

Schedule 14

CDS Data Center Hosting Agreement

This Hosting Agreement (“**Agreement**”) for the Central Data System is made as of _____, 2012 (the “**Effective Date**”) by and between the Washington Metropolitan Area Transit Authority (the “**Authority**” or “**WMATA**”) and _____ (“**Host**”) (each a “**Party**” and together the “**Parties**”).

Recitals

- A. WHEREAS**, WMATA has entered into a contract entitled "Design, Build, Installation, Operation and Maintenance Agreement," with accompanying Schedules (the "**Contract**") with a contractor (the "**Contractor**," as such term is further defined below) for the procurement and maintenance of a New Electronic Payment Program (“**NEPP**”) System, including the NEPP Central Data System;
- B. WHEREAS**, the Contract allow components of the NEPP System to be hosted by entities other than WMATA or the Contractor;
- C. WHEREAS**, Host provides data center hosting services;
- D. WHEREAS**, WMATA wishes to outsource the hosting of the data center than houses the Central Data System; and
- E. WHEREAS**, WMATA wishes to engage Host to maintain and manage the CDS and NEPP Software for such purposes, and Host is willing to provide such hosting services, all on the terms and conditions set out below.

NOW, THEREFORE, in consideration of the mutual agreements and obligations contained herein, the Parties agree as follows:

Agreement

- 1. Definitions** This Hosting Agreement for the CDS incorporates definitions set out in Schedule 1 of the Contract except as otherwise provided below:
 - 1.1 "CDS"** means the Central Data System.
 - 1.2 "Central Data System"** means the computer system (i) that controls all processes, transactions and events related to WMATA's fare vending and collection device operation; (ii) that controls communications to the devices and external/ internal NEPP System; (iii) that serves as the repository and processor for all data transferred from NEPP equipment; (iv) that monitors and controls the NEPP equipment and ensures proper

performance of the NEPP System; and (v) that stores WMATA fare tables and other system and equipment parameters for data exchange and provides Interfaces to other WMATA systems.

- 1.3 **"Content"** means (i) WMATA Data provided to the Contractor in accordance with the Contract; and (ii) WMATA Data provided to the Host under this Agreement.
- 1.4 **"Contractor"** means the entity that has entered into the Contract with WMATA.
- 1.5 **"Hosted NEPP Data Center"** means the NEPP Data Center, as made available by the Host on its Hosting System.
- 1.6 **"Hosting Software"** means the Host's information management software that enables WMATA Users to access the Hosted NEPP Data Center and Content residing on the Hosting System.
- 1.7 **"Hosting System"** means (i) the Hosting Software; and (ii) all servers, networks, Internet connections, disk storage, software operating systems, and applications that are used by Host to operate the Hosted NEPP Data Center, and make the Data Center available to users.
- 1.8 **"NEPP Data Center"** shall mean the data center that houses the Authority's Central Data System.
- 1.9 **"Personal Information"** means a natural person's (i) first name and last name, or first initial and last name, in combination with (ii) any one or more of the following data elements that relate to a particular resident: (a) Social Security number, (b) driver's license number or state-issued identification card number; (c) financial account number, (d) credit card number, debit card number, other cardholder account data, and (iii) similar information whose unauthorized use would constitute or permit identity theft or other fraud.
- 1.10 **"Service Levels"** has the meaning provided in Section 2 (Data Center Hosting Services).
- 1.11 **"Third Party"** means any person or entity other than WMATA, the Host, or the Contractor.
- 1.12 **"WMATA Authorized User"** means WMATA employees, customers and vendors who are permitted by WMATA to access and use the Hosted NEPP Data Center as end users.
- 1.13 **"WMATA Authorized Vendor"** means a Third Party service provider selected by WMATA to service, improve, or otherwise work with the NEPP Data Center, the Central Data System, or the Content.

- 1.14 WMATA Data** means data and information (whether confidential or not), including (i) Personal Information and other data input or stored in WMATA systems for purposes of WMATA business, whether by WMATA, by WMATA' agents, or by other users authorized by WMATA; as well as (ii) any other data or information generated within or by the existing Authority systems and operations, or by the NEPP System, including but not limited to, ridership, operating parameters, revenue information, data files and formats, customer data other than Personal Information, credit ratings, spousal relationships, addresses, telephone numbers, and account balances. The term "WMATA Data" also includes any data or information derived from such WMATA Data, whether through de-identification, data mining, analytics, aggregating, profiling, or other techniques that analyze, augment, or otherwise manipulate such Data.
- 1.15 "Hosting Services"** has the meaning provided in Section 2 (Data Center Hosting Services).
- 2. Data Center Hosting Services** The Host will perform the services necessary (i) to maintain and manage the NEPP Data Center; (ii) to preserve and secure the Content resident on the Hosting System and (ii) to maintain and manage the Hosted NEPP Software in order to make the Content Available from the Data Center for access and use by WMATA, Authorized Users, and Authorized Vendors (the "**Hosting Services**"). Such Hosting Services shall comply in full with (i) the Technical Specifications; (ii) the Service Levels set out in Schedule 6 to the Contract (the "**Service Levels**"); and (iii) the Contract.
 - 3. Availability** The Hosting System and its operation shall meet the Availability standards set out in Section 24 of the Contract (entitled "Service Levels and Service Level Credits") and in Schedule 6 of the Contract, governing Service Levels.
 - 4. Other Service Levels** The Hosting System and its operation shall meet all other applicable Service Levels set out in Section 24 of the Contract (entitled "Service Levels and Service Level Credits") and in Schedule 6 to the Contract, governing Service Levels.
 - 5. Security** The Host shall secure the Hosted NEPP Data Center with Physical Security Measures and Technical Security Measures (as such terms are defined in Schedule 1 of the Contract). In addition, with respect to the Hosting System, the Host shall meet the obligations set out in (i) Contract Section 22 (entitled "Security") and Section 23 (entitled "Payment Card Security Standard"), (ii) applicable provisions of the Technical Specification, and (iii) applicable provisions of Schedule 6 to the Contract, governing Service Levels.
 - 6. Support** Host will provide support for the Hosted NEPP Data Center to WMATA via a telephone help desk, which shall be operated 24 hours/day, 7 days/week, to address and repair defects and meet Availability and other Service Levels.

- 7. Protections to WMATA Data** The Host shall only access and utilize WMATA Data in order to perform its obligations under this Agreement, and for no other purposes. The Host shall treat WMATA Data as Confidential Information, absent express written permission by the Authority.
- 7.1 Strict Limitations on the Creation of Derivatives of WMATA Data** Without limiting the above restrictions on the Host's use of WMATA Data, and by way of example, the Host shall not de-identify, aggregate, analyze, profile, mine, or otherwise manipulate WMATA Data except in the performance of its express duties under this Agreement.
- 7.2 Full and Prompt WMATA Access and Downloads of WMATA Data** The Host shall, upon Authority request, promptly release to the Authority all copies of any WMATA Data in its possession and shall not withhold WMATA Data for any reason including for cause. The Host will also provide the Authority any data maps, documentation, software, or other materials reasonably necessary for the Authority to use, translate, interpret, extract and convert WMATA Data for use by the Authority.
- 7.3 No Proprietary Formats for WMATA Data** To the extent the Hosting System requires any formatting of WMATA Data, the Host agrees that all such re-formatted WMATA Data shall be stored in an industry-standard format, that is not proprietary to the Host.
- 7.4 WMATA Privacy Policy** Host acknowledges that WMATA operates under an existing privacy policy located at http://www.wmata.com/about_metro/privacy.cfm (the "**WMATA Privacy Policy**"). The Host agrees to comply with the WMATA Privacy Policy.
- 8. Service Level Credits** The Host shall provide Service Level Credits as set out in Contract Section 24 (entitled "Service Levels and Service Level Credits") and Schedule 7 to the Contract, with respect to the operation of the Hosting System.
- 9. Intellectual Property**
- 9.1 License** During the Term, Host grants to WMATA and Authorized WMATA Users a non-exclusive license to access and use the Hosting System for purposes of accessing and using the Hosted NEPP Data Center.
- 9.2 Authorized Third Party Service Providers** WMATA is entitled to provide its third party service providers with access to the NEPP Data Center for purposes of maintaining and improving the Central Data System and the Content; provided (i) the Third Party is bound by confidentiality provisions no less protective of the Host as those set out in Section 12 (Confidentiality); and (ii) the Third Party agrees to abide by all license restrictions set out in Section 9 (Intellectual Property).

- 9.3 WMATA Grant of Rights; Content** It is agreed and understood that Contractor shall provide Content to Host. WMATA grants to Host a non-exclusive license to access and use Content and Hosted NEPP Software only to the extent necessary for Host to provide the Hosting Services for WMATA. WMATA represents and warrants that the Contractor has necessary rights in the Content in order to provide that Content to Host for use in the Hosted NEPP Data Center.
- 9.4 Ownership of Content** WMATA is and shall remain the sole and exclusive owner of all right, title and interest to the Content and WMATA's Confidential Information (including all associated Intellectual Property Rights).
- 9.5 Ownership of Hosted NEPP Software** As between Host and WMATA, WMATA owns all title, interest, and rights to NEPP System; it being understood that the Contract governs the rights between WMATA and Contractor in the NEPP System.
- 9.6 Ownership of Hosting System** As between WMATA and the Host, the Host is the sole owner of the Hosting System.
- 9.7 Restrictions on Use** WMATA shall comply with the Host's Acceptable Use Policy and codes of conduct; provided such policy and code are reasonable. The Host shall provide WMATA with a copy of such materials before any required compliance by WMATA.
- 10. Necessary Equipment** WMATA, or the Contractor shall be responsible (at its expense) for providing the resources necessary to connect to the Hosted NEPP Data Center, including acquiring, installing and maintaining Internet access, hardware, software and other equipment as may be necessary for WMATA (or WMATA Authorized Users and Authorized Vendors, as applicable) to connect to, access, and use the Website and the Web Hosting Services.
- 11. Fees; Invoicing; Payment; Credits** [To be determined by WMATA and Host].
- 12. Confidentiality** The following terms and conditions govern use and protection of Confidential Information that one Party (the "**Disclosing Party**") provides or discloses to the other Party (the "**Receiving Party**") pursuant to this Agreement:
- 12.1 Definition** The term "**Confidential Information**" shall mean (i) WMATA Content, and (ii) non-public information concerning a Party's software (whether owned or licensed by such Party), systems, products, services, research and development; customer and prospective customers; business plans and finances, and similar information of a Party (a) that is marked confidential, restricted or proprietary by the Disclosing Party (or by any other person to whom such Disclosing Party has an obligation of confidence); or (b) is disclosed under circumstances where the Receiving

Party either knew or should have known that the information should be treated as confidential.

12.2 Exclusions The obligations of this Section 12 (Confidentiality) shall not apply to any information (with the burden of proof upon the Receiving Party) (i) that the Receiving Party rightfully possessed at the time of the disclosure by the Disclosing Party or rightfully received from a third party without restriction on disclosure; (ii) that the Receiving Party develops independently and without reference to any Confidential Information of the Disclosing Party; (iii) that is or becomes available to the public through no act or omission of the Receiving Party; or (iv) that is required to be produced or discloses under WMATA's Public Access to Records Policy ("PARP") by any judicial or government authority (with requisite jurisdiction), provided that the Receiving Party gives the Disclosing Party notice of such requirement to permit the Disclosing Party in to seek a protective order or other relief.

12.3 Obligations Each Party acknowledges that the other Party owns or otherwise possesses valuable Confidential Information. Neither Party will at any time without the prior written consent of the other party publish, disclose or otherwise disseminate, duplicate or use, directly or indirectly, Confidential Information of the other Party to or for its own benefit or that of any of its employees or subcontractors or any other Third Party.

13. Representations and Warranties and Warranties by Host

13.1 Compliance with Standards The Hosting System will perform in all material respects with Sections 2 (Data Center Hosting Services) through Section 7 (Protections to WMATA Data).

13.2 Non-Infringement The Hosting System does not and shall not infringe the Intellectual Property Rights of Third Parties.

13.3 Licensing The Host has obtained and will obtain valid software licenses for the software and technology it uses to perform its services.

13.4 Services All of the services to be performed by the Host will be rendered using high industry practices and in a competent, workmanlike and professional manner.

13.5 Disclaimer Except for the express warranties provided in this Agreement, the Hosting System is provided without additional express or implied warranties, including, without limitation, any warranty of fitness for a particular purpose, or merchantability.

14. Indemnification

- 14.1 Security Incident** The Host shall indemnify, defend and hold harmless the Authority, its affiliates, directors, officers, employees and agents against any and all losses, liabilities, judgments, penalties, awards, costs, fees and expenses (including attorneys' fees) to the extent the Hosting System or actions or omissions of the Host cause or permit unauthorized Third Party access to WMATA Data.
- 14.2 Non-Compliance with Privacy and Security Regulations** The Host shall indemnify, defend and hold harmless the Authority, its affiliates, directors, officers, employees and agents against any and all losses, liabilities, judgments, penalties, awards, costs, fees and expenses (including attorneys' fees) arising out of or related to non-compliance by the Host with applicable data privacy and security laws or regulations.
- 14.3 Intellectual Property Infringement** The Host shall defend, indemnify, and hold harmless WMATA from and against any liability, claim, suit, action, proceeding, damage, cost or expense (including reasonable attorney's fees) resulting from a breach of the Host's non-infringement warranty set out in Section 13.2 (Non-Infringement).
- 14.4 Defense of Action; Defense Costs** If any action or proceeding relating to the indemnification obligations set out in this Section 14 (Indemnification) is brought against the Authority, then upon written notice from the Authority to the Host, the Host shall, at the Host's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.
- 14.5 Effect of Insurance** The Host understands and agrees that it is the Host's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of the Host's insurance to fully fund any indemnification shall not relieve the Host of any obligation assumed under this indemnification.

15. Insurance [To be determined by the Host and WMATA]

16. Limitation of Liability and Damages THE LIABILITY OF THE HOST, IN THE AGGREGATE, SHALL NOT EXCEED TWICE THE AMOUNT DUE OR PAID TO THE HOST, EXCEPT IN THE CASE OF CONTRACTOR'S OBLIGATIONS TO INDEMNIFY THE AUTHORITY UNDER SECTION 14.1 (SECURITY INCIDENT), SECTION 14.2 (NON-COMPLIANCE WITH PRIVACY AND SECURITY

OBLIGATIONS), AND SECTION 14.3 (INTELLECTUAL PROPERTY INFRINGEMENT), IN WHICH CASE THIS LIMITATION SHALL NOT APPLY.

17. **Term** Unless terminated earlier in accordance with Section 18 (Termination) this Agreement shall commence as of the Effective Date and continue for a term of [To be determined by WMATA and Host] (the “**Term**”).

18. **Termination**

18.1 **Termination for Convenience** The Authority shall be entitled to terminate this Agreement for convenience before expiration of the Term upon sixty (60) days prior notice to the Host.

18.2 **Termination for Cause** In the event that either of the Parties is in material breach of an obligation under this Agreement, the non-breaching Party may terminate this Agreement for cause upon written notice after first: (i) providing the other Party with written notice of the breach (a “**Notice of Breach**”) and (ii) providing thereafter a thirty (30) day opportunity to cure beginning on the date of receipt by the alleged breaching Party of the Notice of Breach.

18.3 **Insolvency** In the event the Host shall make an assignment for the benefit of creditors, or shall have a petition in bankruptcy filed for or against it that is not dismissed within sixty (60) days, the Authority shall have the right to terminate this Agreement immediately upon providing written notice of such termination.

18.4 **Termination Without Prejudice to Other Rights and Remedies** Termination of this Agreement will be without prejudice to the terminating Party’s other rights and remedies pursuant to this Agreement.

19. **Effect of Termination**

19.1 **Data Migration** Upon termination or expiration of this Agreement, the Host shall promptly provide to WMATA a full and complete download of all MWATA Data resident in the Hosting System, in accordance with Section 7 (Protections for WMAT Data).

19.2 **Transition Assistance** Upon termination or expiration of this Agreement, the Host shall provide the Authority with prompt assistance to migrate the CSA and the Content to an alternative host. At the Authority’s direction, such transition assistance shall continue for a six (6) month period following termination or expiration of this Agreement.

19.3 **Return of Materials** Each Party agrees that upon termination or expiration of this Agreement it will either (i) return to the other Party all Confidential Information of such other Party (except for Confidential Information (if any) to which it retains continuing rights); or (ii) destroy

such Confidential Information and certify in writing to such destruction. In the case of the Host, no Confidential Information or WMATA Data shall be destroyed before the Host (i) has met its obligations under Section 19.1 (Data Migration) and Section 19.2 (Termination Assistance); (ii) the Authority has confirmed in writing that the Host has met each of such obligations. It is agreed and understood that the Host shall continue to meet all of its obligations under Section 7 (Protections to WMATA Data) until it is received the Confirmation of Data Migration.

19.4 Survival The following Sections shall survive any termination or expiration of this Agreement:

- Section 9.4 (Ownership of Content)
- Section 9.5 (Ownership of Hosted CSA Software)
- Section 9.6 (Ownership of Hosting System)
- Section 12 (Confidentiality)
- Section 14 (Indemnification)
- Section 16 (Limitations of Liability and Damages)
- Section 19 (Effect of Termination) (for the referenced period of time)

20. General To incorporate general terms that are standard in Authority contracts.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

Authority

Host

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____