API License Agreement

This Agreement is entered into by the Tri County Metropolitan Transportation District of Oregon (TriMet) and [COMPANY NAME] ("You" and "Your").

    1.   <u>Definitions</u>.

        (a)   "Application" means web or other software services or applications developed by you to interact with the API.

        (b)   "API" means the application programming interface, developer tools, and any API documentation or other API materials made available by TriMet.

        (c)   "API Key" means the security token TriMet makes available by TriMet to allow access to the HOP Fastpass® API.

        (d)   "HOP Fastpass® Data" means information and data (which may include Personal Data) related to HOP Fastpass® Service users, provided by TriMet under this Agreement.

        (e)   "HOP Fastpass® Service" means the electronic fair system operated by TriMet.

        (f)   "Personal Data" means any information relating to a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, a phone number, an email address, an identification number, location data, an online identifier, or any other information specific to that natural person.

        (g)   "TriMet" means the Tri County Metropolitan Transportation District of Oregon, (TriMet), a municipal corporation of the State of Oregon.

        (h)   "TriMet Marks" means TriMet's proprietary trademarks, trade names, branding, or logos made available for use in connection with the API pursuant to this Agreement.

        (i)   "Your Marks" means Your proprietary trademarks, trade names, branding, or logos that You provide to TriMet under this Agreement.

    2.   <u>License Grant</u>. Subject to and conditioned on Your compliance with all terms and conditions set forth in this Agreement, TriMet hereby grants You a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the term of the Agreement to: (a) use the API and HOP Fastpass® Data solely for the purpose of developing and distributing Your Application that will communicate and interoperate with the HOP Fastpass® Service and allow users to _____; and (b) display certain TriMet Marks in compliance with usage guidelines that we may specify from time to time.

You acknowledge that there are no implied licenses granted under this Agreement. TriMet reserves all rights that are not expressly granted. You may not use the API or any TriMet Marks for any other purpose without TriMet's prior written consent. You agree that use of the TriMet Marks in connection with this Agreement will not create any right, title, or interest, in or to the TriMet Marks in favor of You and all goodwill associated with the use of the TriMet Marks will inure to the benefit of TriMet.

In order to use and access the API, You must obtain an API Key through the registration process provided by TriMet. You may not share the API Key with any third party, must keep the API Key and all log-in information secure, and must use the API Key as Your sole means of accessing the API. Your API Key may be revoked at any time by TriMet. TriMet may set and enforce limits on your use of the API (limiting the number of requests that You may make), in TriMet's sole discretion. You agree that You will not attempt to circumvent such limitations.

3. <u>Use Restrictions</u>. Except as expressly authorized under this Agreement, You may not:

(a) copy, modify, or create derivative works of the API, in whole or in part;

(b) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the API;

(c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the API, in whole or in part;

(d) remove any proprietary notices from the API;

(e) purchase or register search engine or other pay-per-click keywords (such as Google AdWords), trademarks or domain names that use the TriMet Marks or any variations or misspellings that may be deceptively or confusingly similar to the TriMet Marks;

(f) make any modifications to any HOP Fastpass® Data, other than as reasonably necessary to modify the formatting in order to display it in a manner appropriate for Your Application;

(g) display any HOP Fastpass® Data that is more than [*number*] hours older than such HOP Fastpass® Data available via the API;

(h) store, post, distribute or process Personal Data without the express consent of the data subject to whom the Personal Data pertains;

(i) use the API or any HOP Fastpass® Data in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right, privacy right, or other right of any person, or that violates any applicable law;

(j) use the API or any HOP Fastpass® Data in any manner or for any purpose except the purpose described in Section 2(a);

(k) combine or integrate the API with any software, technology, services, or materials not authorized by TriMet;

(l) design or permit the Your Application to disable, override, or otherwise interfere with any TriMet-implemented communications to end users, consent screens, user settings, alerts, warning, or the like;

(m) use the API to replicate or attempt to replace the user experience of the TriMet's HOP Fastpass® Service; or

(n) attempt to cloak or conceal your identity or the identity of the Application when requesting authorization to use the API.

Your implementation and operation of the Application shall comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations. In addition, You will not use the API in connection with or to promote any products, services, or materials that constitute, promote, or are used primarily for the purpose of dealing in spyware, adware, or other malicious programs or code, counterfeit goods, items subject to U.S. embargo, unsolicited mass distribution of email ("spam"), multi-level marketing proposals, hate materials, hacking, surveillance, interception, or descrambling equipment, libelous, defamatory, obscene, pornographic, abusive, or otherwise offensive content, stolen products, and items used for theft, hazardous materials, or any illegal activities.

4. <u>Your Applications</u>. You agree to monitor the use of the Application for any activity that violates applicable laws, rules and regulation (including those applicable to Personal Data) or any terms and conditions of this Agreement, including any fraudulent, inappropriate, or potentially harmful behavior, and promptly restrict any offending users of the Application from further use of the Application. You agree to provide a resource for users of the Application to report abuse of the Application. As between You and TriMet, You are responsible for all acts and omissions of Your end users in connection with the Application and their use of the API, if any. You agree that You are solely responsible for posting any privacy notices and obtaining any consents from Your end users required under applicable laws, rules, and regulations for their use of the Application.

5. <u>No Support; Updates</u>. This Agreement does not entitle You to any support for the API. You acknowledge that TriMet may update or modify the API from time to time and at our sole discretion (in each instance, an "Update"), and may require You to obtain and use the most recent version(s). You are required to make any such changes to the Application that are required for integration as a result of such Update at Your sole cost and expense. Updates may adversely affect how the Application communicates with the TriMet's HOP Fastpass® system. Your continued use of the API following an Update constitutes binding acceptance of the Update.

6. <u>Data Sharing.</u> [AS APPLICABLE] You agree to provide [anonymized trip data][*other data per project*] to TriMet upon reasonable request by TriMet. [This would include aggregate data related to trip starting and ending point, trip numbers, average duration, time of

day, month and year, and similar information collected by You. In addition to the foregoing, You agree to share aggregate data upon reasonable request by TriMet regarding the number of customers who use a TriMet HOP Fastpass® card collected by You.]

7.   No Fees. [AS APPLICABLE] You agree that no license fees or other payments will be due under this Agreement in exchange for the rights granted under this Agreement. The parties acknowledge and agree that this fee arrangement is made in consideration of the mutual covenants set forth in this agreement, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein. If the parties pursue further or additional integrations beyond those described in this agreement, TriMet reserves the right to re-examine license fees or other payments.

8.   Collection and Use of Information. TriMet may collect certain information about Your employees, contractors, or agents. By accessing, using, and providing information to or through the API, You consent to all actions taken by TriMet with respect to information in compliance with the then-current version of our privacy policy, available at trimet.org/privacy.

9.   Confidentiality and Data Security.

(a)   Confidential Information. "Confidential Information" means all proprietary information disclosed to or accessed by one party (the "Receiving Party") relating to the other party's ("Disclosing Party") business, in whatever form or medium (whether or not specifically marked or otherwise identified as "Confidential" or "Proprietary") including information related to (i) business operations and strategies, cost, pricing, profit, production, forecast and other accounting, economic and financial data; (ii) all nonpublic data, concepts and information relating to the HOP Fastpass® Service; (iii) information that Disclosing Party must keep confidential as result of obligations to third parties; and (iv) information about Disclosing Party's customers, suppliers and personnel, including Personal Data. Confidential Information does not include any information that Receiving Party can prove through written records: (w) was independently developed by Receiving Party without reference to the Confidential Information, and before the date Receiving Party received the Confidential Information; (x) is or becomes part of the public domain through no fault of Receiving Party (except for Personal Information); (y) was already known by Receiving Party at the time of disclosure; or (z) is approved by Receiving Party, in writing, for disclosure.

(b)   Non-Use, Non-Disclosure, and Protection. Subject to Section 9(c) below, Receiving Party will not use Confidential Information except as required to perform the Services. Receiving Party will not disclose Confidential Information to any nonparty without Disclosing Party's prior written consent, other than to Receiving Party's employees and approved subcontractors who (i) need to know the Confidential Information, and (ii) are bound by confidentiality and use restrictions that are at least as restrictive as those described in this Agreement. With respect to Personal Data, You shall comply with Exhibit A ("Privacy and Data Security").

(c)   Public Records Request. You acknowledge that TriMet is subject to the Oregon Public Records Act. Third persons may claim that Your Confidential Information

submitted to TriMet hereunder may be, by virtue of its possession by TriMet, a public record and subject to disclosure pursuant to the Oregon Public Records Act. Subject to the following conditions, TriMet agrees not to disclose Your Confidential Information submitted to TriMet provided that You include a written request for confidentiality that specifically identifies the information to be treated as Confidential Information. TriMet's obligation to maintain certain information as confidential under this Agreement is subject to the constraints of Oregon and federal laws. Within the limits and discretion allowed by applicable laws, TriMet will maintain the confidentiality of Your Confidential Information. If, in response to a public records request, TriMet refuses to release the records in question due to such information being properly marked by You as Confidential Information, You shall provide information sufficient to sustain TriMet's position to the District Attorney of Multnomah County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, TriMet will notify You in order for You to take all appropriate legal action. You agree to hold harmless, defend, and indemnify TriMet for all costs, expenses, and attorney fees that may be incurred by TriMet as a result of any legal proceeding regarding the disclosure of Your Confidential Information.

10.   Intellectual Property Ownership; Feedback. You acknowledge that, as between TriMet and You, (a) TriMet owns all right, title, and interest, including all intellectual property rights, in and to the API, HOP Fastpass® Service, HOP Fastpass® Data, and the TriMet Marks and (b) You own all right, title, and interest, including all intellectual property rights, in the Application, excluding the aforementioned rights in this Section 10(a). You will use commercially reasonable efforts to safeguard the API and TriMet Marks (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. You will promptly notify TriMet if You become aware of any infringement of any intellectual property rights in the API and TriMet Marks and will fully cooperate with us, in any legal action taken by us to enforce our intellectual property rights. You agree to include a credit to TriMet within Your Application as mutually agreed by the parties (i.e., "Powered by HOP Fastpass®"). If You or any Authorized Persons sends or transmits any communications or materials to TriMet by mail, email, telephone, or otherwise, suggesting or recommending changes to the API or the HOP Fastpass® Service, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), all such Feedback is and will be treated as non-confidential. You hereby assign to TriMet on its behalf, and on behalf of its employees, contractors, and agents, all right, title, and interest in, and we are free to use, without any attribution or compensation to You or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although we are not required to use any Feedback.

11.   Disclaimer of Warranties. THE API AND TRIMET MARKS ARE PROVIDED "AS IS" AND TRIMET SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. TRIMET SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABLITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. TRIMET MAKES NO WARRANTY OF ANY KIND THAT THE API OR TRIMET MARKS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER

PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY'S SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

12.   Indemnification. You agree to indemnify, defend, and hold harmless TriMet and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising from or relating to (a) Your use or misuse of the API or TriMet Marks, (b) Your breach of this Agreement, including any schedule, and (c) the Application, including any end user's use thereof. In the event we seek indemnification or defense from You under this provision, TriMet will promptly notify You in writing of the claim(s) brought against us for which we seek indemnification or defense. TriMet reserves the right, at our cost and in our sole discretion, to assume full control of the defense of claims with legal counsel of our choice. You may not enter into any third-party agreement that would, in any manner whatsoever, constitute an admission of fault by us or bind us in any manner, without our prior written consent. In the event TriMet assumes control of the defense of such claim, we will not settle any such claim requiring payment from You without Your prior written approval.

13.   Limitations of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL TRIMET BE LIABLE TO YOU OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (a) ANY LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE API; OR (b) ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIFTY DOLLARS EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR TRIMET WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.   Term and Termination. The term of this Agreement commences when executed by all parties by signing below and will continue in effect until terminated as set forth in this Section. TriMet may immediately terminate or suspend this Agreement, any rights granted herein, and/or Your licenses under this Agreement, in our sole discretion at any time and for any reason, by providing notice to you or revoking access to the API and TriMet Marks. In addition, this Agreement will terminate immediately and automatically without any notice if You violate any of the terms and conditions of this Agreement. You may terminate this Agreement at any time by ceasing access to and use of the API and TriMet Marks. Upon termination of this Agreement for any reason all licenses and rights granted under this Agreement will also terminate and You must cease using the API and destroy, and permanently erase from all devices and systems You directly or indirectly control all copies of TriMet's Confidential Information and the HOP Fastpass® Data. Any terms that by their nature are intended to continue beyond the termination or expiration of this Agreement, will survive termination. Termination will not limit any of TriMet's rights or remedies at law or in equity.

15. <u>Governing Law and Jurisdiction</u>. This agreement is governed by and construed in accordance with the internal laws of the State of Oregon. Any legal suit, action, or proceeding arising out of or related to this agreement or the licenses granted hereunder will be instituted exclusively in the federal or state courts in Multnomah County. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

16. <u>Miscellaneous</u>. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. Any failure to act by TriMet with respect to a breach of this Agreement by You or others does not constitute a waiver and will not limit TriMet's rights with respect to such breach or any subsequent breaches. This Agreement may not be assigned or transferred for any reason whatsoever without TriMet's prior written consent.

17. <u>Counterparts; Titles</u>. This Agreement may be executed in any number of counterparts each of which when executed and delivered is an original but all the counterparts together constitute the same document. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

_____

TriMet

_____

Name

_____

Title

_____

Date

_____

OTHER PARTY

_____

Name

_____

Title

_____

Date

Exhibit A

Privacy and Data Security

You acknowledge and agree that, pursuant to this Agreement, You may create, receive, or have access to HOP Fastpass® Data, which may include Personal Data. You shall comply with the terms and conditions set forth in this Agreement in Your processing, creation, collection, receipt, transmission, storage, disposal, use, and disclosure (each an act of "Processing") of HOP Fastpass® Data. You are responsible for any unauthorized Processing of HOP Fastpass® Data under Your control or in Your possession by all Authorized Persons. As used in this Agreement, Authorized Persons includes Your employees, agents, and contractors.

You agree that You and any Authorized Persons shall:

1. maintain and comply with a privacy policy that complies with all applicable privacy laws and provides adequate notice and obtains prior consent as required for the collection, use and storage of all Personal Data that the Application will access once installed;

2. implement and maintain a written information security program including appropriate policies, procedures, and risk assessments;

3. implement and maintain throughout the term of this Agreement appropriate technical and organizational measures to protect Personal Data against unauthorized or unlawful processing and accidental destruction or loss in accordance with the security specifications attached as Schedule 1;

4. to the extent Your Application transmits Personal Data outside the HOP Fastpass® Service, notify all users of such Applications that their Personal Data will be transmitted outside the HOP Fastpass® Service and that TriMet is not responsible for the privacy, security or integrity of such transfer; and

5. promptly notify TriMet of any actual or suspected breach or compromise of Personal Data (a **"Data Breach"**) within 24 hours of becoming aware of such occurrence. Upon learning of the Data Breach, at Your own cost, You will: (i) promptly remedy the Data Breach to prevent any further loss of Personal Data; (ii) investigate the incident; (iii) take reasonable actions to mitigate any future anticipated harm to TriMet and affected data subjects; and (iv) promptly answer questions from TriMet relating to the Data Breach.

SCHEDULE 1

SECURITY SPECIFICATIONS

Physical access controls employed for preventing unauthorized persons from gaining access to data processing systems within which Personal Data is processed or used.	Examples • *Electronic access card reading system* • *Management of keys / documentation of key holders* • *Palisade fencing* • *Solid reinforced concrete exterior to building with no windows.* • *24x7x365 staffed security guards* • *Security service, front desk with required sign in for all visitors* • *Burglar alarm system* • *Internal and external infrared pan, tilt, zoom CCTV Monitored building management system* • *Biometric scanners* • *Man traps*
Admission control measures taken for preventing data processing systems from being used without authorization.	Examples • *Personal and individual user log-in when entering the system and / or the corporate network* • *Password procedures minimum of 8 characters, with one upper case, lower case, and digit. If the user account has five invalid logon attempts, the account will be locked out. All passwords expire after 90 days. Upon verification of the username and password, the application uses session-based token authentication.* • *Remote access for maintenance requires two-factor authentication* • *Automated screen locks after a defined period of inactivity* • *Password protected screen savers* • *All passwords are electronically documented and protected against unauthorized access through encryption*
Virtual access control measures taken to ensure that persons entitled to use a data processing system have access only to Personal Data to which they have a right of access, and that Personal Data cannot be read, copied, modified or removed without authorizations in the course of processing or use and after storage.	Examples • *User authentication is based on username and strong password* • *Data are stored in encrypted relational databases.* • *All transactional records contain identifiers to distinguish client records.* • *System processing uses a rule-based mechanism to tailor data access to specific users and roles* • *Data access, insert, and modification are logged* • *ISO certifications are maintained at the datacenter.*

Transmission control measures taken to ensure that Personal Data cannot be read, copied, modified or removed without authorization during electronic transmission or transport, and that it is possible to check and establish to which bodies the transfer of Personal Data by means of data transmission facilities is envisaged.	Examples • *All data are encrypted in flight using SSL* • *Access to reports is logged* • *Backup media are encrypted* • *Removable storage is not used.*
Input control measures taken to ensure that it is possible to check and establish whether and by whom Personal Data have been entered into data processing systems, modified or removed.	Examples • *Record entry is restricted to a defined set of roles* • *All entry is date/time stamped and includes identifiers for entering party* • *Firewalls and intrusion prevention systems are in place to prevent unauthorized access*
Assignment control measures employed to ensure that, in the case of commissioned Processing of Personal Data, the data are processed strictly in accordance with the instructions of the principal.	Examples • *Confidentiality agreements are in place for all individuals with data access* • *Training is conducted during onboarding and on a regular basis* • *No third parties used for the processing of data other than as described in this Agreement* • *Privacy policy describes rights and obligations of agent and principle*
Availability control measures taken to ensure that Personal Data are protected from accidental destruction or loss.	Examples • *Systems employ redundancies such as RAID arrays and redundant equipment* • *Backups are stored in alternate location from primary processing* • *Multiple air conditioning units are installed to provide redundant capacity in a N+1 configuration.* • *High sensitivity smoke detection, and Argonite gas suppression* • *Multiple firewall layers and virus protection on all servers* • *UPS backed by N+1 generators* • *Diverse fiber routing and multiple carriers*

Separation control measures taken to ensure that Personal Data collected for different purposes can be processed separately.	Examples *Three-tier systems are used to physically separate presentation, business processing and storage* *Customer data are stored in separate databases or in logically separate architectures* *Separation of duties is used internally to ensure functions pass through change control processes* *Discrete development, staging and production environments are maintained.* *All routing of data for processing is controlled through automated rules engines.*