

END-USER SOFTWARE LICENSE, TRAINING AND IMPLEMENTATION SUPPORT AGREEMENT

PARTIES:

TRANSTRACK SYSTEMS® Inc.
A subsidiary of Trapeze Americas
5265 Rockwell Drive, NE
Cedar Rapids, IA 52402
("Licensor")

Whatcom Transportation Authority
4011 Bakerview Spur Road
Bellingham, WA 98226

DATE: March 08, 2023

PLACE: Bellingham, WA 98226

RECITALS

- A. Licensor is in the business of developing and licensing the web-based TransTrack Manager® application, available on-line to transit agencies for transit industry Business Intelligence data collection, processing and reporting; and
- B. Licensee desires to implement a Data Management System; and
- C. Licensee desires to obtain a license for the TransTrack Manager® software application available online and services and training support for the software, as well as development of custom imports and reports.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I. GRANT OF LICENSE

1. Grant of License. Subject to all the terms and conditions of this Agreement ("License"), and in consideration of the covenants and representations set forth herein, Licensor grants to Licensee a personal, non-exclusive, non-transferable right and license to the TransTrack Manager® application, with no right to sublicense. The TransTrack Manager® application is described in detail in Exhibit A attached hereto and incorporated by reference ("Software"). The License is granted solely under the conditions contained herein, and Licensee accepts such grant. The term of the License is set forth in Article IV, Section 6 below. This License and the use of the

Software may not be assigned by the Licensee, without the prior written consent of the Licensor. The License, the Software, and user documentation and training materials may not be disclosed, sublicensed, published, released or transferred to another party by Licensee without the prior written consent of Licensor, or except as provided in this License, or by reason of law required of Licensee by State regulations.

2. Ownership Rights. The Software and the documentation related thereto ("Documentation") are proprietary to Licensor and title thereto remains in Licensor. All applicable intellectual property rights to the Software, including but not limited to patents, copyrights, trademarks and trade secrets, are and shall remain with the Licensor.
3. Domain. Licensee agrees to access the Software through the Internet at the web address: www.transtrack.net. Access to this domain ("Domain") will be through a special pass code given to Licensee, which is personal to it and is granted through this License Agreement.
4. Restrictions. The Software may not be rented, loaned, leased, sublicensed, sold or distributed by Licensee to any person, entity, corporation, municipality or agency thereof, except for designated representatives of the Licensee. Licensee may not alter proprietary notices, labels, or markings on the Software whether on the Domain or elsewhere. Licensee may not modify, translate, reverse engineer, disassemble, or decompile the Software. Access to the Domain may not be assigned or utilized by any other entity or persons other than Licensee and designated representatives of the Licensee. Shared access to the Software will be provided with separate pass codes given by Licensor to the Licensee and representatives of the Licensee. The Licensee shall own all content, information and data ("Data") input into the Software by the Licensee or otherwise created in connection with Licensee's use of the Software.
5. Documentation. Licensor shall supply complete Documentation necessary for Licensee to use the Software effectively. Documentation includes, but is not limited to, user manuals and file descriptions. Licensee shall have the right, as part of the License granted herein, to make as many additional copies of the Documentation for its own use as it may reasonably determine it needs.

ARTICLE II. TRAINING, IMPLEMENTATION AND SUPPORT SERVICES

1. Set-Up and Training Services. In connection with the grant of the License, Licensor shall provide Licensee with certain initial user training, implementation and initial set-up services so that the Software will conform

to the organizational needs and business logic requirements of the Licensee. These services are set forth in the Implementation Set-Up and Training Services described in Exhibit "B" attached hereto and incorporated by reference.

With respect to the Set-Up and Training Services, the Customization and Programming Services, and the Support Services which are set forth in Sections 1, 2, and 3 of this Article II, Licenser warrants that all such Services, which are more fully described in Exhibits B, C, and D of this License, shall be performed in a skillful and competent manner which meets or exceeds the industry standards for experienced consultants providing similar services to those provided hereunder. Licenser represents that its employees have all qualifications and approvals of whatever nature that are required to perform such Services.

2. Customization and Programming Services. Under this License, there may be some customization of Licenser's proprietary Software ("Customized Software"). The fees for the Customized Software are already included in the prices set forth in the Exhibits to this License. Should Licensee ask for additional custom features beyond the scope of what has been agreed upon by the Parties for functionality or "look and feel", Licensee shall make requests for such customization and Licenser will determine if it is able to perform such additional services and the fees that will be associated with those additional services. Aside from any intellectual property belonging to Licensee which is subsequently utilized in any customization, notwithstanding any regulatory requirements, including, but not limited to, FTA terms, all Customized Software is licensed in accordance with the terms of this Agreement and Licenser shall retain all right, title and interest in any elements of the Customized Software, its existing Software that are incorporated into any customized product, including but not limited to, rights to patents, copyrights, trademarks, trade secrets, transferable technical data, know-how, source code, processes, future improvements, plans, drawings, specifications, and methods of manufacture incorporated in and to any Customized Software and Professional Services outlined in Exhibit "C" attached hereto and incorporated by reference. Subject to the rights of termination by Licenser, as specified in this License, any Customized Software shall be available to Licensee for Licensee's use during the one (1) year initial term and any additional renewal terms of the License, provided that Licensee and Licenser can agree on the scope of the Services to be provided and the then current rate for the annual maintenance and support fee for use of the Software.
3. Maintenance and Support Services. Licenser shall provide on-going technical assistance, training and support services to the Licensee as described in Exhibit "D" attached hereto and incorporated by reference.

4. Reports. Licensors shall provide Licensee with the reports containing the information at the times and in accordance with the list provided in Exhibit "E" attached hereto and incorporated by reference. Licensors will prepare and deliver to Licensee such other reports in such formats and at such times as are reasonably requested by Licensee, provided that Licensee agrees to pay the related reasonable incremental costs incurred by Licensors for preparing these other reports, which costs shall be estimated by Licensors at Licensee's request. Licensee will review all reports delivered to it for accuracy within fourteen (14) days of delivery, as specified in Exhibit E, and will notify Licensors of any "**material errors**", defined as errors, omissions or discrepancies discovered in any report referenced in Exhibit E. In the event of any material error in a custom report requested by Licensee, Licensors will use commercially reasonable efforts to correct the material error. In the event Licensors is unable to do so, after a reasonable period of time and in its sole discretion, it will return any fees already paid by Licensee for the customization and will not require payment of any fees related to correction of the error if already presented to Licensee in the form of an invoice. Notwithstanding anything contained herein with respect to damages, remedies and liability, THE RETURN OF FEES OR THE FORBEARANCE TO COLLECT ANY FEES RELATED TO ERROR CORRECTION IN CUSTOM REPORTS WILL BE THE SOLE AND EXCLUSIVE REMEDY OF LICENSEE FOR THE INABILITY OF LICENSOR TO CORRECT ERRORS.

ARTICLE III. FEES AND LICENSEE RESPONSIBILITIES

1. Payment of Fees and Costs. Licensee agrees to pay Licensors licensing and service fees as described in Exhibit "F", attached hereto and incorporated by reference. These licensing and service fees are for the License described in Article I, and training, set-up services, customized programming services, ISP and on-going support services described in Article II. All amounts due from Licensee shall be paid in accordance with the schedule referenced in Exhibit "F." Upon receipt of an invoice from Licensors, Licensee shall, within thirty (30) days, review the invoice and pay all approved charges for services that have been provided to Licensee.
2. Default by Licensee in Payment of Fees. Should Licensee either fail to make the payments set forth in Exhibit "F" within thirty (30) days from the date of invoice to Licensee or dispute any charges on such statement, the Licensors shall send a written notice of delinquency in the manner set forth in Article IV, Section 8(K). If payment for undisputed charges has not been received after ten (10) days from the date of the written notice to Licensee specifying the delinquency, Licensors shall have the right to terminate this License and all rights granted herein and seek damages and injunctive relief for the breach thereof.

3. Responsibilities of the Licensee. Licensee agrees to name a Project Manager/System Administrator with responsibility for taking reasonable action to ensure a timely implementation set-up and training by Licensor of Licensee's staff. Licensee is responsible for assigning security access to the Software and data of the Licensee. Licensee understands that satisfactory performance of the Software requires: up to date Microsoft Edge, Chrome, Firefox, or similar modern browsers. Licensee is responsible for providing the hardware and appropriate software and operating systems specified herein.
4. Fee Increase. Licensee shall, upon each anniversary of the Effective Date of the Initial Term and subsequent Renewal Terms, increase Fees six percent (6%) upon written notice to the Licensee.
5. No Other Terms. Except as explicitly provided in this License, no other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this License or have any legal effect whatsoever. Without limiting the generality of the foregoing, Licensor will not be bound by any standard or printed or referenced terms produced by Licensee, including but not limited to those terms included or referenced in any of Licensee's purchase orders. Licensee expressly acknowledges that no provisions, representations, undertakings, agreements, regarding the products or services to be provided hereunder, have been made, other than those contained in this License.

ARTICLE IV. MISCELLANEOUS

1. Confidentiality.
 - A. Definition of Confidential Information. The parties acknowledge that in connection with their respective rights and responsibilities under this License, each will have access to the others' confidential and proprietary information ("Confidential Information"). Licensor's Confidential Information includes the Software and all copies and partial copies thereof, including its proprietary function, logic and structure, the Documentation, and any other information of a competitive, sensitive or proprietary nature, such as, but not limited to, any non-public information relating to Licensor's internal procedures, customers, personnel, incidents, financial information and other results. Licensee's Confidential Information includes the Data, as defined in Article I, Section 4 of this License Agreement, and any information of a competitive, sensitive or proprietary nature, such as, but not limited to, any non-public information relating to Licensee's internal procedures, customers, personnel, incidents,

financial information and other results. For purposes hereof, the parties acknowledge and agree that, except as otherwise provided in subsection 1(D) of this Article IV, Licensee's Confidential Information includes any and all methodologies, business logic and technology utilized by Licensee in its business. This obligation of confidentiality applies to any Confidential Information that is proprietary to each Party as well as to information of third parties that either Party has an obligation to keep confidential, and will survive termination of this License. The Parties agree that, upon termination of this License, Licensors shall return to Licensee all copies of Licensee Confidential Information in Licensors' possession.

- B. Limitations on Disclosure and Use. Except as specifically provided for in this License or as required by law, each Party agrees not to use the other Party's Confidential Information for itself or for any other party, or divulge or disclose the Confidential Information to any other party other than to authorized employees or consultants with a need to know, each of whom is made aware of and agrees to abide by these obligations. All confidentiality obligations contained in this Article IV shall be in full force and effect as to those entities. Except as specifically provided for in this License or as required by law, each Party agrees to implement reasonable procedures to prevent unauthorized disclosure and to treat the other Party's Confidential Information with at least the same degree of care as it treats its own Confidential Information, but at a minimum with a reasonable degree of care.
- C. Compelled Disclosure. In the event that either Party becomes legally compelled to disclose the other Party's Confidential Information, the compelled Party shall provide the other Party with at least fourteen (14) business days written notice (or, if such notice period is impracticable, prompt notice) so that the other Party may seek a protective order or other appropriate remedy. If the other Party is unable to obtain a protective order or other appropriate remedy, then the receiving Party may disclose the disclosing Party's Confidential Information requested but only that minimum amount of Confidential Information required to comply with the legal request as advised by the receiving Party's legal advisor.
- D. Exclusions from Confidential Information. For purposes of this subsection, Confidential Information shall not be deemed to include any information that (i) is or subsequently becomes publicly available other than through either Party's breach of any duty owed the other Party; (ii) was lawfully known to the receiving Party prior to disclosure in connection with this License; or (iii) became known to

the receiving Party from a third party other than by breach of a duty of confidentiality; or (iv) information that is required to be disclosed pursuant to the California Public Records Act.

2. Intellectual Property Warranty and Indemnification. Licensors represents and warrants that Licensor is the owner of the Software and has the right to grant the License granted herein. Licensor will defend and indemnify Licensee against a claim that the Software infringes a United States intellectual proprietary right of a third party provided that: (i) Licensee promptly notifies Licensor in writing upon receipt of the claim or complaint, and does not prejudice the rights of Licensor within the context of any such action or claim; (ii) Licensee provides Licensor, at Licensor's expense, with assistance, information and authority necessary for Licensor to perform its obligation under this Section 2; and (iii) Licensor controls and pay for the defense and settlement of any claim or action with legal counsel of Licensor's choice in its sole discretion. If the Software becomes, or in Licensor's reasonable judgment is likely to become, the subject of a claim based upon an alleged infringement of an intellectual property right of a third party, Licensor will notify Licensee and at Licensor's sole option, (i) procure for Licensee the right to continue to use the Software; or (ii) replace or modify the Software so that it is non-infringing; or (iii) require that Licensee, upon advance written notice, cease, with respect to all periods commencing on and after the date of such notice, use of the Software under this License for an indefinite period or, at Licensor's sole discretion, for a period pending satisfaction by Licensor of clause (i) or (ii) immediately above in this Section 2 of Article IV. In the case of this clause (iii), Licensor shall credit the Licensee for fees paid with respect to the Software, calculated on a straight-line depreciation schedule based on the term of this License commencing from the date of Licensee's payment of the License Fees hereunder. Should Licensee be required to cease use of any Customized Software, Licensor shall reimburse Licensee for all customization fees paid by Licensor to Licensee, based on the same depreciation schedule, as well as any costs associated with sourcing a replacement software. In addition to the return of the amortized fees already paid to Licensor, Licensor and Licensee shall have the right to terminate this License in its entirety without any obligations thereafter. These remedies, including termination of the License, as well as the indemnification obligations contained herein, shall be the sole and exclusive remedies of Licensee for Licensor's breach of its warranty of non-infringement.
3. Equitable Remedies. Each of the parties acknowledges and agrees that its failure to comply with the terms of Section 2, 3 and 4 of Article I and Section 1 of Article IV will result in immediate and irreparable damage to the other party. Each of the parties acknowledges and agrees that there is no

adequate remedy at law available to the other party for such failure and in the event thereof, the non-breaching party shall be entitled to seek equitable relief in the way of a temporary restraining order, an injunction and such other relief as a court of competent jurisdiction may deem proper, without the necessity of posting a bond or similar security.

4. WARRANTY DISCLAIMER. EXCEPT FOR THE LIMITED WARRANTY WITH RESPECT TO THE SERVICES TO BE PERFORMED IN ACCORDANCE WITH ARTICLE II, SECTION 1 ABOVE, LICENSOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, ANY THIRD PARTY SOFTWARE, ANY HARDWARE OR EQUIPMENT, THE SERVICES RENDERED BY ITS PERSONNEL, OR THE RESULTS OBTAINED FROM THE WORK OF ITS PERSONNEL, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY AGAINST INFRINGEMENT THAT MAY BE PROVIDED IN SECTION 2-312 OF THE UNIFORM COMMERCIAL CODE OR ANY COMPARABLE STATE STATUTE. LICENSEE FURTHER UNDERSTANDS AND AGREES THAT IT IS GRANTED THIS LICENSE ON AN "AS IS" "WHERE IS" BASIS. FURTHER, LICENSOR DOES NOT WARRANT THAT: (I) THE SOFTWARE OR ANY CUSTOM SOFTWARE WILL MEET ALL OR ANY OF LICENSEE'S PARTICULAR REQUIREMENTS; (II) THAT THE SOFTWARE OR ANY CUSTOM SOFTWARE WILL OPERATE ERROR FREE OR UNINTERRUPTED; OR (III) ALL PROGRAMMING ERRORS IN THE SOFTWARE OR ANY CUSTOM SOFTWARE CAN BE FOUND OR CORRECTED.
5. LIMITATION OF LIABILITY. IN NO EVENT SHALL LICENSOR BE LIABLE FOR: CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE BREACH OF THE WARRANTY OF INFRINGEMENT, INCLUDING ANY DAMAGES WHICH MAY BE CONTAINED IN SECTION 2-312 OF THE UCC OR COMPARABLE STATE STATUTE, PERFORMANCE OF ANY SERVICES, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR RECORDS, OR LOSS OF BUSINESS INFORMATION, OR FOR ACTS OF NEGLIGENCE THAT ARE NOT INTENTIONAL OR RECKLESS IN NATURE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S AGGREGATE LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES, COSTS OR LOSSES WHATSOEVER ARISING EITHER JOINTLY OR SOLELY FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE USE (WHETHER OR NOT IN THE MANNER PERMITTED BY THIS AGREEMENT) OF THE SOFTWARE, CUSTOM SOFTWARE, DOCUMENTATION, INCLUDING CLAIMS FOR BREACH OF CONTRACT, TORT, MISREPRESENTATION, OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY THE LICENSEE IN THE YEAR OF THE CLAIM FOR THE SOFTWARE,

CUSTOM SOFTWARE, DOCUMENTATION OR SERVICE THAT IS THE SUBJECT OF THE CLAIM. THIS LIMITATION OF LIABILITY SHALL NOT APPLY FOR ACTUAL DAMAGES RESULTING FROM BODILY INJURY OR TANGIBLE OR REAL PROPERTY DAMAGE RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR.

NOTWITHSTANDING SUCH LIMITATIONS, LICENSEE RESERVES ALL RIGHTS TO CHALLENGE THE ENFORCEABILITY OF ANY OF THE LIMITATIONS OF LIABILITY BASED UPON THE WASHINGTON STATE CONSTITUTION, INCLUDING BUT NOT LIMITED TO, WASHINGTON CONSTITUTION, ARTICLE 8, SECTION 7.

6. Term and Termination. This term of this License shall commence on the date of complete execution by both parties and continue for one (1) year as the "**Initial Term**" with the Initial Term ending on June 30, 2024. The Agreement will automatically renew for successive one (1) year periods (each a "**Renewal**") unless Licensee provides written notice to Licensor at least thirty (30) days before the end of the Term. The license right to use the Software are only valid and available for the Licensee use during the Initial Term and any subsequent and fully paid up annual Renewal periods. Upon prior written notice, either party may terminate this License if the other party becomes insolvent, ceases doing business in its regular course, files a petition in bankruptcy or is subject to the filing of an involuntary petition for bankruptcy which is not rescinded within a period of ninety (90) days, or fails to cure a material breach of any term or condition of this License within thirty (30) days of receipt of written notice specifying such breach and demand for cure. Notwithstanding the foregoing, however, failure by Licensee to timely pay undisputed or disputed fees under this License shall be subject to shorter termination periods as specified in Article III, Sections 1 and 2 above. Data within the system after termination will be purged thirty (30) days after final invoice.

7. Insurance and Escrow Agent

- A. Escrow. After execution of this License, and subject to payment of the appropriate fees by Licensee (set forth in Exhibit F), Licensor will deposit and maintain with an escrow agent the source code for the Software and related documentation ("Escrowed Materials"), pursuant to an agreement for escrow services with an Intellectual Property Escrow Agent ("Escrow Agent"). Licensee shall be named a beneficiary under the agreement with the Escrow Agent. It shall be the responsibility of Licensee to procure third-party software in order to use the Escrowed Materials. The events which would allow Licensee to receive the Escrowed Materials from the Escrow Agent shall be: (i) the bankruptcy or dissolution of Licensor; (ii) a court

order requiring the Escrow Agent to release the Escrowed Materials; or (iii) a request of Licensor. In the event of a release to Licensee of the Escrowed Materials, Licensee shall be granted a royalty free license to access, use, digitally perform and execute the Escrowed Materials in furtherance of the purpose of this License.

- B. Insurance. Licensor will obtain and maintain during the Term: (i) Commercial General Liability and Umbrella and/or Excess Liability Insurance, including products, completed operations liability and personal injury, advertising liability and contractual liability with a minimum combined single limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate; (ii) Commercial Automobile Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage; Licensor will also provide a program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code for applicable state of employee residence, including Employer's Liability, covering all persons providing services on behalf of the Licensor and all risks to such persons under this License.

Licensor will also maintain **Technology Professional Liability** (Errors and Omissions) with limits not less than \$2,000,000 million per occurrence or claim, and \$2,000,000 million aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations under the contract and shall include, but not be limited to, liability arising out of the loss, loss of use of, damage to, corruption or, inability to access, or inability to manipulate electronic data, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations.

8. General.

- A. Relationship of the Parties. In performing their respective obligations hereunder, each of the parties shall operate as and have the status of an independent contractor and shall not act as or be an agent, partner, or employee of the other party. Neither party shall have any right or authority to assume or create obligations of any kind or to make any representations or warranties on behalf of the other

party, whether express or implied, or to bind the other party in any respect whatsoever.

- B. Force Majeure. Neither party shall be deemed in default of this License to the extent that performance of the party's respective obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, act of government, or any other cause beyond the reasonable control of such party, provided that such party gives the other party written notice of the condition within ten (10) business days of discovery thereof. If proper notice is given, the time for performance or cure shall be extended for a period equal to the duration of the force majeure event or circumstance described in the notice.
- C. Assignment and Binding Effect. Licensee may not assign, bargain, sell, transfer, sublicense, convey, hypothecate or pledge the rights and licenses granted to it herein without the prior written consent of Licensors. Licensors may, with notice to Licensee, assign this License either in its entirety or in partial form to a successor in interest by way of merger, acquisition, spin-off, or consolidation, or to an entity with which it enters into an outsourcing agreement with respect to the maintenance and support obligations for the Software. This License shall be binding upon and inure to the benefit of any permitted successors or assigns.
- D. Sole License. This License, including the recitals and the attached exhibits and any other attachment incorporated herein by reference, sets forth the entire License and understanding of the parties relating to its subject matter, and supersedes and merges all prior and contemporaneous agreements, negotiations and understandings between the parties, whether oral or written. Neither Licensee nor Licensors shall be bound by any oral agreement or representation irrespective of by whom or when made. No change or modification to this License will be binding unless it is in writing and signed by authorized representatives of Licensors and Licensee.
- E. Legal Costs and Expenses. If any action or proceeding, including non-binding mediation, is brought to enforce any of the terms of this License, the prevailing party shall be entitled to recover all of its reasonable costs and expenses incurred in such proceeding, including but not limited to, reasonable attorney's fees.
- F. Severability. In the event that any provision of this License is determined by a court of competent jurisdiction to be illegal, invalid, or otherwise unenforceable under applicable laws or regulations,

either such provision shall be deemed amended to conform to such laws or regulations without materially altering the intention of the parties, or it shall be deleted and the parties shall negotiate in good faith to replace such provision. In such event, the remainder of this License shall continue in full force and effect unless, after the provisions deemed to be illegal, invalid or unenforceable are removed, the remainder of the License's terms make it commercially impracticable to continue in the opinion of either Party. In such event, the License will terminate without any liability on the part of either Licensee or Licensors.

- G. Waiver. The waiver of any right or default hereunder shall be effective only in the instance given and shall not operate as or imply a waiver of any similar right or default on any other occasion. Either party may elect to continue performance notwithstanding such breach by the other party, but such performance shall not constitute a waiver of such breach nor otherwise limit the non-breaching party's remedies. No waiver of any provision of this License shall be effective unless in writing and signed by the party against whom it is sought to be enforced.
- H. Authority. Licensors and Licensees warrant and represent that they are free to enter into and fully perform this License, that all required authorizations have been procured prior to execution of this License, and that the parties designated as signatories of Licensors and Licensees each have the requisite authority to do so.
- I. Alternative Dispute Resolution. Prior to commencement of any civil legal proceedings, specifically excluding injunctive relief authorized hereunder, to enforce the obligations of a party under the terms of this License, a party must submit the controversy or claim for mediation to an independent mediator selected by the Judicial Arbitration and Mediation Services, Inc. ("JAMS"). All proceedings shall be administered by JAMS in accordance with their then current rules. If there is any inconsistency between the terms of this License and any such JAMS rule, the terms and procedures set forth herein shall control. Venue of the mediation shall be Los Angeles County, California. All statutes of limitation applicable to any claim or dispute hereunder shall apply to any mediation proceeding. All discovery activities shall be expressly limited to matters directly relevant to the dispute or claim being mediated. No provision hereof shall limit the right of any party to obtain provisional or ancillary remedies, including without limitation, injunctive relief, attachment, or the appointment of a receiver, from a court of competent jurisdiction before, after or during the pendency of any mediation. Mediators

must be active members of the California State Bar or retired judges of the state or federal judiciary of California, with expertise in the substantive laws applicable to the subject matter brought before the mediator. To the maximum extent practicable, JAMS, the mediator, and the parties shall take all action required to conclude any mediation proceeding within one hundred eighty (180) days of the filing of the dispute with JAMS. Should the parties be unable to resolve the dispute or claim in accordance with this stated procedure, a civil action may be commenced under the laws of the State of California. This alternative dispute resolution provision shall survive termination, amendment, or expiration of this License.

- J. Governing Law. This License shall be governed in accordance with the laws of the State of Washington. Venue shall be in Whatcom County.
- K. Notices. Any notice required or permitted by this License shall be in writing and shall be properly addressed to the other party at the following address or to such other address as may be provided in writing by either party from time to time, shall be sent by any recognized commercial overnight courier or United States registered or certified mail, postage prepaid, return receipt requested, and shall be concurrently sent by facsimile:

To Licensor: TransTrack Systems®, Inc.
Attn: Legal
5265 Rockwell Drive, NE
Cedar Rapids, IA 52402

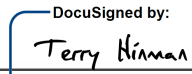
To Licensee: Whatcom Transportation Authority
4011 Bakerview Spur Road
Bellingham, WA 98226
Attention: Procurement & Contracts Department
Email: procurement@ridewta.com

With copy to:
R. Josh Nylander
Email: joshn@ridewta.com

- L. Survival. Sections 1 through 5 as well as Sections 7 and 8 of this Article IV shall survive the termination of this License.

IN WITNESS WHEREOF the parties hereto have executed this End-User Software License, Training and Implementation Support Agreement as of the date and at the place first above noted.

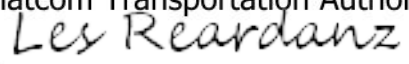
LICENSOR:
TRANSTRACK SYSTEMS®, Inc.

By:  Terry Hinman

53492FF1984E4DF...

Name: Terry Hinman

LICENSEE:
Whatcom Transportation Authority

By: 
Signed: Friday, May 12, 2023

Name: Les Reardanz

Title: Group Leader / General Manager

Title: General Manager

Date: 5/15/2023

Date: _____

EXHIBIT "A"

DESCRIPTION OF THE SOFTWARE APPLICATION AVAILABLE ON-LINE

TransTrack Manager® is the name of the Software application, available on-line, that is the subject of this License Agreement. Internet use of the TransTrack Manager® application ("Software") requires Licensee to have a web browser compatible with the Software (e.g., Microsoft Edge, Google Chrome, Mozilla Firefox, Safari). Licensee workstations used to access the Software require the following: (1) Operating System – Windows 8 or higher; (2) Processor – 2GH or higher; and (3) Physical Memory – 4GB of RAM or higher. The Software may not be compatible with cell or smart phones. Modules available with this Software License are as follows.

- Organization
- Routes
- Ridership
- Operations
- Fleet
- Plan
- Support
- Security (e.g., User Security)
- Analytics

Functions available to Software users include:

- Edit (Add, Delete, Save, Cancel, Close)
- Show Filters
- Export
- Report
- View Settings
- Import

EXHIBIT "B"

SET-UP AND TRAINING SERVICES

Phase 1 – Business Assessment & Process Review. A total of 4 hours have been budgeted to review Whatcom Transportation Authority processes and assist Whatcom Transportation Authority in selecting levels of data input appropriate for Whatcom Transportation Authority

Phase 2 – Implementation & Training. A successful implementation requires that Licensee make available to Licensor relevant information no later than 30 days prior to implementation. Much of the information necessary to configure the system will be collected during the Phase 1 Business Assessment. Activities associated with Phase 2 follow.

Set-Up Activities

A total of 24 hours will be spent in set-up activities. Views that will be configured by Licensor on behalf of Licensee for start-up include the following:

- **Organization Module** -- All Views necessary for start-up.
- **Routes Module** – Route Profiles in effect at the time of implementation. Passenger Sampling, Ride Check Scheduling, Ride Check Sample Data, and associated Route Set-up Views for Service Calendar and Route Plan data. Import APC data back to Current Fiscal Year or beginning of Calendar Year.
- **Operations Module** -- All Look-Up views necessary to support management reporting and data imports. Import for Operations Schedule, Route Setup, and Service Calendar from Trapeze FX/TransitMaster/Vontas.
- **Fleet Module** – All Look-Up views necessary for start-up, including the fleet inventory.
- **Security Module** – All Look-Up views necessary to support system security. Licensor will assign a System Administrator password to the Licensee, as well as initial passwords and security access to Licensee management and staff and designated representatives of the Whatcom Transportation Authority, as determined in Phase 1. Licensee is responsible for user security after the initial set-up.
- **Reports Module** – NTD Report Information (S-10).
- **Ride Check Application** – Access to the Ride Check Application for use on Android Devices.

Training & On-Site Support

Training Materials and Documentation are included in the setup of the service. Initial staff training by TransTrack staff is highly recommended. Licensor will provide a quote for training services upon the initiation of the customization phase. Hourly rates for the training will be defined in Exhibit "F" ("Fee Schedule") below.

All training will be conducted at AGENCY facilities and/or the facilities of AGENCY representatives, or Online as needed.

- **System Administrator Training** – Individualized training on system security and import functions. This training is provided after the System Administrator has attended Basic Training.
- **User Group Training** – User groups, defined in Phase 1, will be trained in new processes, data input or import, validation and reporting. Training will be customized to Licensees user groups.

Travel reimbursement:

In the event Licensee requires on-site training, any travel costs will be reimbursed as follows:

- Detailed receipts or other proof of expense are required to be fully reimbursed. WTA will not pay any mark-up or per-diem incentive. A credit card receipt will not be accepted in lieu of a detailed receipt. Receipts are not required for meals covered by per diem and for miscellaneous expenses under \$10 a day.
- Meals & Incidentals per GSA.gov rates at the time of travel based on the destination.
- Mileage will be based on GSA.gov rates at the time of travel.
- Air fare and baggage will be based on the most economical flights with reasonable routing. Business class or first-class tickets will not be reimbursed.
- Hotel will be moderately priced and conveniently located. WTA will not reimburse charges for unused rooms.

Expenses including, but not limited to, laundry (unless staying more than 5 nights), in-room movies, travel insurance (e.g. Rental Car insurance, air fare

insurance, etc.), extra-cost facilities (e.g. "Resort Fee"), room upgrades or concierge floors, medical expenses, alcohol, damage/theft, fines, tickets, or lost luggage or personal item replacement costs, will not be reimbursed. A complete list of Non-Reimbursable Expenses is available upon request.

Training Materials & Documentation

Training materials are available on-line in the Support Module – Training Materials view. Other documentation is also available in the Support Module – Documentation view. This documentation does not include programming language, which is deposited into an Escrow Account.

EXHIBIT "C"

MODULAR ADD-ONS & CUSTOMIZED PROFESSIONAL SERVICES

Licensee shall have access to Modular Add-ons specified below. Fees associated with Modular Add-Ons are shown in Exhibit "F".

Modular Add-ons

- Daily APC Import & Data Cleansing
- Ride Check Application with Sample Scheduling

Customized Programming

Customized programming services include a budget of 24 hours to import scheduled trips and operating calendar information from Trapeze FX/OPS.

Additional Software Engineering services are available on a time and materials basis at the rate specified in Exhibit "F". The Licensee agrees to validate reports, imports and other customer applications and any subsequent revisions within 14 days of the report or revision being made available. Licensee is responsible for all validation, unless otherwise specified.

Licensee may request custom modifications to the Software to allow for customized reports. Licensor has agreed to review the request for the custom modifications ("Modifications"). If the parties agree to create the Modifications all terms and conditions of the License shall remain in full force and effect in addition to those listed in this Exhibit "C". If there is any conflict between the main body of the License and this Exhibit C, solely regarding the terms and conditions of the Services to create and maintain the Modifications, then the provisions of this Exhibit "C" shall prevail.

Consultant Services

Customized professional services are available from TransTrack team members on a time and materials basis at the rate specified in Exhibit "F". Requested services will be outlined in a separate scope of work and schedule for approval as requested. Such services include data analysis, service analysis, APC data management, Federal and State data certifications, National Transit Database data review and submission, National Transit Database survey support and APC certification, training, implementation, and other services as requested. The Licensee agrees to validate and submit all reports, surveys, and other information

on behalf of Licensee to any subsequent Reporting body. Licensee is responsible for all validation, unless otherwise specified.

Modifications

Custom modifications are not proposed at this time.

1. All Services to create, consult, train, maintain and service the Modifications will be billed to Licensee on a time and materials basis as further set forth in the attached Exhibit "F".
2. Licensee will provide Licensor with specifications for the Modifications which shall include technical specifications, system requirements, end results desired, estimated time frame for completion and any other information Licensor deems necessary to evaluate its ability to create the Modifications.
3. Licensor will review all requested items included in #2 above and discuss with Licensee the ability of Licensor to produce, service and maintain the Modifications. Licensor will also provide an estimated price for all Services for initial creation as well as continuing service and support. Licensor shall also inform Licensee if its timetable for completion is reasonable and can be accomplished in a timely fashion.
4. Once Licensor has reviewed all of the above and discussed same with Licensee, a final timetable shall be agreed upon as well as an estimate for a range of fees, which will be invoiced to Licensee for the Modifications. After that point, should Licensor receive other requests from Licensee for further changes to the current Software over and above what is initially reviewed and requested in #2 above, the timetable for completion and cost will be subject to change based on Licensor's evaluation of the changes and its ability to create and maintain what Licensee has requested.
5. Licensor will need the cooperation and access to certain of the Licensee's employees or data to create the Modifications and to perform efficiently, correctly and in a timely manner. Any inability to provide the necessary advice, support or access to the people, data or materials necessary for Licensee's completion of the Modifications may require adjustments to the time table already agreed to as well as the costs for same.
6. After successful installation on the domain of the Modifications, Licensee shall have a fourteen (14) day testing/acceptance period ("Test Period") during which it shall utilize the Modifications and determine if they meet the specifications given to Licensor. During that period, Licensor shall provide advice and assistance to Licensee as requested. The costs for

Licensor's assistance shall also be on a time and materials basis but will have already been included in the range of costs for the entire project.

7. Should there be any problems with the Modifications performing their desired results for the custom reports, Licensee shall so notify Licensor during the Test Period with specificity to enable Licensor to correct the problems. After Licensor has completed its adjustments as necessary to ensure that the Modifications meet the specifications, Licensee will have an additional seven (7) days in which to test and accept the revised Modifications.
8. If after that additional time, Licensor is unable to meet the criteria listed in the specifications given to Licensor, Licensee shall be entitled to reject the Modifications in whole. After rejection of the Modifications for failure to meet the required specifications, Licensee shall be entitled to the return of all Fees paid for the Modifications within a reasonable period after rejection. Notwithstanding the foregoing however, Licensee may not unreasonably reject the Modifications.
9. Return of the Fees for the Modifications shall be the sole and exclusive remedy for the inability of Licensor to meet the specifications of Licensee. All terms related to disclaimers of warranties as well as limits on liability listed in the main body of this License contained in Article IV, Sections 4 and 5, shall also apply to the Services as they relate to the Modifications.
10. Licensee represents and warrants that it is the owner or licensee of the specifications or other information provided to Licensor for the creation of the Modifications and has the right to provide same to Licensor. Licensee shall defend, indemnify and hold harmless Licensor, its officers, employees and agents, from and against any claim that the specifications and information once provided to Licensor whether prior to or after creation of the Modifications and their integration into Licensee's system and network, infringe the intellectual property rights or breach any contract rights it may have with a third party. Such indemnity shall include all costs, expense and fees, including reasonable attorney's fees. All steps and obligations to obtain the full indemnification for any such claim as specified in Article IV, Section 2 of this License, as they relate to Licensee, shall now be the obligation of Licensor. There shall be no return of fees to Licensee in this event since, it will be the indemnitor. However, the parties shall have all termination rights specified in Section 2 of Article IV.

EXHIBIT "D"

SUPPORT SERVICES

Licensor will be the Internet Service Provider of the Software application, available to Licensee through the Internet at the web address: www.transtrack.net. Access to this domain will be through a special user name and password established for Licensee.

Licensed Software Uptime

Uptime means that all functionality of the Licensed Software specified herein are operational. The Software application shall be available 24 hours/day, 7 days/week, and 365 days/year. The Licensed Software as specified herein shall be available 98% of this time, excluding scheduled maintenance and factors associated with Licensee's Internet connection, as measured on a rolling 30-day period.

Procedures for Licensee users in the event that access is denied will be covered in training. This includes troubleshooting to determine whether the problem is the Licensee's Internet connection or the server of the Licensor or the Software application itself. Licensor technical support staff, upon notification by Licensee staff, shall address problems with the server of the Licensor or Software application immediately.

Operations Support Response Time

Licensor will provide support and respond to inquiries during normal business hours (6:30 a.m. to 5:00 p.m. Pacific Time Monday – Friday). Licensor operations support will be prepared to research data and information of the Licensee and make this information available to Licensee as reasonably requested. Urgent and after-hour needs, questions and requests for technical support may be made to Licensor, by Licensee staff, using the telephone or with our online help desk both methods reach Licensor staff immediately. Expanded technical assistance hours may be arranged in advance for special projects or periods of intense data input and analysis. Methods of obtaining help will be covered in training.

Technical problems will be investigated and fixed with due diligence. Activities and processes for which the Software application is designed are generally not time-critical. Those determined to be critical will be supported with a paper backup in the event of a system failure that cannot be repaired within 8 hours.

Data Back-Up and Retention

Licensors will back-up all data on a nightly basis and keep a copy of the data for a 30-day period. Historical data will be retained in summary format for up to five (5) years. AVL and APC detailed data will be retained for two (2) years.

Security Standards

Personnel (System Administrator) of the Licensee will be responsible for determining and maintaining security to access data of the Licensee on the Domain.

Licensors agree that the security provided on the server will not allow unauthorized traffic to access Licensee data.

EXHIBIT "E"

REPORTS

"Working Reports" are those available as an option in the majority of Views in all Modules. Working reports primarily provide data in tabular format and may be exported in coma-delimited format. Reports may also be exported. Microsoft software products may be used by the Licensee to configure data in report exports.

"Custom Reports" are those that use information from more than one view or are designed to the specifications of the Licensee. Funds have been included in Exhibit F for Customized Reports, to be determined during Phase 1 and implemented at the discretion of the Licensee.

Custom Reports are not proposed at this time.

Software Engineering services required for development of Custom Reports are available on a time and materials basis at the rate specified in Exhibit "F". The Licensee agrees to validate reports and any subsequent revisions within 14 days of the report or revision being made available. Licensee is responsible for all validation, unless otherwise specified in the Custom Report price.

EXHIBIT "F"
FEE SCHEDULE

Initial FY pricing will that of current rates that are being paid to Trapeze for Plan, Ridecheck tool and APC Gateway as applicable. Pricing will start on the next Trapeze renewal and the agency can cease to pay Trapeze once payment has transferred.

Rates based on 51-150 or fewer active vehicles and modular functionality and set-up, training and support services defined in Exhibits A through E. If there are any changes requested by Licensee then the rate shall be increased in accordance with Licensor's then current published price list. With no changes in functionality or service levels, the annual maintenance and support services fees for continued on-line service shall not increase by more than 6% per year.

In the event that the Licensee commences use of the Escrowed Materials defined in Article IV, Section 7A, it shall require that the Licensee procure third-party software at the expense of the Licensee.

Hourly rates for additional services are available on a Time & Materials basis: Professional Services/Training/Software Engineer \$185 per hour; and Data Entry \$150 per hour.

Annual Fees Will be paid by June 30, 2024, and within thirty (30) days of renewal each subsequent year. Labor and Travel costs will be progressively billed monthly as they are incurred.

Vendors do not generally charge fees to interface with TransTrack, however, should a vendor decide to charge a fee for an interface, these charges will be Licensee's responsibility.