



TOKEN TRANSIT™ AGREEMENT
FOR PILOT SOFTWARE AND SUBSCRIPTION SERVICES

This Pilot Agreement for Token Transit Software and Subscription Services (“Agreement”) dated _____, 2017~~8~~ (the “Effective Date”), is made by and between Token Transit, Inc., a Delaware corporation (“TT”), with its principal place of business located at 3425 19th St. San Francisco, CA 94110, and Maritime Metro Transit, a division of the City of Manitowoc, a Wisconsin Municipal Corporation, (“Customer”), with its principal place of business located at 915 S. 11th Street, Manitowoc, WI 54220 (each of TT and Customer may be referred to as a “Party”) with respect to the following:

WHEREAS, TT is the owner of a transportation ticketing and administration service, software, and related materials (collectively, the “Service”) which includes a downloadable mobile application (the “TT App”) currently available for Android and Apple smartphone devices allowing riders to purchase transit passes using credit or debit cards (among other payment methods that may be added to the Service), and then activate those digital passes which are visually validated by transit operators at the time of use; and

WHEREAS, the Customer seeks to participate in a pilot program during the Initial Term (defined below), which may be extended to full deployment, to (i) evaluate the feasibility and popularity of the Service for the sale and purchase of transit fares to allow riders of Customer’s transit system (such riders of Customer are referred to herein as “Riders”) to ride ~~{name/describe specific transit mode/brand}~~ Maritime Metro Transit (pre-paid digital transit fares for Riders purchased through the Service are referred to herein as “Digital Fares”) and (ii) to provide Feedback Information (defined below) to TT to enable TT to improve the Service;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the Parties hereby agree as follows:

TERMS AND CONDITIONS

Section 1 Service.

1.1 License Grant; Customer Policy Information.

(a) Subject to the terms of this Agreement, TT grants to Customer, during the Term, a limited, nontransferable, nonexclusive right to access and use the Service, as TT may modify it from time to time, in connection with Customer’s Riders, solely for Customer’s internal purposes. Riders will download the TT App directly from TT and/or TT’s authorized distribution platforms (e.g., the Apple App Store and/or the Google Play Store).

(b) Customer shall provide TT with information

regarding Digital Fares such as refund and Digital Fare expiration information (“Customer Policy Information”). TT currently makes available a web portal as part of the Service which is subject to the terms herein (and TT’s then current website terms of service applicable to the web portal, if any) in order for Customer to upload Customer Policy Information and/or access certain data from TT such as payment reports. Customer represents and warrants that it has all rights and authorizations necessary to grant the rights stated in this Agreement, to provide TT with Customer Policy Information, and that the Customer Policy Information is accurate.

1.2 Restrictions. Customer shall not reverse

Comment [KM1]: Jim, has this been prepared?



assemble, reverse compile or reverse engineer the Service including any software, or otherwise attempt to discover any Service source code or underlying Confidential Information (as that term is defined below). For the avoidance of doubt, Customer is not granted any rights to distribute the TT App. Customer will not remove or export the Service or any TT Confidential Information from the United States.

1.3 Support Obligations.

(a) As part of the Services, TT will (i) make available through the TT App the ability of Riders to purchase of Digital Fares and, based on the then current functionality of the TT App to view Customer Policy Information as may be provided by Customer and (ii) provide commercially reasonable customer service to Customer's Riders with respect to the functionality of the TT AP and to Customer in a manner consistent with the support that it provides all users of the TT App and its other transit customers, as TT determines in its discretion, respectively.

(b) Customer hereby authorizes the sale of Digital Fares to Riders via the Service. Customer shall be responsible throughout the Term (and thereafter as stated in Section 10.3) for (i) ensuring that the correct fare structure, including fees and Digital Fare expiration terms are incorporated into and/or provided through the Service, (ii) validating that each Rider has purchased the correct Digital Fare for the ride, as reflected in the TT App, at the time of the ride, (iii) ensuring that only authorized representatives access the web portal component of the Service on behalf of Customer and that all such data obtained by Customer from TT is used solely as permitted in this Agreement for Customer's internal purposes and in compliance with all applicable laws, rules, and regulations, and (iv) providing all customer support for Riders relating to Customer's transit service, which may include the ability to issue refunds to Riders through the TT web portal.

1.4 Feedback Information. TT seeks feedback and evaluation from Customer on the performance of the Service ("**Feedback Information**"), which Customer agrees to provide. TT may, at its sole discretion, utilize the Feedback Information to improve or to enhance the Service. With respect to the Feedback Information, Customer hereby assigns to TT any invention, work of authorship, idea, information, feedback or know-how (whether or not patentable) or other Feedback Information that is conceived, learned or reduced to practice in the course of performance under this Agreement and any patent rights, copyrights (including moral rights; provided that any non-assignable moral rights are waived to the extent permitted by law), trade secret rights and all other intellectual property rights of any kind with respect thereto. Customer agrees to take any action reasonably requested by TT to evidence, perfect, obtain, maintain, enforce or defend the foregoing. Feedback Information shall be deemed Confidential Information of TT.

1.5 Retained Rights. Except for the rights expressly licensed pursuant to this Agreement, TT retains all right, title, and interest in and to the Service (and all other products, works, and other intellectual property created, used, or provided by TT for the purposes of this Agreement).

Section 2 **Confidentiality.**

2.1 Confidential Information. As used herein, "**Confidential Information**" means all confidential and proprietary information of a Party ("**Disclosing Party**") disclosed to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including all code, inventions, know-how, business, technical, and financial information. The terms of this Agreement, Rider Data (defined below), and any non-public element of the Service are deemed the Confidential Information of TT without any further



marking or designation requirement. Confidential Information shall not include, or shall cease to include, as applicable, information or materials that (a) were available to the public on the Effective Date; (b) become available to the public after the Effective Date, other than as a result of violation of this Agreement by Receiving Party; (c) were rightfully known by the Receiving Party prior to its receipt thereof from the Disclosing Party; (d) are or were disclosed by the Disclosing Party generally without restriction on disclosure; (e) the Receiving Party received from a third party without that third party's breach of agreement or obligation to the Disclosing Party; or (f) are independently developed by the Receiving Party.

2.2 Non-Disclosure. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. For the avoidance of doubt, Confidential Information may be shared with the Receiving Party's employees, contractors, agents, sub-contractors, or consultants as required to perform Receiving Party's obligations hereunder; provided that, such individuals have agreed to be bound by obligations of confidentiality that are at least as restrictive as those contained in this Section 2. Each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior timely notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance. Absent the entry of a protective order, the Disclosing Party shall disclose only such information as is necessary to be disclosed in response to such subpoena, court order or other similar document.

Section 3 Rider Data.

3.1 Rider Data. The phrase "Rider Data" means and refers to any data provided or inputted by or on behalf of the Customer's Riders via the Service (e.g., through the TT App) for the sale or purchase of Digital Fares from TT, which may include email address, full name, cardholder information, credit cards or debit card information and bank information of the Riders, and any other data as described in TT's privacy policy for the TT App (as that privacy policy may be amended from time to time). Customer agrees and acknowledges that TT has a direct relationship with Customer's Riders via the TT App through which it collects Rider Data (along with similar data from riders of other transit customers of TT), and accordingly, Rider Data is owned and controlled by TT.

3.2 TT Obligations. TT shall:

(a) use the Rider Data in compliance with its privacy policy (as it may be updated from time to time) and applicable laws and regulations; (b) comply with applicable Card Networks' Operating Rules (i.e., applicable PCI standards, if any), as the same may be amended from time to time; provided, however, that Customer agrees and acknowledges that TT uses the services of third party payment processors who, as between TT and such third party, shall be solely responsible for their acts and omissions; and (c) maintain commercially reasonable industry-standard administrative, physical, and technical safeguards to protect the security and integrity of the Service and Rider Data.

3.3 Customer Obligations. In the event that TT shares any Rider Data, in its sole discretion, Customer shall (a) use (i) Rider Data at all times in compliance with the terms of this Agreement and (ii) personally identifiable Rider Data for the sole purpose of providing customer support to Riders during the Term; (b) use Rider Data in compliance with the then current TT privacy policy, applicable



laws and regulations, including Card Networks' Operating Rules (as the same may be amended from time to time), and any written instructions from TT; (c) maintain industry-standard administrative, physical, and technical safeguards to protect the security and integrity of Rider Data and notify TT in the event of any unauthorized access to or use of Rider Data; and (d) treat such Rider Data as the Confidential Information of TT.

Section 4 Fees and Payment.

4.1 Fees. In consideration for the Services set forth herein, the Customer will pay a fee ("Fee") in the form of commissions retained by TT for Digital Fares purchased by Riders through the Service during each calendar month as follows:

For each Digital Fare purchased by a Rider for use on Customer's transit system during the Term, TT will retain a Fee of (a) 10% of the gross total proceeds of the transaction processed by the Service that is greater than or equal to \$2.00 and (b) \$.06 + 7% of the gross total proceeds of the transaction processed by the Service that is less than \$2.00.

TT will forward the net total proceeds (less the Fee), taking into account any refunds, credits, chargebacks in accordance with TT's then current policy, or other make-goods granted, to Customer on a monthly basis, within 5 days following the end of each calendar month; for the avoidance of doubt, TT may delay payment if a negative balance occurs until Customer has a positive balance in its account.

4.2 Reports. TT shall provide Customer with reports showing the Fee calculation and/or access to an online reporting system as part of the Service ("Reports"). If Customer believes that TT has calculated the Fee incorrectly, Customer must contact TT no later than 30 days after the closing date on the first statement in which the error or problem appeared, in order to receive an adjustment or credit if verified by TT.

4.3 Taxes. Each Party will be responsible for any applicable taxes and TT may withhold from any payments to Customer any taxes that are required to be withheld under applicable law.

Section 5 Customer Identification; Use of Trademarks.

For the term of this Agreement, TT may disclose to third parties that Customer is one of its customers (including, without limitation, by using Customer's name(s), mark(s), and logo(s) in its publicity and marketing materials and in the connection with the Service). Similarly, during the Term, Customer is authorized to use the TT's name, mark(s) and logo(s) in Customer's municipal publications, website, social media, publicity and marketing materials, solely for publicizing the availability of the Service to its Riders.

Section 6 Warranty Disclaimer.

TT represents, and Customer acknowledges and agrees, that the Service is experimental in nature and that the Service, including all components thereof (e.g., the TT App), and access thereto are provided "AS IS" and may not be fully functional. TT DISCLAIMS ALL WARRANTIES RELATING TO THE SERVICE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES ARE NOT RELYING AND HAVE NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMERS, TT MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR THAT THE SERVICES WILL BE ERROR-FREE OR AVAILABLE AT ANY GIVEN TIME.

Section 7 Indemnification.



7.1 TT Indemnification. TT shall indemnify, defend and hold harmless Customer from and against any and all third party claims, damages, losses, expenses or liabilities, including, but not limited to, reasonable attorneys' fees, in each case payable to unaffiliated third parties, arising out of or resulting from the following: (a) the TT's breach of confidentiality obligations under Section 2 of this Agreement; (b) the willful misconduct or the grossly negligent acts, errors or omissions of TT, its officers, agents, and employees; and (c) breach of any covenant or representation herein.

7.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless TT from and against any and all third party claims, damages, losses, expenses or liabilities, including, but not limited to, reasonable attorneys' fees, in each case payable to unaffiliated third parties, arising out of or resulting from the following: (a) the Customer's breach of obligations under Section 2 or Section 3.3 of this Agreement; (b) claims, including from Riders, regarding or relating to the Customer's transit service including those relating to expired but unused Digital Fares and any unauthorized use or disclosure of Rider Data; (c) the willful misconduct or the grossly negligent acts, errors or omissions of Customer, its officers, agents, and employees; and (d) breach of any covenant or representation herein.

7.3. Conduct. A Party's indemnification obligations under Section 7 shall not apply unless: (a) the indemnifying Party has the sole right to conduct the defense of any such infringement claim or action and all negotiations for its settlement or compromise, and to settle or compromise any such claim; (b) the indemnified Party cooperates; and (c) the indemnified Party gives the indemnifying Party prompt written notice of any threat, warning, or notice of any such claim or action, with copies of any and all documents the indemnified Party may receive relating thereto.

Section 8 Damage Disclaimer and Liability Limitation.

8.1 Disclaimer of Damages. TT's aggregate maximum liability for damages arising out of or in connection with this Agreement, whether based upon a theory of contract or tort or otherwise, shall not exceed the amount of the Fee paid or due during the prior 12 month period. The Parties further acknowledge that nothing in this Section 8.1 shall be deemed to waive the rights to equitable relief.

8.2 Exclusion of Certain Damages. Subject to a Party's indemnification obligations, to the maximum extent permitted by law, in no event shall either Party be liable for any special, punitive, consequential, incidental, or indirect damages, including loss of profits, income, goodwill, cost of procurement of substitute goods or services, or revenue, in connection with this Agreement.

8.3 Basis of Bargain. EACH PARTY RECOGNIZES AND AGREES THAT THE DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL, BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

Section 9 Non-Assignment.

Neither Party may assign or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, that TT may assign or transfer this Agreement or any interest therein to an affiliate or a successor to all or substantially all of its business or assets, whether through an acquisition, merger, change of control, or otherwise. Any attempted assignment or transfer in violation of this Section shall be void and without



effect.

Section 10 Term; Termination.

10.1 Term. This Agreement will commence upon the Effective Date and continue in effect for a period of 365 days commencing upon public launch of the Service for use with Riders, unless earlier terminated as set forth herein (“Initial Term”). Unless terminated earlier as permitted herein, the Agreement will be extended automatically for successive additional terms of 90 days at the end of the Initial Term and each renewal term (collectively, the “Term”).

10.2 Termination. Either Party may elect not to renew this Agreement by giving written notice to the other Party at least 20 days prior to the end of the then current (initial or renewal) term. Either Party may terminate this Agreement for any reason or no reason upon 30 days’ written notice to the other Party at the address listed above, or immediately upon notice of any breach by the other Party of the provisions of this Agreement. Upon termination, the license granted hereunder will terminate and Customer shall immediately return or, at TT’s election permanently destroy, any and all documents, notes and other materials regarding the Service to TT, including, without limitation, all software, Confidential Information, including any Rider Data, and all copies and extracts of the foregoing, but the terms of this Agreement will otherwise remain in effect. At TT’s request Customer will certify under penalty of perjury that all Rider Data has been permanently deleted.

10.3 Obligations to Customer’s Riders Upon Termination. Upon termination or expiration of this Agreement (a) TT shall terminate the right of the Customer’s Riders to purchase any new fares on Customer’s transit service and (b) TT and Customer shall each keep active the right of customers to activate and use existing pre-purchased but unused Digital Fares for a period of 120 days from the

expiration or termination date of this Agreement. For the avoidance of doubt, TT shall have no obligation to support pre-purchased Digital Fares for more than 120 days after termination or expiration of this Agreement regardless of Customer’s policy.

Section 11 General

11.1 Applicable Law. This Agreement shall become effective only upon its execution by both TT and Customer and it shall be governed by and construed in accordance with the laws of the State of Wisconsin without regard to the conflicts of laws provisions therein. The jurisdiction and venue for actions related to then subject matter of this Agreement shall be the California-State of Wisconsin and United States Federal Courts located in San Francisco, California where Customer is located, and each Party hereby submits to the personal jurisdiction of such courts.

11.2 Attorneys’ Fees. In any action to enforce this Agreement the prevailing Party will be entitled to costs and reasonable attorneys’ fees.

11.3 Severability. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

11.4 Force Majeure. If the performance of this Agreement or any obligation hereunder (other than obligations of payment) is prevented or restricted by reasons beyond the reasonable control of a Party or its subcontractors, the Party so affected shall be excused from such performance to the extent of such prevention or restriction.

11.5 Entire Agreement. This Agreement and any exhibits and attachments hereto constitute the entire agreement between the Parties pertaining to



the subject matter hereof, and any and all written or oral agreements previously existing between the Parties are expressly cancelled and superseded by these terms. Any modifications of this Agreement must be in writing and signed by both Parties.

11.6 Notices. All notices, demands, requests or approvals to be given under this Agreement, must be in writing and will be deemed served when delivered personally, by email, or on the third business day after deposit in the United States mail, postage prepaid, registered or certified, addressed as follows:

All notices, demands, requests or approvals to the Customer:

[Transit Manager](#)
[City of Manitowoc](#)
[915 S 11th St](#)
[Manitowoc, WI 54220](#)

With a copy to:

[City Clerk](#)
[900 Quay Street](#)
[Manitowoc, WI 54220](#)
[\[notice contact information\]](#)

All notices, demands, requests or approvals to TT:

Token Transit, Inc.
 3425 19th Street, #17
 San Francisco, CA 94110
 Attention: Morgan Conbere

11.7 Equitable Relief. Due to the unique nature of the Parties' Confidential Information disclosed hereunder, there can be no adequate remedy at law for a Party's breach of its obligations hereunder, and any such breach may result in irreparable harm to the non-breaching Party. Therefore, upon any such breach or threat thereof, the Party alleging breach shall be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it, without the requirement of

posting a bond.

11.8 Independent Contractors. The Parties shall be independent contractors under this Agreement, and nothing herein shall constitute either Party as the employer, employee, agent, or representative of the other Party, or both Parties as Parties to a joint venture or partners for any purpose.

11.9 Headings and Interpretation. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa.

Formatted: Right: -0.13", Don't add space between paragraphs of the same style, Line spacing: single

Formatted: Superscript

11.10 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11.11 Survival. Sections 1.2, 1.3(b), 1.4., 1.5, 2, 3.3, 4 (e.g., for Fees not yet paid as of termination), 5, 6, 7, 8, 10.3, 11.1-11.11 and other terms which by their nature are intended to survive, shall survive termination or expiration of this Agreement.

11.12 Insurance. Each Party shall maintain throughout the Term insurance as it deems appropriate in connection with its respective obligations hereunder.



| [SIGNATURE PAGE FOLLOWS]



In witness whereof, the Parties, having all required authority, have caused this Agreement to be executed on the date and year first written above.

Formatted: Left, Indent: First line: 0", Space After: 0 pt, Line spacing: Multiple 1.15 li

Formatted: Indent: First line: 0"

[CUSTOMER NAME] City of Manitowoc [Token Transit, Inc.]

Comment [KM2]: City requires two signatures absent a resolution from the corporation authorizing one

By: _____ By: _____
[SIGNATURE] MAYOR JUSTIN M. NICKELS
Name: _____ NAME AND TITLE _____

Formatted: Indent: Left: 0", No widow/orphan control, Tab stops: 0.69", Left

Formatted: No widow/orphan control, Tab stops: 0.69", Left

Formatted: Indent: Left: 0"

Title: _____

TOKEN TRANSIT, INC.

CITY CLERK DEBORAH NEUSER By: _____
Name: _____
Title: _____
By: _____
Name: _____
Title: _____

Sonja Birr

From: Jim Muenzenmeyer
Sent: Monday, March 19, 2018 1:20 PM
To: Sonja Birr
Cc: Dan Koski; Marlo Kohlmann
Subject: Token Transit Agreement
Attachments: Token Transit Agreement.pdf

Sonja, Please place on the next DPI Committee agenda this agreement which has already been vetted by the City Attorney.

The Agenda item could read..."Discussion and possible action to approve agreement with Token Transit and to forward the agreement to the full Council for further action."

Thanks ~ Jim