

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Approving the MuniMobile fare payment application Terms of Service agreement, and authorizes the Director of Transportation to include the Terms of Service in the Agency's MuniMobile fare payment application and to electronically execute them in the course of the Agency's approving a customer's enrollment to use the MuniMobile application.

SUMMARY:

- The Agency is finalizing the development of a mobile fare payment application called MuniMobile.
- On October 31, 2014 the Director of Transportation executed a contract with GlobeSherpa to conduct a pilot project of MuniMobile for a period of up to two years. The value of the contract is \$95,000.
- MuniMobile will allow customers to purchase, store, and use single or multiple Muni fares on a smartphone or other mobile electronic device.
- MuniMobile will protect personal information and payment transactions, and provide an eCommerce website for online ticket purchases, and multi-language support in future releases.
- As part of the enrollment process, customers must agree to Terms of Service, which set out the contractual obligations and liability limits of the SFMTA, GlobeSherpa, and MuniMobile users.
- As the Terms of Service include a binding arbitration provision, these Terms must be approved by the SFMTA Board of Directors.

ENCLOSURES:

1. SFMTAB Resolution
2. Terms of Service

APPROVALS:

DATE

DIRECTOR _____ 10/26/15

SECRETARY _____ 10/26/15

ASSIGNED SFMTAB CALENDAR DATE: November 3, 2015

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PURPOSE

To obtain approval of the Terms of Service, including an arbitration clause, which will be implemented as part of MuniMobile, a mobile fare payment application that will enable customers to purchase, store, and use single or multiple Muni fares on smartphones and other electronic devices.

GOAL

The MuniMobile Application supports:

Goal 3: Improve the environment and quality of life in San Francisco

Objective 3.2: Increase the transportation system's positive impact to the economy.

DESCRIPTION

This fall, the SFMTA is preparing to launch as a pilot project, MuniMobile, the Agency's new mobile ticketing application for smartphones and other electronic devices. MuniMobile is being created in partnership with GlobeSherpa, developer of similar mobile fare payment applications for other transit operators, including Portland Tri-Met, the Los Angeles Department of Transportation, Virginia Railway Express, and Ventra, the regional fare payment system in Chicago. The MuniMobile pilot project will last up to two years.

The MuniMobile application will allow customers to purchase, store, and use single or multiple Muni fares on one mobile device. Single-ride fares, cable car rides, and one-day, three-day, and seven-day passports will be available. The application will provide industry-leading security to protect personal information and payments, an eCommerce website for online ticket purchases, and multi-language support in future releases.

As part of the enrollment process in the application, customers must agree to the Terms of Service, as is standard with many mobile applications. The Terms of Service agreement requires that claims arising from the use of the application that are within the jurisdictional amount of the San Francisco Small Claims Court (currently \$7,500) must be brought in that court, and a further requirement that claims greater than that jurisdictional amount be subject to binding arbitration. These requirements are standard in mobile application terms of service, as they discourage class action lawsuits over minor issues, but those provisions are a departure from usual SFMTA contracting terms and will limit the Agency's ability to remove claims to Superior Court, which may potentially limit some of the Agency legal defenses and options.

The City Attorney has approved the proposed Terms of Service and reviewed this report.

PUBLIC OUTREACH

The Agency will receive feedback regarding the MuniMobile smartphone application and any

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comments regarding the Terms of Service via the 311 Customer Service Center.

ALTERNATIVES CONSIDERED

Not applicable. Terms of Service are required for a smartphone application.

FUNDING IMPACT

The \$95,000 contract with GlobeSherpa includes application development, project management support, Spanish and Cantonese language translation, and handheld scanners for transit fare inspectors. Based on 70% smartphone penetration amongst Muni riders and a gradual increase to a 10% application adoption rate, the projected credit card processing costs and commission paid to GlobeSherpa (at 4%) are \$275,000 in the first year of the pilot.

ENVIRONMENTAL REVIEW

SFMTA Environmental Review staff determined that the proposed MuniMobile Terms of Service do not constitute a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c). The proposed MuniMobile Terms of Service would not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The proposal is therefore not subject to environmental review under CEQA.

The Planning Department’s concurrence is on file with the Secretary to the SFMTA Board of Directors.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Not applicable.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the MuniMobile fare payment application Terms of Service agreement, and authorizes the Director of Transportation to include the Terms of Service in the Agency’s MuniMobile fare payment application and to electronically execute them in the course of the Agency’s approving a customer’s enrollment to use the MuniMobile application.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA is finalizing the development of a mobile fare payment application called MuniMobile, which will allow customers to purchase, store, and use single or multiple Muni fares on a smartphone or other mobile electronic device; and,

WHEREAS, The Agency entered a contract on October 31, 2014, with application developer GlobeSherpa to conduct a pilot project for MuniMobile of up to two years; and,

WHEREAS, As part of the enrollment process to use the MuniMobile application, customers must agree to Terms of Service, which sets out the contractual obligations and liability limits of the SFMTA, GlobeSherpa, and MuniMobile users; and,

WHEREAS, As the Terms of Service include a binding arbitration provision for claims arising from the use of the application that are greater than the jurisdictional limit (currently \$7,500) of the San Francisco Small Claims Court, and the Terms of Service require all other claims be heard in the Small Claims Court; and,

WHEREAS, The MuniMobile application does not constitute a project under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c) because the action would not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves the MuniMobile fare payment application Terms of Service agreement, and authorizes the Director of Transportation to include the Terms of Service in the Agency's MuniMobile fare payment application and to electronically execute them in the course of the Agency's approving a customer's enrollment to use the MuniMobile application.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 3, 2015.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
MOBILE FARE PAYMENT TERMS OF SERVICE
UPDATED October 2, 2015**

Agreement Summary:

The MUNI Fare Payment Application allows you to pay the fare to ride MUNI's buses, light rail vehicles, and cable cars. This Agreement and the SFMTA's Privacy Policy (<https://www.sfmta.com/terms-use>) govern your registration, access to, and use of, the App and the website at SFMTA.transitsherpa.com ("the Website"). If you are using the App on behalf of any entity, you represent and warrant that you are authorized to accept and agree to be bound by this Agreement on behalf of yourself and the entity that you represent.

BY CLICKING ON THE CHECK BOX BELOW, YOU, AS THE PERSON SEEKING TO USE MUNI'S MOBILE FARE PAYMENT APPLICATION ("THE APP"), REPRESENT THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, WHICH ESTABLISHES A CONTRACT BETWEEN YOU, THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA), AND GLOBESHERPA, INC. YOU MUST INDICATE YOUR CONSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BY CHECKING THE BOX BELOW. IF YOU DO NOT AGREE TO OR DO NOT UNDERSTAND THIS AGREEMENT, YOU MUST NOT USE THE APP, AND YOU MUST USE ANOTHER MEANS TO PAY THE FARE REQUIRED TO RIDE MUNI.

Tickets purchased through the App are stored on your phone. It is your responsibility to use a charged and properly operating mobile device with Internet connectivity to access and use the App. You are solely responsible at all times for the proper functioning of your mobile phone to show proof of payment.

The App requires you to register by providing your personal contact information, including your name, phone number, and email. You will need to provide your payment (credit card) information to use the App to pay for your fare. If you are registering on behalf of an entity, you must provide personal contact and payment information about that entity. You agree that the information you provide is accurate and complete, and you agree to update that information if it changes. Your failure to provide accurate and complete information will be a breach of this Agreement and may result in termination of your account and of denial of access to the App.

ANY QUESTIONS, ISSUES, OR CONCERNS REGARDING THE APP AND THE WEBSITE (SFMTA.transitsherpa.com) MUST BE DIRECTED TO THE SAN FRANCISCO'S 311 CUSTOMER SERVICE CENTER. You can contact the 311 Customer Service Center by dialing 311 within San Francisco or (415) 701-2311 outside of San Francisco, or by email at <http://www.sf311.org>.

By accessing the Website and applying to use the App, you represent and affirm that you are at least 18 years old. By using the App, you represent and affirm that you have the legal authority to access and use the credit card registered with the App and the Website for the payment of Fares. Any dispute, claim or controversy arising out of or relating to this Agreement will be settled by the San Francisco Small Claims Court or arbitration.

BY CHECKING THIS BOX, I INDICATE THAT I HAVE READ, UNDERSTAND AND

AGREE TO THE REQUIREMENTS AND CONDITIONS OF THIS AGREEMENT.

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Terms and Conditions:

1. Purpose of the Services and Access License. The sole purpose of the App and your use of the App is limited to payment of the applicable fare to ride MUNI, by using a smart phone or other electronic device. The App can be used on MUNI's bus, light rail, and cable car lines. The SFMTA grants you a non-exclusive, non-transferable, revocable license to access and use the App for the payment of fares for MUNI transit services and to access information about those fares and services.

2. Security of Account Information. As part of your registering for the App, you will select a User ID and an Account Password, which will be linked to your payment and contact information. **You are responsible for maintaining the security and confidentiality of your User ID and Account Password. You are also solely responsible for all activities that occur through your User ID and Account Password. You agree not to access or use, or attempt to access or use, the App, the Website, or any part them by using the identity or the registration data of any person other than yourself. You agree to notify SFMTA immediately of any unauthorized use of your User ID or Account Password.**

3. Confirming Account Information. From time to time, you may receive an email message from the SFMTA asking you to log into the Website to confirm or update your account information. If such account information is not confirmed or updated, the account may be suspended by SFMTA. If the SFMTA suspends your account, your contact information may remain on the App and the Website or be removed by SFMTA. Please read our Privacy Policy (<https://www.sfmta.com/terms-use>), which describes the personally identifiable information we collect, use, disclose, manage and store. **IMPORTANT: You can change or update your account information only by logging into the SFMTA's Website. The SFMTA will never ask you to confirm or update your account information through a link in an email. If you receive an email message purportedly from the SFMTA asking you to click on a link to provide personal or credit card information, DO NOT DO IT—it is likely an attempt to obtain your personal information for fraudulent or other illegal purposes. If you receive such an email, please immediately report it to the SFMTA by contacting San Francisco's 311 Customer Service Center by dialing 311 within San Francisco or (415) 701-2311 outside of San Francisco, or by email at <http://www.sf311.org>.**

4. Using the App to Pay a Fare. The following methods of payment can be used for a fare transaction: **MasterCard and Visa.** A fare is the amount set by the SFMTA for a person to ride a MUNI bus, rail vehicle or cable car. If you wish to use the App to purchase a ticket (pay a fare), you will be asked to supply credit card information and other information. You understand that any such information will be treated by the SFMTA as required by the SFMTA's [Privacy Policy](#) (<https://www.sfmta.com/terms-use>). You promise that all information you provide, including but not limited to all information concerning your name, address, credit card number or

other payment information, and other identifying information of any nature necessary to pay a fare, is true, complete and correct and that you will update all information if it changes. You grant SFMTA the right to provide any information you submit in registering to use the App or to pay a fare to third parties for purposes of facilitating the fare payment initiated by you or on your behalf. Verification of information may be required to complete a ticket sale.

You agree to pay all charges incurred by you or by any users of your account and credit card at the price(s) in effect when such charges are incurred. Fares are set by the SFMTA Board of Directors during publicly noticed meetings and stated in U.S. Dollars. Notices of fare increases may not be posted on the Website until the increased fare comes into effect. Notices of public meetings at which fare increases are discussed and determined may be found at SFMTA.com. By using the App to purchase a fare, you represent and affirm that you are authorized to charge the credit card used to pay the fare transaction. The SFMTA does not retain any payment (credit card) information. The SFMTA only retains your personal contact information and ticket data. The SFMTA does not own the App; the App is provided to the SFMTA under license by GlobeSherpa. Payment is processed by PayPal, which is responsible for the security of credit card information.

5. Pricing, Availability; Purchase Confirmation; Refunds. If you do not receive (a) a message containing your ticket and (b) a confirmation number for your ticket order (in the form of a confirmation page or purchase receipt) after submitting payment information, or if you experience an error message or service interruption after submitting payment information, it is your responsibility to confirm with 311 whether or not your order has been received. You may be the only person capable of knowing of any problems that may occur during the fare payment process. SFMTA will not be responsible for losses (monetary or otherwise) if you fail to receive the tickets and/or an order confirmation, and such failure is not caused by the App.

6. Fare Payment and Legal Requirements. Use of the SFMTA transit services are subject to your payment of applicable fare charges and any applicable fees. Fare Transactions may be regulated by certain federal, state, and local laws or regulations. You agree to comply with all laws applicable to using the App, including but not limited to the San Francisco Transportation Code. You acknowledge that complying with all applicable laws is your responsibility. SFMTA reserves the right, without refund of any amount paid, to prosecute and to impose any penalties allowed by applicable law, including but not limited to exclusion and citation, upon any person whose conduct violates SFMTA fare payment policies (<https://www.sfmta.com/getting-around/transit/fares-passes/proof-payment>) or applicable law in purchasing tickets and accessing or riding MUNI facilities and vehicles. SFMTA will comply with law enforcement officials and may provide them with all information you submit to us to assist in any investigation or prosecution they may conduct. You are solely responsible for any data charges or other charges you may be assessed by your mobile phone service provider. A ticket is not redeemable for cash.

7. Consent to Receive Emails and Notice. As long as you maintain an account, you may not "opt out" of receiving account-related emails from SFMTA. The parties hereto may give legal notice by means of electronic mail, which electronic mail shall be considered delivered when sent. The notice address of SFMTA is munimobile@SFMTA.com (or such other address as is provided by SFMTA to you). Your address for the receipt of notices pursuant to this Agreement shall be the current email address listed by you in your account profile. You also

agree, unless you opt out, to receive marketing emails related to the App.

8. App User Code of Conduct. In connection with your use of the App and the Website, you agree that you will not:

- a. Restrict or inhibit any other visitor or user from lawfully using the App or the Website, including, without limitation, by means of “hacking” into or otherwise accessing the App or the Website in a manner that is not authorized by the SFMTA or defacing any portion of the App or the Website;
- b. Use the App or the Website for any unlawful purpose;
- c. Transmit any software onto the App or the Website that contains any viruses, worms, Trojan horses, defects, date bombs, time bombs or other items of a destructive nature;
- d. Modify, adapt, sub-license, translate, sell, reverse engineer, decompile or disassemble any portion of the App or the Website, or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the App or the Website;
- e. Attempt to access another person's personal information or data on the App or the Website;
- f. Remove any copyright, trademark or other proprietary rights notices contained on the App or the Website;
- g. “Frame” or “mirror” any part of the App or the Website;
- h. Use any robot, spider, offline reader, search/retrieval application or other manual or automatic device or process to retrieve, index, data-mine or in any way reproduce or circumvent the navigational structure or presentation of the App or the Website or its contents without SFMTA prior written consent;
- i. Upload or attempt to upload content to the App or the Website other than the information specifically required by the SFMTA for your access to or use of the App or the Website; or
- j. Take any action that imposes or may impose (in SFMTA’s sole discretion) an unreasonable or disproportionately large load on SFMTA’s (or its third-party providers’) infrastructure.
- k. Intentionally damage or deface any SFMTA property, including facilities, vehicles, equipment.

9. SFMTA May Change the App or the Agreement at Anytime. SFMTA reserves the right to change or modify the App, this Agreement and its Privacy Policy (<https://www.sfmta.com/terms-use>) at any time and in its sole discretion with or without notice. Your continued use of the App indicates your acceptance of the changes to this Agreement. If you disagree with or do not accept the changes in this Agreement, you must discontinue using the App. The SFMTA may require that all users download and accept the updated App and use only the latest update to the App to utilize the App and access the Website. The SFMTA does not warrant or otherwise guarantee that the App or the updated App will work on all mobile devices.

10. Trademarks and Copyright; Ownership and Use Restrictions. Subject to your compliance with this Agreement, you may download one (1) copy of the App, and you may use it solely for your personal, non-commercial use, provided that you do not delete, alter, remove, modify or deface any copyright and other proprietary notices contained therein. Subject to your compliance with this Agreement, SFMTA and GlobeSherpa each grants you a limited license to

use the App, provided that you not use, reproduce, modify, display, publicly perform, distribute, create derivative works of the App, or circumvent any technological measure that effectively controls access to the App in any way, including without limitation by manual or automatic device or process, for any purpose. You agree not to resell the App. Use of the App and the Website for any purpose other than as expressly authorized in this Agreement is a violation of SFMTA's and GlobeSherpa's copyrights and other proprietary rights and is strictly prohibited.

The information and content provided on or through the App or the Website, including any data, text, designs, graphics, images, photographs, illustrations, audio and video clips, trademarks, logos, service marks, icons and links are created by and owned exclusively by GlobeSherpa or the SFMTA and are intended to educate and inform you about the products and services offered or described in the App. Nothing contained on the App or the Website should be construed as granting, by implication, estoppel or otherwise, any license or right to use any trademark, logo, or service marks without the express written permission of SFMTA, SFMTA's licensors or suppliers, or the third-party owner of any such trademark, logo, or service mark. The trademarks, logos, and service marks, whether registered or unregistered, may not be used in connection with any product or service that is not offered by SFMTA, in any manner that is likely to cause confusion with customers, or otherwise interfere with the SFMTA's ownership of the trademarks or the public's access to and use of the App.

The App, including all software, databases, proprietary information and any intellectual property and other rights relating thereto and including without limitation the selection, sequence and "look and feel" and arrangement of items, are owned and operated by GlobeSherpa and will remain the property of GlobeSherpa. The App is protected by U.S. and international copyright, trademark and other laws, and you acknowledge that these rights are valid and enforceable. You further acknowledge that you do not acquire any ownership rights by using the App.

All editorial and creative assets on the Website, including the code used to create web pages, are protected by US and international copyright laws. The SFMTA and GlobeSherpa reserves all rights to this content. All copyrights, design rights, trademarks, and other intellectual property rights (registered and unregistered) in and on the Website belong to the SFMTA or GlobeSherpa, each of which reserves all rights. Nothing in this Agreement or other provision of the Website or of SFMTA.com grants to you or any person a right or license to use any trademark, design right or copyright owned or controlled by or licensed to the SFMTA.

11. Information and Content Provided by SFMTA. Although SFMTA strives to provide information and content that is both useful and accurate, the nature of the data and other information contained on the App may be subject to frequent change. In addition, the facts and circumstances of every situation differ. Accordingly, although SFMTA endeavors to use reasonable care in assembling the information, the information may not be up-to-date, accurate or complete.

12. Linking and Hyperlinking. You are granted a limited, non-exclusive right to create a text hyperlink to the App, provided that the linking website does not contain any illegal material or such link is not for an illegal purpose. This limited right may be revoked at any time. You may not use a SFMTA or GlobeSherpa logo or other proprietary graphic to link to the App without the express written permission of SFMTA or GlobeSherpa. Further, you may not use, frame or utilize framing techniques to enclose any SFMTA or GlobeSherpa trademark, logo or other proprietary information, including the images found on the App, the content of any text or

the layout/design of any page or form contained on a page on the App without SFMTA's express written consent. Except as noted above, you are not conveyed any right or license by implication, estoppel or otherwise in or under any patent, trademark, copyright or proprietary right of SFMTA or any third party.

13. Termination and Other Remedies. This Agreement shall remain effective until terminated in accordance with the terms of this Agreement. SFMTA reserves the right to modify or terminate this Agreement, and/or your access to and use of the App or any portion thereof, immediately without notice at any time and for any reason, with or without cause. Upon termination of this Agreement, your right to use the App shall immediately cease, and you agree that you will destroy all content obtained from the App and all copies thereof, whether made under this Agreement or otherwise. You agree that any termination of your access to or use of the App may be effected without prior notice and that SFMTA may immediately deactivate or delete your password and user name, and all related information and files associated with your account, and/or bar any further access to such information or files. You agree that SFMTA shall not be liable to you or to any third party for any termination of your access to the App or to any such information or files and shall not be required to make such information or files available to you after any such termination.

Violations of this Agreement, including unauthorized use of the App, may be investigated, and appropriate legal action may be taken, including without limitation civil, criminal and injunctive action. You agree that monetary damages may not provide a sufficient remedy to SFMTA or GlobeSherpa for violations of this Agreement, and you consent to injunctive or other equitable relief for such violations.

SFMTA is not required to provide any refund to you if it exercises any of its rights or remedies because you have violated this Agreement or any of SFMTA's rights. Additionally, SFMTA reserves the right, in its sole discretion, to modify, suspend or discontinue any part of the App at any time, or to impose limits on certain features and App and to restrict access to any part or to all of the App, without notice to you. SFMTA shall not be liable to you or to any third party for any claim or cause of action arising out of its exercise of these rights.

All protective provisions of this Agreement shall survive termination, including but not limited to intellectual property protections, warranty disclaimers, indemnity and limitations of liability.

14. General Disclaimer. You acknowledge that you are responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed to access and use the App and you are solely responsible for all charges related to those activities. You assume all responsibility and risk for your use of the App and your reliance thereon. No opinion, advice or statement of the SFMTA, whether made on the App or otherwise, shall create any warranty. **Your use of the App and of any content provided through the App are entirely at your own risk.** You acknowledge and agree that neither SFMTA nor its licensors or vendors are responsible for any contact or interaction between you and any other user of the App and that you bear the sole risk of transmitting through the App, any content, including payment information and information that identifies you or your location. The payment of a fare using the App does not guarantee that transit service will be provided or available at the time scheduled or that transit service will be timely, available, not delayed, cancelled or changed as to time or location. Your use of the App does not create a bailment or other liability for your personal property that you may bring on board a transit vehicle.

15. Warranty Disclaimer. The App, the information and content on the App, and any product or service obtained through the App are provided “as is” and “as available,” without representations, promises or warranties of any kind, either express or implied. To the fullest extent permissible pursuant to applicable law, the SFMTA, GlobeSherpa and its licensors and clients disclaim all warranties, express or implied, with respect to the App, the Website, and any product or service obtained through the App and the Website, including without limitation implied warranties of title, non-infringement, accuracy, merchantability and fitness for a particular purpose, and any warranties that may arise from course of dealing, course of performance or usage of trade. Applicable law may not allow the exclusion of implied warranties, so the above exclusions may not apply to you. Neither the SFMTA nor its employees, officer, licensors or vendors warrant that your use of the Website or the App will be uninterrupted, error-free or secure, that defects will be corrected, or that the Website, the App and the server(s) on which the Website and App are hosted are free of viruses or other harmful components. The SFMTA does not and cannot guarantee that technical difficulties will not occur during the download of the App or that the App will download successfully, or that the Website or App will operate without interruption or error.

16. Limitation of Liability. Neither the SFMTA, GlobeSherpa nor any of their affiliates, licensors, clients, suppliers, advertisers or sponsors, nor their directors, officers, employees, consultants, agents or other representatives (“App Providers”), are or will be responsible or liable to you or to any third party for any indirect, incidental, consequential, special, exemplary, punitive or other damages (including without limitation damages for loss of business, loss of data or lost profits), under any contract, negligence, strict liability or other theory arising out of or relating in any way to the services and/or materials contained on the App, to any linked website or to any product or service purchased through the App. Without limiting the foregoing, you expressly acknowledge and agree that the App Providers shall have no liability or responsibility whatsoever for (a) personal injury or property damage, of any nature, whether arising in contract or in tort, resulting from your access to and use of the App or the Website, including any claim, cause of action, obligation, liability, right, or remedy whether or not arising from the negligence of SFMTA or the App Providers, (b) any unauthorized access to or use of our secure servers and/or any and all personal information and/or financial information stored therein, (c) any interruption or cessation of transmission to or from the Website, (d) any bugs, viruses, worms, trojan horses, defects, date bombs, time bombs or other items of a destructive nature which may be transmitted to or through the Website by any third party, (e) any errors, mistakes, inaccuracies or omissions in any materials, or for any loss or damage of any kind incurred as a result of the use of the App and any information posted, emailed, transmitted or otherwise made available via the App, and/or (f) the failure of a transit system to honor a ticket. **Your sole and exclusive remedy for dissatisfaction with the App or the Website is to stop using the App and the Website. The maximum liability of the SFMTA and its licensors and your sole and exclusive remedy for all damages, losses suffered by you, and causes of action, whether in contract, tort (including, without limitation, negligence) or otherwise, shall be five hundred dollars (\$500.00).**

17. Indemnification. You agree to indemnify, defend and hold harmless SFMTA, GlobeSherpa, their affiliates, licensors, clients, suppliers, advertisers, sponsors and contractors and their respective directors, officers, employees, consultants, agents and other representatives,

from and against any and all claims, damages, losses, costs and other expenses that arise directly or indirectly out of or from (a) your breach of this Agreement and/or (b) your activities in connection with the App.

18. Interstate Nature of Communications. You acknowledge that in using the App you will be causing communications to be sent through interstate telecommunications networks, which are governed by federal law pursuant to the interstate commerce clause of the U.S. Constitution. Even communications that seem to be intrastate in nature can result in the transmission of interstate communications regardless of where you are physically located at the time of transmission. You acknowledge that use of the App results in interstate data transmissions.

19. Assignment; Change in Control. You cannot assign this Agreement without the prior written approval of SFMTA. Any attempt at improper assignment shall be void. The SFMTA may assign this Agreement without your consent to (a) a parent or subsidiary, (b) an acquirer of assets, (c) a successor by merger, or (d) a service provider under contract with the SFMTA to manage the App.

20. Severability. If any part of the Agreement should be determined to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, then such term shall be enforced only to the extent that it is enforceable, and the remaining terms shall survive and remain in full force and effect and continue to be binding and enforceable.

21. Waiver. No waiver of any term, provision or condition of the Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or shall constitute a waiver of any other term, provision or condition hereof, whether or not similar, nor shall such waiver constitute a continuing waiver of any such term, provision or condition hereof. No waiver shall be binding unless executed in writing by the party making the waiver.

22. Force Majeure. If the performance of the App or any part of the Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor dispute, act of God or any other causes beyond the control of either party, that party shall be excused from such for a reasonable time that it is prevented, hindered or delayed by such causes.

23. Integrated Agreement. This Agreement, the SFMTA's Privacy Policy (<https://www.sfmta.com/terms-use>), and other policy statements made on the SFMTA's Website constitute the entire agreement between you, the SFMTA, and GlobeSherpa, and supersede any prior written or oral agreement with regard to the App.

24. Choice of Law and Venue. This Agreement is made and will be performed entirely in San Francisco, California. Any and all claims, causes of action or disputes (regardless of theory) between you and SFMTA arising out of or related to this Agreement, the App, Website, or content accessed through the App, and transactions made through use of the App, including but not limited to disputes concerning the transfer of funds related to fare payment, shall be governed by the laws of the State of California without regard to conflict or choice of law principles, and that venue for any such action shall be in San Francisco.

25. Legal Disputes. You acknowledge that any dispute concerning an amount in controversy that is within the jurisdictional claim limit of the San Francisco Small Claims Court must be brought (filed and heard in) that court. Any dispute concerning an amount in controversy greater than the jurisdictional claim limit of the San Francisco Small Claims Court or that seeks

injunctive relief must be submitted to arbitration in accordance with this Agreement. You acknowledge and agree that, regardless of any statute or law to the contrary, you must file any claim or cause of action against the SFMTA in accordance with the California Government Claims Act, Government Code section 900 et seq., and the claims requirements of the City and County of San Francisco, as described at <http://www.sfcityattorney.org/index.aspx?page=3>. You acknowledge and agree that your failure to follow those claims requirements will forever bar your claim.

You agree that any dispute, claim or controversy of an amount greater than \$5,000 arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, or the use of the App (will be settled by binding arbitration between you and SFMTA, except that each party retains the right to bring an individual action in small claims court in San Francisco, California.

a. Individual Capacity. You acknowledge and agree that you and SFMTA are each waiving the right to a trial by jury or to participate as a plaintiff or class in any purported class action or representative proceeding. Further, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Legal Disputes" section will be deemed void. Except as provided in the preceding sentence, this "Legal Disputes" section will survive any termination of this Agreement. ***You acknowledge and agree that you and SFMTA are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.***

b. Arbitration Rules. The arbitration will be conducted in San Francisco, California. The arbitration shall be administered by one arbitrator from the American Arbitration Association (AAA). Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest, attorneys' fees, and arbitration fees and costs. The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of California and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

c. Arbitrator's Decision. The arbitrator will render a decision and award within the time frame specified in the AAA Rules. The arbitrator's decision will be a reasoned decision, which gives the basic reasons for the decision and not all the detailed factual findings. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The parties shall equally share the fees charged by the arbitrator, and each side shall bear their own respective costs. In any arbitration arising out of or related to this Agreement, the arbitrator is not empowered to award punitive or exemplary damages and the parties waive any right to recover any such damages.

d. Fees and Costs. Each party will be responsible for paying half of any AAA filing, administrative and arbitrator fees. Each party will pay its own costs and attorney's fees, regardless of who wins or loses an arbitration.