule (based on the date this agreement is executed) as approved by the CapWIN Board of Directors. The Subscription Fee will be assessed beginning agency fiscal year [insert year]. Prior to the end of the first fiscal year for which a Subscription Fee has been assessed, and at the end of subsequent fiscal years during the duration of this agreement, Agency agrees to reassess the number of devices on which CapWIN is installed and pay CapWIN a Subscription Fee in accordance with the most current fee schedule (at the time of reassessment) as approved by the CapWIN Board of Directors.

Full deployment of CapWIN software to agency devices can take place after execution of this Agreement and upon completion of the required training for the proposed users and/or the in-house trainer. Deployment of CapWIN software is NOT contingent upon receiving payment of the initial Subscription Fee beginning agency fiscal year [insert year].

CapWIN shall invoice Agency for subscription fee. Invoices shall include the time period of the subscription and the fee according to the appropriate fee schedule. Agency will pay invoice within 30 days of receipt. All payments shall be; 1) made by check, and made payable to the University of Maryland, 2) payments shall be forwarded to the attention of Program Coordinator, University of Maryland, CapWIN, 6305 Ivy Lane, Ste 300, Greenbelt, MD, 20770.

Policies, Procedures and Standards. CapWIN is solely responsible for establishing, coordinating and modifying, in its discretion, all policies, procedures, and conditions for use and other standards for operation and utilization of the CapWIN System (collectively "SOPs"). As SOPs are established or changed, a written or electronic copy will be delivered to the Agency with reasonable advance notice for implementation, except in unforeseen, time-sensitive circumstances where such advance notice is not practicable. Agency must comply with and enforce among its users all SOPs as established and modified.

Connectivity. The Agency shall be connected to the CapWIN System on a date mutually agreed upon by the parties after the Agency has met all CapWIN System connection and participation requirements.

Interruptions. CapWIN reserves the right to interrupt, suspend or reduce access to and/or use of the CapWIN System by Agency or any other person or entity when such action is deemed necessary in CapWIN's sole discretion. CapWIN will endeavor, when feasible, to provide advance notice to Agency of any such interruption, suspension or reduction. As soon as feasible following the interruption, suspension or reduction, CapWIN will contact Agency in an attempt to resolve any problems and restore operations.

Point of Contact. The Agency shall designate a principal representative to serve as its central Point of Contact (POC) on matters relating to CapWIN System operations and this Agreement. The name, title and contact information (address, e-mail, telephone and fax numbers) shall be provided to CapWIN. Any changes to the Agency POC or the POC contact information shall be provided to CapWIN without unreasonable delay.

5. General Responsibilities

a. CapWIN

CapWIN will establish, maintain and operate the system infrastructure for the CapWIN System, as deemed necessary or appropriate by CapWIN.

CapWIN will provide mobile client software appropriate for authorized users from the Agency to utilize the CapWIN System. CapWIN will also provide any maintenance upgrades to client software, as deemed

necessary by CapWIN. All software shall be provided subject to CapWIN license agreement(s).

CapWIN will inform Agency of the minimum specifications for fixed and mobile user equipment, agency operating software and network connectivity, as applicable. Such specifications are subject to change in CapWIN's discretion. Should CapWIN change specifications (e.g. Windows 2000 to Windows XP as the minimum operating system) that affect the operability and/or utilization of the CapWIN System, reasonable notification will be made to the Agency, except in unforeseen, time-sensitive circumstances where it is not practicable.

CapWIN will provide Agency Administrator training for designated agency administrators. End user training will be available to agencies with less than 40 end users. For agencies with more than 40 end users, CapWIN will work with the agency to set up an appropriate "train-the-trainer" training schedule. The number of individuals to be trained and the number and type of classes provided will be based on the Agency's needs and capabilities and CapWIN's ability to meet those needs, as determined by CapWIN. Additional training may be provided as deemed necessary or appropriate by CapWIN due to upgrades or modifications in the system.

CapWIN will provide 24/7 help desk support for CapWIN software. The level of help desk support will be as determined by CapWIN.

b. Agency

The Agency must purchase, install and maintain at its own risk and expense all fixed and mobile user equipment and operating software required to access and use the CapWIN System. All such equipment and software must meet or exceed the minimum specifications established by CapWIN.

The Agency must provide and maintain at its own risk and expense all network connections (wired and/or wireless) needed to establish and maintain its connection to the CapWIN System. Such connections shall be subject to the approval of CapWIN, which may disapprove any connection it deems inconsistent with the objectives or successful operation of the CapWIN System.

The Agency shall pay any additional expenses associated with Agency-specific requirements (such as unique Records Management Systems (RMS) data).

6. Access to Law Enforcement System Databases

Upon and subject to agreement with the subject jurisdictions, CapWIN may include a CapWIN System link to one or more law enforcement system databases in Maryland, Virginia and/or the District of Columbia (e.g., Maryland Interagency Law Enforcement System (MILES), Virginia Criminal Information System (VCIN) and/or Washington Area Law Enforcement System (WALEs) ("Database" or "Databases"). Such a Database link will be made available for authorized users at eligible Agencies with law enforcement responsibilities and will be subject to any additional terms and conditions that may be required by CapWIN, including the execution of a Law Enforcement System Database Access Agreement.

In order to access a Database through the CapWIN System, Agency users must receive authentication and authorization as required by both CapWIN and the Database in the Agency's jurisdiction (Local Database). Only those users who receive both levels of authentication and authorization will be considered Authorized CapWIN Users for the purpose of Database access through the CapWIN System. Authorized CapWIN Users will receive Database access to the extent agreed by the participating Databases.

Before accessing any Databases through the CapWIN System, Agency shall, through its appropriate CJIS (Criminal Justice Information Services) Systems Agency (CSA), coordinate and receive any and all necessary approvals, authentications and/or authorizations (including mobile operator certifications and configurations) from the state and/or federal agencies responsible for maintaining those Databases or the information therein.

7. Security

Agency agrees to adhere to and enforce CapWIN System security procedures promulgated by CapWIN, and to be responsible for compliance in the use of the CapWIN System by its users. Agency and its users must also comply with all security and confidentiality requirements imposed by applicable state and federal authorities regarding access to Databases and the transportation of sensitive information via a wireless network.

In order to maintain security of the CapWIN System and related databases, the Agency will only enter into the CapWIN System the names of users who are authorized to use the CapWIN System, along with the appropriate role(s) and level(s) of authorization required for each, as established by CapWIN. Agency is responsible for establishing and maintaining its own access security, including the security of user identification, passwords, and any other confidential information related to its use of the CapWIN System. Agency shall promptly notify CapWIN of any known or suspected unauthorized use of its access to the CapWIN System and of any known or suspected breach of security. CapWIN will

notify Agency of any known breach of or challenge to the CapWIN System that affects Agency.

8. Disclaimers and Limitations of Liability

THE CapWIN SYSTEM AND ANY RELATED MATERIALS, INFORMATION AND SERVICES (INCLUDING DATABASES) ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED.

CapWIN, UM AND CATT EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CapWIN, UM AND CATT EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION THAT THE CapWIN SYSTEM AND/OR ANY RELATED MATERIALS, INFORMATION OR SERVICES (INCLUDING DATABASES) WILL BE UNINTERRUPTED, SECURE OR ERROR FREE OR WILL MEET AGENCY'S REQUIREMENTS, IF ANY, FOR QUALITY, SECURITY OR OTHERWISE.

AGENCY ASSUMES TOTAL RESPONSIBILITY FOR, AND ANY AND ALL RISK OF LOSS, DAMAGE OR LIABILITY WHICH AGENCY MAY SUSTAIN WHILE USING THE CapWIN SYSTEM OR RELATED RESOURCES, SERVICES AND FACILITIES (INCLUDING DATABASES), AND AGENCY HEREBY RELEASES AND AGREES NOT TO SUE CapWIN, UM, CATT AND/OR THEIR DIRECTORS, OFFICERS, AGENTS, EMPLOYEES AND STUDENTS, FOR ANY SUCH LOSS, DAMAGE OR LIABILITY IN CONNECTION THEREWITH.

IN NO EVENT SHALL CapWIN OR UM OR CATT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, RELIANCE, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY MIGHT ARISE AND REGARDLESS OF WHETHER CapWIN, UM AND/OR CATT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE DAMAGES WERE FORESEEABLE.

9. Term, Termination and Modification

This Agreement shall become effective on the date executed by the last party to sign ("Effective Date") and shall expire five (5) years thereafter.

Either party may terminate this Agreement by providing the other party with thirty (30) days written notice of termination. Should termination occur prior to payment of initial annual Subscription Fee as agreed to in Section 4 of this Agreement, there will be no obligation on the part of the Agency to pay any Subscription Fee to CapWIN. This Agreement may be terminated for cause by either party for failure of the other to comply with the terms of the agreement.

Except as otherwise provided herein, this Agreement may not be modified or amended unless mutually agreed upon in writing by the parties hereto.

10. Notices

All notices related to this Agreement sent to CapWIN must be sent in writing to CapWIN at:

CapWIN Deputy Director
CapWIN
6305 Ivy Lane, Suite 300
Greenbelt, Maryland 20770

or electronically at:

opsdirector@capwin.org

All notices related to this Agreement sent to the Agency must be sent in writing to the Agency at:

or electronically at:

Any notice(s) **required** by this Agreement to be in writing, may not be sent only in electronic form.

11. Miscellaneous

Both parties agree that, in the event of a dispute between the parties, CapWIN and the Agency will use reasonable, good faith efforts to attempt to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding, alternative dispute resolution that are mutually acceptable to the parties.

Neither party shall be in default of this Agreement if failure to perform any obligation is caused by supervening conditions beyond the party's control, including acts of God, civil unrest, strikes, labor disputes, governmental demands or requirements, or a service interruption from an underlying carrier or service provider.

The Agency may not assign any of its rights or obligations under this Agreement to any other person or entity without CapWIN's prior written consent.

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Maryland without regard to conflict of laws principles.

If any provision in this Agreement is held be unenforceable, the unenforceable provision shall be construed as nearly as possible to reflect the original intent of the parties and the remaining provisions shall remain in full force and effect.

The parties are independent parties. Respective employees and agents of either party are not employees or agents of the other. Nothing contained herein shall be deemed to create an agency, joint venture, franchise or legal partnership between or among them.

By signing this agreement, Agency acknowledges that this Agreement supersedes and replaces any terms and conditions of Purchase Order or other financial document(s) used to make payment(s).

AGREED:

**For UM, Authorized University
Representative on behalf and
for the benefit of CapWIN**

For the Agency

By: _____

By: _____

Typed: William L. Henry

Typed: _____

Title: CapWIN Deputy Director

Title: _____

Date: _____

Date: _____