

**CITY OF LOS ANGELES**  
**INTER-DEPARTMENTAL CORRESPONDENCE**

**Date:** June 29, 2021

**To:** Honorable City Council  
c/o City Clerk, Room 395  
Attention: Honorable Mike Bonin, Chair, Transportation Committee

**From:** Seleta J. Reynolds, General Manager   
Department of Transportation

**Subject: RECOMMENDATIONS FOR CONTRACT AMENDMENTS WITH BLUELA CARSHARING LLC, AND MOBILITY DEVELOPMENT PARTNERS, FOR BLUELA ELECTRIC VEHICLE CARSHARE PROGRAM EXPANSION (CF #19-0131)**

**SUMMARY**

This report requests authorization to execute contract amendments for the BlueLA phase 2 expanded scope of work. This includes amendments to contract #C-128717 with BlueLA LLC to expand the electric vehicle (EV) car share pilot program in disadvantaged communities and to execute a personal service agreement with Mobility Development Partners (MDP) to continue to manage the Steering Committee, outreach management process, and operational support, as its current scope of work for its expired contract #C-134444.

**RECOMMENDATIONS**

It is therefore requested that the City Council, subject to approval of the Mayor:

1. AUTHORIZE the LADOT General Manager or Designee to:
  - a. Execute the Contract Amendment with BlueLA LLC, on behalf of the City in an amount, providing for additional program funding not to exceed \$3,790,000 (including \$1,300,000 derived from CARB Grant Funds and \$2,490,000 derived from Los Angeles Department of Water and Power (LADWP) to:
    - i. Triple the scale of the pilot program from 100 to 300 electric vehicles in a broader range of disadvantaged communities; and
    - ii. Expand to South Los Angeles, East Hollywood, and Boyle Heights, while continuing to grow service in and around Downtown LA; and
    - iii. Expand the current 40 stations (200 chargers) to 100 stations (500 chargers); and
    - iv. Offer public charging service by owners of privately owned EV's; and
    - v. Revise the amortization schedule from 10 years to 7 years for replaced charger equipment only.
  - b. Execute a personal services agreement with Mobility Development Partners (MDP), with exemption from the Charter Section 1022 Determination process, as MDP was identified and selected for their expert and technical services to partner with the City in the CARB carshare expansion application and award process. This personal services agreement in an amount not to exceed \$558,206, is derived from CARB grant funds. This new

personal services agreement will allow MDP to continue with its current scope of work for its expired contract #C-134444. MDP exceeded the previously allotted time of the contract through no fault of their own beyond the control of the City, to provide technical assistance for the phase 2 expansion, subject to the compliance with City contracting requirements and approval of the City Attorney as to form and legality.

- c. Allocate \$600,000 derived from CARB Grant Fund to the CARB's Sustainable Transportation Equity Project (STEP) grant account within Transportation Grant Fund No. 655, Department 94, to provide funding match which includes an e-bike library within South Los Angeles. Three hundred thousand dollars will be used to secure two 250 electric pedal-assist bikes for South LA residents through a community-based pilot, and \$300,000 will be made available as subsidies to the e-bike program (CF# 20-1041). This project element will be delivered by the Los Angeles CleanTech Incubator (LACI).
2. Authorize the Department of Transportation to receive and deposit up to \$2,490,000 from LADWP to Transportation Grant Fund 655, Department 94 as match funding for the EV carshare expansion and STEP projects.
3. Authorize the Controller to appropriate the match funding received from LADWP up to \$2,490,000 to a new appropriation account within the Transportation Grant Fund 655, Department 94 titled "LADWP Match - EV Carshare Expansion and STEP Grant".
4. Prepare Controller instructions and/or make any technical adjustments that may be required to implement the actions approved by the Mayor and City Council on this matter, subject to the approval of the City Administrative Officer and authorize the Controller to implement these instructions.

## **BACKGROUND**

On March 5, 2019, City Council (Council) accepted a \$3 million grant for the BlueLA phase 2 expansion to bring EV carshare service into South Los Angeles, Boyle Heights, and East Hollywood. At that time, Council authorized LADOT to negotiate an expanded scope of work for the BlueLA contract #C-128717, derived from CARB Grant funds, to provide, manage, operate, and maintain usage agreements for an additional 200 EVs and 60 charging stations during the contract term. It further authorized LADOT to negotiate and execute a personal services agreement with Mobility Development Partners, with exemption from the Charter Section 1022 Determination process, to provide technical assistance for the expanded project.

In March 2020, BlueLA (a subsidiary of the Bollore Group), temporarily suspended its carshare operations in response to the COVID-19 safer at home period. BlueLA subsequently sold 100% of its ownership interest to Blink Charging. Blink transitioned the service and replaced the charging equipment and fleet in January 2021.

## **DISCUSSION**

In April 2018, LADOT launched the EV Carsharing Pilot Program (BlueLA Carsharing) in the pilot area, including Westlake, Pico-Union, neighborhoods north of the University of Southern California (USC), and

portions of Downtown, Hollywood, and Koreatown. Forty stations are now in operation in underinvested communities that fall within the top 10 percent of CalEnviroScreen index.

From the commercial launch in April 2018 until the most recent data in May 2021, the pilot program has recruited over 1,872 new users, over 50 percent of whom are members of underinvested communities. From 40 operating stations, users took over 63,000 trips and drove almost 1.23 million miles.

The expansion project combines State and local commitments in the total amount of \$6,528,000 to leverage against \$24,204,000 in private investments from BlueLA LLC, to install and operate the EV carshare service during the term of contract. LADOT identified the expansion area as part of the grant application to CARB to grow service in underinvested communities and expand the existing footprint of the program. Final site location will include community and council office engagement and support.

The table below references the private sector investment for the expansion, the grant award received through the CARB Grant (C.F. 19-0131), and the City's in-kind commitments made both before and after contract negotiations.

**Table A: Summary Comparison of Commitments and Funds**

<b>CARB Grant Funds (C.F. 19-0131)</b>	
Operating Incentive to Carshare Operator	\$800,000
Reimbursable Advertising and Marketing	\$500,000
Technical Advisory Assistance and Outreach (MDP Costs)	\$600,000
E-Bikes (Match to STEP)	\$300,000
Usage Discounts for Low-Income Members and Community Based Organizations (Carshare and E-Bikes)	\$800,000
<b>Sub-Total</b>	<b>\$3,000,000</b>
<b>City Commitments</b>	
In-Kind Staff Time	\$538,000
Cash Match (Required by CARB #G14-LCT-03)	\$100,000
LADWP Construction and Equipment Contingency	\$2,400,000
BOE Construction (A) and Excavation (U) Permit Fee	\$400,000
LADWP Permit and Inspection Fee	\$90,000
<b>Sub-Total</b>	<b>\$3,528,000</b>
<b>5-Year Expansion Public Investment Total</b>	<b>\$6,528,000</b>

<b>Private Investment Total</b>	<b>\$24,204,000</b>
---------------------------------	---------------------

TABLE B		
Phase 1, Existing Infrastructure, Upgraded Fixtures		40 Stations, 200 EVSEs
Unamortized Costs per Charger Installed		
Phase 1 Initial Station Infrastructure and Fixtures		
If Termination Occurs Before:	Infrastructure	Fixtures
1st Anniversary of Installation*	\$ 9,600	\$ 5,444
2nd Anniversary of Installation	\$ 8,640	\$ 4,666
3rd Anniversary of Installation	\$ 7,680	\$ 3,888
4th Anniversary of Installation	\$ 6,720	\$ 3,111
5th Anniversary of Installation	\$ 5,760	\$ 2,333
6th Anniversary of Installation	\$ 4,800	\$ 1,555
7th Anniversary of Installation	\$ 3,840	\$ 778
8th Anniversary of Installation	\$ 2,880	-
9th Anniversary of Installation	\$ 1,920	-
10th Anniversary of Installation	\$ 960	-
<i>*Anniversary dates of Station Infrastructure Installation and Station Fixture Installation may not be the same.</i>		

TABLE C		
Phase 2, New Installations		60 Stations, 300 EVSEs
Unamortized Costs per Charger Installed		
Phase 2 Additional Station Infrastructure and Fixtures		
If Termination Occurs Before:	Original installation (subsidies applied)	
	Infrastructure	Fixtures
1st Anniversary of Installation*	\$ 7,720	\$ 3,124
2nd Anniversary of Installation	\$ 6,948	\$ 2,677
3rd Anniversary of Installation	\$ 6,176	\$ 2,231
4th Anniversary of Installation	\$ 5,404	\$ 1,785
5th Anniversary of Installation	\$ 4,632	\$ 1,339
6th Anniversary of Installation	\$ 3,860	\$ 892
7th Anniversary of Installation	\$ 3,088	\$ 446
8th Anniversary of Installation	\$ 2,316	-
9th Anniversary of Installation	\$ 1,544	-

10th Anniversary of Installation	\$ 772	-
<i>*Anniversary dates of Station Infrastructure Installation and Station Fixture Installation may not be the same.</i>		

Public Charging for Privately Owned Electric Vehicles

Section 3.3.4 of the BlueLA contract (#C-128717) highlights membership-based charging for individual EV owners as a critical factor of program success, and allows the contractor to provide such service at its discretion. Provided it complies with the terms of the User Agreement and does not prohibit the use of BlueLA’s core EV carshare service, the Contractor will encourage privately owned EV charging at its public stations.

LADOT believes that allowing private EV owners to subscribe to a charging membership and use the BlueLA mobile application to reserve parking at any of the BlueLA stations will provide an important community benefit aligned with the City’s electrification goals, as outlined by the Green New Deal. Those benefits include increasing the number of charging stations available to residents and encouraging EV adoption. Shared use of this infrastructure will also provide a source of additional revenue that will help sustain the program’s emphasis on underinvested communities.

Infrastructure Investment, Term, and Amortization Schedule

BlueLA, now owned and operated by Blink Charging, is making a capital investment of more than \$24,000,000 in the pilot program and phase 2 expansion, including the following components:

- 300 Electric Vehicles
- 500 Blink Charge Points (50% of cost of stations, including Phase I replacement)
- Construction (60 new stations, 50% of cost)

Additionally, BlueLA will cover operating costs of the program during the initial term.

With consideration given to transfer of ownership, reinvestment in the program, and a commitment to proceed with the expansion of the program, LADOT and BlueLA negotiated the following terms:

- Extend the initial term by two additional years to March 31, 2025, allowing the new operator four years to continue to grow membership and use before renewal consideration.
- Three two-year renewal options remain (activated upon mutual agreement).
- Basic amortization terms remain from the original contract:
  - In the scenario where the City terminates before the end of the seven-year life cycle, the City would reimburse the Contractor for unamortized infrastructure costs and have the option to purchase equipment.
  - In the scenario where the Contractor terminates before the end of the seven-year life cycle, the City would reimburse unamortized infrastructure costs but retain the option to purchase the station fixtures from the Contractor for their unamortized value.
- If the contract terminates following full amortization, ownership of infrastructure and equipment will transfer to the City. Infrastructure does not include LADWP-owned conduit and cabling measured from the service point to the meter pedestal.

**FISCAL IMPACT**

There is no impact to the General Fund.

The majority of grant funds will cover carshare operational costs, marketing and outreach costs, contractual services, and Community Based Organizations' steering committee expenses (\$2,400,000). \$600,000 of the grant funds will cover the funding match for implementing the CARB's STEP program which includes an e-bike library within South Los Angeles. Total reimbursement of \$3 million will be reimbursed from CARB over the term of the grant agreement.

LADWP made available \$2,490,000 as infrastructure rebates and permit credits to implement the City's BlueLA Carsharing Expansion Program. Upon execution of the MOU between LADWP and LADOT, the City anticipates total reimbursement of \$2,490,000 over the term of the MOU.

These recommendations are in compliance with City Financial Policies in that grant revenues plus budgeted City funds and matching in-kind resources are available to support this program.

SJR: MP: ast

Attachments:

Attachment A: Proposed 2nd Amendment to BlueLA Contract #C-128717

Attachment B: MDP Proposed Contract

**1**

[1](#)

**SECOND AMENDMENT TO AGREEMENT**  
**CONTRACT #C-128717**

**Amendment No. 2** (the “**Second Amendment**”) to that certain AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND BLUELA CARSHARING, LLC (fka BlueCalifornia, LLC), dated DATE, between the City of Los Angeles (the “**City**”), a municipal corporation acting through the Department of Transportation (“**LADOT**”) and BlueLA Carsharing, LLC (“**BlueLA**” or “**Contractor**”). BlueLA, together with the City, shall be referred to as the “**Parties**,” and each, a “**Party**”.

**WHEREAS**, BlueLA and the City have entered into a certain AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND BLUECALIFORNIA, LLC FOR ELECTRIC VEHICLE CAR SHARING PILOT PROJECT IN DISADVANTAGED COMMUNITIES, dated January 17, 2017 (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with its provisions (the “**Agreement**”); and

**WHEREAS**, the City has secured additional funding from the California Air Resources Board (“**CARB**”) to expand the subject matter of the Agreement, namely the L.A. Leading by Example: Partnering to Pilot EV Car Sharing in Disadvantaged Communities (the “**Project**”); pursuant to City Council File No. 19-0131, the City Council and the Mayor granted LADOT authority to negotiate Phase II and modify the scope of work and the Project area to additional disadvantaged communities for the Agreement; and

**WHEREAS**, the City and BlueLA have negotiated the terms of the Expansion (defined below) and revisions of the Agreement and agreed on the modifications set forth in this Second Amendment; and

**WHEREAS**, Blink Mobility, LLC (“**Blink Mobility**”) acquired 100% ownership interest of BlueLA on or about September 11, 2020; and

**WHEREAS**, the City wishes to continue and expand the Agreement, as modified by this Second Amendment herein, and BlueLA wishes to assist the City in such Expansion, though, among other things, performing the duties, responsibilities, and obligations of the Agreement as modified by this Second Amendment herein; and

**WHEREAS**, the Parties hereto desire to amend the Agreement to include, among others, the Expansion of the Project on the terms and subject to the conditions set forth herein; and

**WHEREAS**, pursuant to Section 4.8 of the Agreement, the amendments contemplated by the Parties must be contained in a written agreement signed by an authorized representative of each Party against whom the amendments are to be enforced.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Second Amendment have the respective meanings assigned to them in the Agreement.
2. It is agreed that Phase I (as defined below), Phase II, and/or any future phases shall be governed by the Agreement's terms and conditions as modified through this Second Amendment.
3. Amendments to the Agreement. As of the Effective Date of this Amendment (defined below), the Agreement is hereby amended or modified as follows:

(a) By deleting “STANDARD PROVISIONS FOR CITY CONTRACTS” in Exhibit 2 and replacing it with “STANDARD PROVISIONS FOR CITY CONTRACTS (REV. 10/17 V3)”

(b) By deleting “BLUEINDY CURRENT SAMPLE USER AGREEMENT” in Exhibit 3 and replacing it with “BLUELA CURRENT SAMPLE USER AGREEMENT.”

(c) By inserting new “Exhibit 5: MASTER DATA LICENSE AND PROTECTION AGREEMENT BETWEEN CITY OF LOS ANGELES acting by and through the LOS ANGELES DEPARTMENT OF TRANSPORTATION AND BLUELA CARSHARING, LLC.”

(d) By inserting new “Exhibit 6: DEFINITIONS AND TERMS.”

(e) By inserting new “Exhibit 7: BLUELA VEHICLE MAINTENANCE AND AGING.”

(f) By deleting all references of “Charge Point(s)” and replacing them with “EVSE” or, where appropriate, “Charger” or “Charging Station.”

(g) Section 1.1.5. is hereby amended by:

(i) inserting immediately following the words “Email: seleta.reynolds@lacity.org” the words “With copy to Anita Tang, LADOT, Carshare Program Manager Email: anita.tang@lacity.org.”

(ii) deleting the words:

"Hervé Muller or Designee  
President  
BlueCalifornia, LLC  
2049 Century Park East, Suite 3200  
Los Angeles, California 90067

and

1842 Baldwin Way  
Marietta, Georgia 30068  
Email: hmuller@ier.aero

With copy (which shall not constitute notice) to:

Lisa Greer Quateman, Esq.  
Polsinelli LLP  
2049 Century Park East, Suite 2900  
Los Angeles, California 90067  
Email: [quateman@polsinelli.com](mailto:quateman@polsinelli.com)”

(iii) Inserting as Contractor Representative the following new contact:

“Brendan Jones, President, or Designee  
605 Lincoln Rd., 5th Floor,  
Miami Beach, FL 33139.”

(h) Section 1.2.3.8. is hereby amended by inserting the following new Sub-Section 1.2.3.8.4.:

“Section 1.2.3.8.4. Additional Insurance Requirements. If additional sources of grant or rebate funding impose different insurance requirements, the Parties shall confer and jointly agree to modify the insurance totals to comport with the requirements thereof.”

(i) Section 2.1.1. is hereby amended by inserting the following new Sub-Section 2.1.1.1.; Sub-Section 2.1.1.2.; and Sub-Section 2.1.1.3.:

“Section 2.1.1.1. Phase II Operational Costs for Expansion. The City shall pay to Contractor no more than the sum of nine hundred thousand dollars (\$900,000) in flexible subsidies to cover Contractor’s operational costs associated with the implementation of Phase II (hereinafter referred to as “**Operational Costs**”). The Operational Costs can, at the discretion of the Contractor, include but are not limited to, direct and indirect costs associated with all operational aspects of the Project such as the lease of EVs, staff costs, third party services, information technology systems, or services, Additional Station Infrastructure and Station Fixtures purchase and installation costs, construction costs; marketing/outreach/member survey costs; vehicle, driver, passenger and facilities’ insurance costs; the reservation system and maintenance costs; personnel and fringe benefits costs; locations’ operating costs (supplies, rent of event and/or storefront (if applicable) equipment, administrative costs such as telephone services, general administrative, office space, printing and mailing. The Operational Costs shall be reimbursed on a rolling basis, based on a monthly invoice and supporting documents submitted by the Contractor to the City and payable within 30 days of receiving each invoice.”

“Section 2.1.1.2. Phase II Marketing, Advertising, and Promotions. The City shall pay to Contractor in reimbursement the sum of five hundred thousand dollars (\$500,000) in accordance with a mutually agreed upon outreach plan for marketing activities (the “**Outreach and Marketing Plan**”) including but not limited to local marketing staff and brand ambassadors, event support, brand activations, print media and direct mail, social media, employer campaigns, transit advertising and promotions, and street art campaigns.”

“Section 2.1.1.3. Phase II Utilization Incentive Plan. The City shall pay to Contractor in reimbursement up to four hundred thousand dollars (\$400,000) in Service utilization incentives, in accordance with a mutually agreed upon utilization plan (the “**Utilization Incentive Plan**”). The City and Contractor shall use commercially reasonable efforts to research and design the Utilization Incentive Plan, which shall be jointly approved by the Parties.”

(j) Section 2.1.2. is hereby amended by inserting the following new Sub-Section 2.1.2.1., Sub-Section 2.1.2.2., and Sub-Section 2.1.2.3.:

“Section 2.1.2.1. Phase II Electric Vehicle Supply Equipment (EVSE) Funding for Expansion. During Phase II, Contractor shall be reimbursed for (i) the sum of eight thousand dollars (\$8,000) per EVSE installed, for a total of three hundred (300)

additional EVSEs and (ii) ninety thousand dollars (\$90,000) to offset LADWP customer fees that would otherwise be due to LADWP. Contractor shall submit requests for payment and supporting documentation, no later than three (3) years following the Effective Date, for up to two million four hundred and ninety thousand dollars (\$2,490,000), which shall be paid within sixty (60) days following such requests.

Each request for reimbursement shall include the following supporting documentation: (i) copy of the invoice for the EVSE purchase; (ii) copy of Customer Submittal Package to LADWP Service Planning and New Business; (iii) copy of the Service Commitment Letter or Adequate Facility Letter issued by LADWP in connection with deployment; and (iv) proof of permits with “finalized” status, which are issued after inspections are passed for the EVSE deployment.

Each EVSE shall satisfy the following minimum technical requirements:

- Input voltage: 208 V to 240 V
- Output power: 6.6 kW to 19.2 kW
- Connector (coupler) standard: J1772
- Certification: certified and listed by a nationally recognized testing laboratory (NRTL)”

“Section 2.1.2.2. LADWP Funding. Funds for the payment provided for in Section 2.1.2.1 are and shall be held in a specific LADOT Transportation Grant Fund 655 Account, titled "LADWP Match - EV Carshare Expansion and STEP Grant" and shall be made available through LADWP (the “Account”), which was established to provide transportation electrification program funding to LADOT to support zero carbon fuel emission mobile sources, such as the Program, based on the Memorandum of Understanding (MOU) between LADWP and LADOT, dated \_\_\_\_\_. The Parties agree that \$2,490,000 of such funds in the Account shall be used exclusively for the Program and be payable to Contractor.

In the event LADWP terminates the MOU prior to the Term hereof, or if no MOU is executed, Contractor shall retain the LCFS credits (defined below) for all EVSE installed during Phase II and remain eligible in the LADWP commercial charging rebate program on a per-site basis.

“Section 2.1.2.3. Low Carbon Fuel Standard (LCFS) Credits. The Parties agree that LADWP shall retain ownership of all Low Carbon Fuel Standard Credits attributable to Phase II EVSE (the “LCFS”) for a period of two (2) years following the date each EVSE is placed in service. After the expiration of the two (2) year period, the City shall de-register ownership of the LCFS credits from CARB’s record within thirty (30) days.. The Parties agree to execute and deliver all such other agreements, certificates, instruments and documents necessary to secure that CARB transfer the LCFS credits to Contractor. Contractor shall submit a LCFS Registration/Reporting Form (Appendix C) on a quarterly basis, within fifteen (15) days following the end of each quarter. Energy for the EVSE shall be measured through dedicated statistical or revenue meter(s), or by a third party data aggregator. Contractor agrees to operate and maintain the EVSE during the two (2) year period that LADWP retains ownership of the LCFS credits.”

(k) Section 2.1. is hereby amended by inserting the following new Sub-Section 2.1.11.:

“Section 2.1.11. CARB Funding. In the event that CARB funding is not made available to Contractor for reasons other than Contractor’s material breach of this Agreement, both Parties, acting in good faith with the intention to reduce the potential losses to Contractor stemming from such lack of funding, will elect, upon mutual agreement, one or more of the following remedial measures: (i) cease ongoing or planned installations and, if necessary, restore the site to its previous condition; (ii) close underperforming Stations; (iii) reduce the number of Vehicles in the fleet; (iv) and/or any other means to be mutually agreed upon by the Parties. Any cost-saving measures that the Parties may implement pursuant to this Section shall not exceed the amount of CARB funding withheld or reduced.”

(l) Section 2.2.1. is hereby deleted in its entirety and replaced by the following :

“Section 2.2.1. Term. The initial term of this Agreement shall commence on the Original Effective Date (as defined below) and shall terminate on the seven (7) year anniversary of the Public Opening (which occurred on April 20, 2018) (hereinafter referred to as the “**Initial Term**”).”

(m) Section 2.4.1. is hereby amended by inserting the following new Sub-Section 2.4.1.1.:

“Section 2.4.1.1. Agreed Value of Additional Station Infrastructure and Fixtures for Phase II. The Parties agree that the Contractor shall invest approximately \$94,218 per a Station of five (5) EVSEs put in service, of which approximately \$67,000 represents construction and cabling costs and approximately \$27,218 represents equipment costs corresponding to approximately \$19,700 per EVSE put in service. The actual costs may vary depending on a variety of factors, including costs of supplies, equipment, financing and personnel, among other things, and the Parties agree that the above amount represents a reasonable and agreed estimate for purposes of this Agreement. Contractor may demonstrate to the City that it is necessary to make improvements and/or upgrades to the Station Fixtures and/or Additional Station Infrastructure following installation thereof, in which case upon the City’s agreement thereto, which shall not be unreasonably withheld, conditioned, or delayed, the amounts shown in Table B below shall be adjusted according to mutually agreed revisions to amortization after the Contractor has made the improvements and/or upgrades.

The financial amortization of the assets comprising each Station is agreed to be over a period of ten (10) years for Additional Station Infrastructure and seven (7) years for Station Fixtures except that in the case of necessary improvements or upgrades described in the preceding sentence, the amortization period of such improvements or upgrades shall run concurrently with that of the Station Fixtures and/or Additional Station Infrastructure so improved or upgraded. If the Contractor incurs replacement and/or refurbishment costs for Additional Station Infrastructure, through no fault of the Contractor, but due to vandalism or other third-party intentional damage in excess of either: (i) \$25,000 in any quarter, or (ii) \$100,000 over the life of the Project, the Parties shall mutually agree to view the associated costs and consider including a credit or adjustment of the amounts

reflected in Table B. In consideration of the Contractor’s substantial investment in the Station Fixtures and Additional Station Infrastructure to be made pursuant to this Agreement, the City has agreed under certain circumstances detailed herein to repurchase the Additional Station Infrastructure and Station Fixtures from the Contractor.”

(n) Section 2.4.2. is hereby deleted in its entirety and replaced by the following:

“Section 2.4.2. Termination by City. Upon the termination or non-renewal of this Agreement by the City, the City shall have the obligation to purchase the Station Infrastructure, and the City shall have the option to purchase the Station Fixtures, from the Contractor, at the remaining Unamortized Cost per EVSE as set forth in Table A below for each Phase I EVSE put in service, or in accordance with Section 2.4.4.1. for Phase II EVSE, if termination occurs before the tenth (10th) anniversary of the installation of such EVSE. Notwithstanding the foregoing, if the termination of this Agreement by the City is pursuant to Section 2.3.1.3. hereof, then the City shall have the option rather than the obligation to purchase the Station Infrastructure. In the event the City exercises its option to purchase the Station Fixtures, the Parties may agree on a software license which may be the basis for the City to make such election. Notwithstanding the foregoing, for each Station Infrastructure and/or Station Fixtures that Contractor did not receive the full reimbursement under Section 2.1.2.1, the City shall pay Contractor the full value of the Station Infrastructure and/or the Station Fixture and the discounted pricing listed in the amortization table (Table B) shall not apply.”

(o) Section 2.4.4. Transfer of Station Fixtures and/or Station Infrastructure is hereby amended by:

(i) deleting the existing Table A and replacing it with the following new Table

A:

Unamortized Costs of Phase I Initial Station Infrastructure and Fixtures, Per EVSE Installed		
If Termination Occurs Before:	Infrastructure	Fixtures
1st Anniversary of Installation*	\$9,600	\$5,444
2nd Anniversary of Installation	\$8,640	\$4,666
3rd Anniversary of Installation	\$7,680	\$3,888
4th Anniversary of Installation	\$6,720	\$3,111
5th Anniversary of Installation	\$5,760	\$2,333
6th Anniversary of Installation	\$4,800	\$1,555
7th Anniversary of Installation	\$3,840	\$778
8 <sup>th</sup> Anniversary of Installation	\$2,880	-
9 <sup>th</sup> Anniversary of Installation	\$1,920	-
10 <sup>th</sup> Anniversary of Installation	\$960	-
<i>*Anniversary dates of Station Infrastructure Installation and Station Fixture Installation may not be the same.</i>		

(ii) deleting “Table B: Unamortized Cost Per Charge Point at Stations with fewer than five (5) Charge Points:”.

(iii) inserting the following Table B in new Sub-Section 2.4.4.1.:

“Section 2.4.4.1. Phase II Additional Station Infrastructure Amortization Table B.

Unamortized Costs of Phase II Additional Station Infrastructure and Fixtures, Per EVSE Installed		
If Termination Occurs Before:	Infrastructure	Fixtures
1 <sup>st</sup> Anniversary of Installation*	\$7,720	\$3,124
2nd Anniversary of Installation	\$6,948	\$2,677
3rd Anniversary of Installation	\$6,176	\$2,231
4th Anniversary of Installation	\$5,404	\$1,785
5th Anniversary of Installation	\$4,632	\$1,339
6th Anniversary of Installation	\$3,860	\$892
7th Anniversary of Installation	\$3,088	\$446
8th Anniversary of Installation	\$2,316	-
9th Anniversary of Installation	\$1,544	-
10th Anniversary of Installation	\$772	-
<i>*Anniversary dates of Station Infrastructure Installation and Station Fixture Installation may not be the same.</i>		

(p) Section 3.1.1. is hereby deleted in its entirety and replaced by the following:

“Section 3.1.1. Utilization Reporting. The Contractor shall provide a monthly utilization report containing: (i) the total number of new and canceled memberships by membership type; (ii) the number of rentals by membership type, start and end location, trip duration, and trip type; (iii) the number of miles traveled; (iv) public charging utilization; and (v) such other information mutually agreed upon by the Parties. Such report shall be made available fifteen (15) days following the end of the month.”

(q) Section 3.1.1.1 is hereby deleted in its entirety and replaced by the following:

“Section 3.1.1.1. Operations Reporting. The Contractor shall provide a monthly operations report containing: (i) new vehicle and EVSE deployment information; (ii) estimates of electricity used; (iii) Project fund expenditure for payments to Contractor by the City pursuant to Section 2.1.1.1 and Section 2.1.2.1; and (iv) such other information mutually agreed upon by the Parties. Such report shall be made available fifteen (15) days following the end of the month.”

(r) Section 3.1.1.2. is hereby deleted in its entirety and replaced by the following:

“Section 3.1.1.2. Marketing Reporting. The Contractor shall provide a quarterly marketing report containing the results of Contractor-sponsored marketing and outreach activities, including (i) events; (ii) promotions; (iii) digital ad and social media campaigns; (iv) survey results; (v) a schedule of program milestones achieved, and (vi) such other information mutually agreed upon by the Parties. Such report shall be made available thirty (30) days following the end of the quarter.”

- (s) Section 3.1.1.3. is hereby deleted in its entirety and replaced by the following:

“Section 3.1.1.3. Financial Reporting. The Contractor shall provide a quarterly financial report containing: (i) a revenue statement representing the usage of the system and (ii) such other information mutually agreed upon by the Parties. Such report shall be made available forty-five (45) days following the end of each quarter; however, in the case of a year-end close, the Contractor shall have up to ninety (90) days to furnish such report.”

- (t) Section 3.1.1.4. is hereby deleted in its entirety and replaced by the following:

“Section 3.1.1.4. Mobility Data Specification Compliance. The City may, upon written notice to Contractor, request that Contractor comply with the Open Mobility Foundation's Mobility Data Specification ("MDS"), as published on <https://github.com/openmobilityfoundation/mobility-data-specification>, which may be updated from time to time. The City's notice shall be accompanied by a developer guide that will provide Contractor with an introduction on integrating with the Los Angeles Department of Transportation's Mobility Data Specification System. Following such notice, Contractor shall comply with the MDS within twelve (12) months.

Additionally, the Parties agree to execute a Master Data License and Protection Agreement, as referenced in Exhibit 5, prior to sharing any data pursuant to the MDS. Contractor shall use this open standard and common language to send the City data on commercial vehicle activity in the public right-of-way, which shall include but not be limited to vehicle ID and type and geolocation information; provided however that nothing in this Section shall require Contractor to transmit any data that is protected by law, regulation, or this Agreement.”

- (u) Section 3.1.1.5. is hereby deleted in its entirety.

- (v) Section 3.1.1.6. is hereby deleted in its entirety.

- (w) Section 3.1.1.7. is hereby deleted in its entirety.

- (x) Section 3.1.2. is hereby deleted in its entirety and replaced by the following:

“Section 3.1.2. Contractor shall participate in discussions with the City (which may invite consultants from the Steering Committee or other third parties whom the City determines to be necessary for such discussions), provided however that anyone present at such discussions shall be subject to the confidentiality requirements of this Agreement) on data collection, including design of an intake survey, data elements, frequency access, and reporting related to the Project. Upon

request by the City, the Contractor shall send initial and annual e-mail surveys to its Members and provide the voluntary results to the City.”

- (y) Section 3.1.5.4. is hereby deleted in its entirety and replaced by the following:

“Section 3.1.5.4. Store all records in a secured storage facility that maintains confidentiality to the extent permitted by Law and provides fire and natural disaster protection, or alternatively, store all records on the secure cloud-based storage environment from a reputable cloud service provider.”

- (z) Section 3.2.1. is hereby deleted in its entirety and replaced by the following:

“Section 3.2.1. Vehicles. Contractor plans to use Chevy Bolt electric vehicles for the Service. Contractor reserves the right to use other vehicles compatible with the Chargers and/or the State of California’s requirements for operating electric vehicles and EVSE. Additional vehicles must be eligible for the Clean Vehicle Rebate Project (“**CVRP**”). Contractor shall notify the City if it elects to introduce different vehicles to the Service.”

- (aa) Section 3.2. is hereby amended by adding the following new Sub-Section 3.2.5.:

“Section 3.2.5. Service Level Agreement. The Contractor shall commit to a Service Level Agreement, referenced in Appendix B.”

- (bb) Section 3.3.1.1. is hereby deleted in its entirety and replaced by the following:

“Section 3.3.1.1. Contractor shall provide, manage, operate, and maintain: (i) five hundred (500) Chargers at a minimum of one hundred (100) Stations, and (ii) three hundred (300) Vehicles. Contractor’s responsibilities pursuant to this Section are contingent upon: (i) the City’s procuring timely work approvals for Station installations and making payments as required hereunder in this Agreement; (ii) meeting those terms outlined in Section 3.3.1.3. and Section 3.9.3.1. of this Agreement; and (iii) lack of new or unforeseen ordinance, legislation, or other regulation which may act to restrict Contractor’s ability to fulfill any of its responsibilities in this Agreement or otherwise negatively impact the service.”

- (cc) Section 3.3.1. is hereby amended by adding the following new Sub-Section 3.3.1.3:

“Section 3.3.1.3. Service Impediments and Customer Safety. Contractor may temporarily reduce the size of the Service by closing Stations and EVSEs or reassigning/storing the Vehicles, if Contractor determines in its reasonable discretion that operation of the Service or any part thereof poses a public safety risk to customers, Contractor’s employees, or the general public. In the event Contractor exercises its right to temporarily reduce or suspend Services pursuant to this Section, Contractor shall notify the City in writing within twenty-four (24) hours. Any reduction or suspension of Services shall be limited to the location(s) at which Contractor reasonably determines a public safety risk exists. The City reserves the right to review and/or modify any reduction or suspension in Services, and may require that Contractor reassign and/or relocate those Vehicles that were reduced or suspended from Service in order to maintain the fleet requirements established in the CARB Grant Agreement. Contractor shall

return the Service to normal operation as soon as practicable once the public safety risk is resolved.”

(dd) Section 3.3.2. is hereby deleted in its entirety and replaced by the following:

“Section 3.3.2. The terms and conditions for the use of the Service shall continue to be set by the Contractor and set forth in a contract between the Contractor and each Member (the “**User Agreement**”). The User Agreement shall disclose that Vehicles may include monitoring technology that:

- Provides GPS guidance to the Member; and
- Transmits to the Contractor information about the Vehicle, including battery state of charge and other Vehicle statistics.

Except as required by Law or by this Agreement, the Contractor shall, in its sole discretion, determine the terms of the User Agreement, a copy of which, as updated from time to time, shall be maintained on Contractor’s website.”

(ee) Section 3.3.3. is hereby deleted in its entirety.

(ff) Section 3.4.2.6. is hereby deleted in its entirety and replaced by the following:

“Section 3.4.2.6. Contractor reserves the right to deny membership or to cancel the membership of individuals, including for violations of the law or its User Agreement. Contractor shall publish and maintain a copy of the User Agreement, as it shall be updated from time to time, on its website or otherwise distribute it to its Members. The User Agreement currently in force for the Service is attached for illustration as Exhibit 3.”

(gg) Section 3.5. is hereby deleted in its entirety and replaced by the following:

“Section 3.5. Maintenance and Support. Contractor shall provide, manage, operate, and maintain in working condition all of the Station Fixtures at the Stations at the Contractor’s expense. Contractor shall use commercially reasonable efforts to maintain the Vehicles and the EVSE so that the Service can operate twenty-four (24) hours a day, seven (7) days a week. Vehicles shall be maintained in accordance with applicable laws and manufacturer requirements.”

(hh) Section 3.5. is hereby amended by adding the following new Sub-Section 3.5.6.:

“Section 3.5.6. Vehicle Maintenance and Assessment. Upon the earlier of a Vehicle reaching (i) four (4) years of age or (ii) 75,000 miles (the “**Assessment Milestone**”), Contractor shall engage a third party to conduct an aging assessment of the Vehicle (the “**Assessment**”). The Assessment shall evaluate the Vehicle condition and consumer readiness and be performed according to industry standards. Each Vehicle shall undergo the Assessment twice a year after reaching the Assessment Milestone. Each Vehicle must be deemed qualified to reenter the fleet. Each Assessment will include a written report of the Vehicle condition and shall be available upon the City’s written request, or otherwise made available forty-five (45) days following the end of each quarter. Vehicle age shall be calculated as if the vehicle were purchased on December 31<sup>st</sup> of its respective

model year. The current Assessment criteria is attached for illustration as Exhibit 7.

(ii) Section 3.8, is hereby amended by deleting the words ", generally similar to the software used by BlueIndy" from the third line of such Section and substituting in lieu thereof a period.

(jj) Section 3.9, is hereby amended by adding the following new Sub-Section 3.9.4:

“Section 3.9.4. Deployment. During Phase II, Contractor shall: (i) establish mutually agreed projections for Service utilization rates (the “**Projected Utilization**”); (ii) deploy two (2) Vehicles per each new Station; and (iii) increase the total number of Vehicles in the fleet to three hundred (300) within six (6) months of opening one hundred (100) Stations. In the event that actual utilization rates are lower than the Projected Utilization for three (3) consecutive months, Contractor and the City shall confer and jointly approve a plan to increase utilization and/or reduce and/or modify the number of Vehicles and/or the Service size as necessary.”

(kk) Section 3.10.2, is hereby deleted in its entirety and replaced by the following:

“Section 3.10.2. During the Initial Term, the City shall make available no less than five hundred (500) parking spaces within a minimum of one hundred (100) sites to be used as Stations for the EV car sharing service. These parking spaces shall be on-street unless otherwise agreed by the Contractor.”

(ll) Section 3.10.3, is hereby deleted in its entirety and replaced by the following:

“Section 3.10.3. The City shall make available to the Contractor sites at least five (5) contiguous parking spaces for the Contractor to install EVSEs. The Contractor may decide to deploy Stations with fewer than five (5) EVSE. In locations where at least five (5) contiguous parking spaces are not available, the City shall use its best effort to identify an alternate location with five (5) such spaces.”

(mm) Section 3.10.4, is hereby deleted in its entirety and replaced by the following:

“Section 3.10.4. Station locations shall be mutually agreed upon by the City and the Contractor in the communities of Westlake, Pico Union, portions of Koreatown, areas north of the University of Southern California, portions of Downtown Los Angeles, East Hollywood, Boyle Heights, South Los Angeles, and/or elsewhere as may be mutually agreed by the Parties.”

(nn) Section 3.10.5, is hereby deleted in its entirety and replaced by the following:

“Within sixty (60) business days of the Effective Date, the City shall begin and conclude work to conduct a geographic information systems (GIS) technical analysis for site selection. The analysis shall include, but not be limited to:

- Population density
- Proximity to transit
- Employment density

- Income levels
- Vehicle ownership
- Transit/Walk/Bike modal shares
- Proximity to affordable housing
- EVSE Infrastructure suitability and capability.”

(oo) Section 3.15.1. is hereby deleted in its entirety and replaced by the following:

“Section 3.15.1. Following approval of the Notice to Proceed, LADOT (or, at Contractor’s option, Contractor) shall apply for all permits and approvals itself for one or more Stations necessary for construction of the proposed Stations. Provided that the Contractor has not elected to apply for permits and approval itself, the Contractor shall provide to LADOT all documents required for permit application, and within not more than ten (10) business days of receipt of such documents, LADOT shall submit the following applications to the appropriate City departments for review in a timely manner:”

(pp) Section 3.15.3. is hereby deleted in its entirety and replaced by the following:

“Section 3.15.3. Within two (2) business days of receiving all permits and approvals necessary for construction of a proposed Station, provided that the Contractor has not elected to apply for permits and approvals itself, LADOT shall work in good faith to provide to the Contactor a final construction work package with the issued permits and approved plans. To the extent that the Contractor has applied for permits and approvals itself, the affected City departments shall issue such permits and approvals to the Contractor directly.”

(qq) Section 3.15.4. is hereby deleted in its entirety and replaced by the following:

“Section 3.15.4. Following the approval of the Notice to Proceed, the Contractor shall provide to LADWP computer aided design site plans. Upon Within twenty-five (25) business days of receipt of the Contractor-provided design site plans, LADWP shall work in good faith to complete conduit design plans from the nearest service point to the meter pedestal location and apply for the Excavation “U” permit through BOE. The City shall work in good faith to provide the approved conduit design plans to the Contractor in a timely manner., within two (2) business days of “U” permit issuance to LADWP, the approved conduit design plans.”

(rr) Section 3.15.5. is hereby deleted in its entirety and replaced by the following:

“Section 3.15.5. LADWP and BCA shall conduct the necessary inspections scheduled by the Contractor in coordination with Station construction. After inspections are completed, the BCA shall issue a letter of release to LADWP, signaling the LADWP to begin its work as described in this Section, and issue a final approval notice (hereinafter referred to as the “**Final Approval**”). Following installation by or on behalf of the Contractor and inspection of service conduit by LADWP, LADWP shall install cable from the electric service point to the meter pedestal. LADWP shall work in good faith to install an LADWP meter in the meter pedestal provided by the Contractor and energize the Station in a timely manner. within fifteen (15) business days following all final construction inspections and approvals.”

(ss) Section 3.24.1. is hereby amended by deleting “Table C: Low-Income Membership Targets” in its entirety and replacing it with the new table that follows:

<b>Table C: Proposed Low-Income Membership Targets</b>	
<b>Date</b>	<b>Members</b>
April 2022	4,500
April 2023	7,500
April 2024	12,000
April 2025	20,000

(tt) Section 3.27.3.1. is hereby deleted in its entirety and replaced by the following:

“Section 3.27.3.1. The Service is operated by Blink Mobility or its Affiliates or co-venturers. The Parties agree that Blink Mobility may operate the Service under the name “BlueLA powered by Blink Mobility.”

(uu) Section 3.27.7. is hereby deleted in its entirety and replaced by the following:

“Section 3.27.7. The provisions of this Section 3.27.7. expressly supersede the City Standard Provisions including PSC-23. All trademarks, trade names, service marks, service names, and all other intellectual property rights associated with the Service, including without limitation, the name “Bluecar”, “BlueCarSharing”, “BlueLA”, “Blink Mobility”, “BlueLA powered by Blink Mobility”, and any derivations thereof, shall be and remain the sole and exclusive property of the Contractor and its Affiliates as the case may be.

(vv) Section 3.28.1. is hereby deleted in its entirety and replaced by the following:

“Section 3.28.1. Advertising. The Contractor may sell advertisements on or inside the Vehicles, on its website, and its mobile applications and as otherwise not prohibited by Law. However, the Contractor may only sell advertisements on the Station Fixtures if and to the extent that advertisement on Station Fixtures is not prohibited by any existing agreement to which the City is a party, or negotiated by the Contractor with a third party that has an existing street furniture advertising contract with the City. The City shall notify the Contractor of any such instance. Any advertisements sold by the Contractor must be in compliance with the Law (including LAMC Section 87.54) and the list of permitted and prohibited content in Exhibit 4 to this Agreement which is excerpted from the City Transit Advertising Policy.”

4. Representations and Warranties. Without derogating or limiting the Representations and Warranties set forth in Section 4 of the Agreement, each Party hereby represents and warrants to the other Party that:

(a) It has the full right, power, and authority to enter into this Second Amendment and to perform its obligations hereunder and under the Agreement as amended by this Second Amendment.

(b) The execution of this Second Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such Party, and the delivery of this Second Amendment by such Party, have been duly authorized by all necessary action on the part of such Party.

(c) This Second Amendment has been executed and delivered by such Party and (assuming due authorization, execution and delivery by the other Party hereto) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms[, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity.

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 4 OF THE AGREEMENT AND IN THIS SECTION 4 OF THIS SECOND AMENDMENT, (A) NEITHER PARTY HERETO NOR ANY PERSON ON SUCH PARTY'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR ANY OTHER PERSON ON SUCH OTHER PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 4.

5. Date of Effectiveness; Limited Effect. This Second Amendment will become effective on [DATE] (the "**Effective Date**"). Except as expressly provided in this Second Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import will mean and be a reference to the Agreement as amended by this Second Amendment. All references to the original effective date of the Agreement shall be referred to in this Amendment as the "**Original Effective Date.**"

[signature page follows]

**IN WITNESS WHEREOF**, the parties evidence their agreement through the execution of this **SECOND AMENDMENT** by their duly authorized signatures.

Executed for:

Executed for:

**The City of Los Angeles**

**BlueLA Carsharing LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Seleta J. Reynolds  
General Manager  
Department of Transportation

Brendan Jones  
President  
BlueLA Carsharing LLC

**Approved as to Form and Legality:**

**ATTEST:**

Michael N. Feuer, City Attorney

Holly Wolcott, City Clerk

By: \_\_\_\_\_

By: \_\_\_\_\_

Michael Nagle  
Deputy City Attorney

City Clerk  
City of Los Angeles

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX B**

**Service Level Agreement**

	<b>Category</b>	<b>Measure</b>	<b>KPI</b>	<b>Terms</b>
1	System	Response to unplanned system-wide outage	24/7 immediate response	
2	Website	Website availability	> 99.9%	
3	Stations	Time to restore to service if ≥50% chargers are unavailable	< 24hrs from first report	
4	Stations	Time to restore to service if <50% chargers are unavailable	< 48hrs from first report	
5	Stations	Number of vehicles and parking spaces available at each station	≥ 1 vehicle / ≥ 1 parking space	Measure of vehicle and parking availability shall be captured by the Contractor once every 24 hours.
7	Stations	Graffiti removal response time (all)	< 72 hrs from first report	
8	Stations	Graffiti removal response time (hate speech)	< 24 hrs from first report	Hate speech shall be defined as abusive or threatening writing or symbols that express prejudice against a particular group, especially on the basis of race, religion, or sexual orientation.
9	Vehicles	Routine vehicle cleaning	100% every 2 weeks	
10	Vehicles	Cleaning response time - dirty vehicle report	< 48 hrs from first report	Dirty vehicle reports deemed unreasonable by the Contractor shall be discounted from SLA compliance.
12	Vehicles	Vehicle aging assessment (See agreement Section 3.5.A)	Every 6 months, starting when vehicle reaches 4 years old or 75,000 miles	

13	Customer Service	Bilingual service	24/7 Spanish coverage	
14	Customer Service	Call answer rate	> 75% in 75 seconds	
15	Customer Service	Call abandon rate	< 5% in 180 seconds	
16	Customer Service	Email response time	> 95% in 24 hrs	

**Overall Terms**

Available shall be defined as ready for immediate use and not reserved, out of service, or otherwise occupied. Instances of unavailability or non-operation caused by vandalism, illegal parking, emergencies/disasters, homeless encampments, nearby construction and street improvements, accidents, or other types of inflicted damages and obstructions outside of the Contractor's control, shall be discounted from SLA compliance.

## Appendix C

### Request for EVSE Reimbursement

Project Address: \_\_\_\_\_

**LADOT POINT OF CONTACT**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

**COST ESTIMATE (NOT INCLUDING LADWP CHARGES & FEES)**

Total Charging Station Equipment Cost: \_\_\_\_\_

Site Engineering Cost: \_\_\_\_\_ Permit Fees: \_\_\_\_\_

Construction Cost: \_\_\_\_\_ Other Costs: \_\_\_\_\_

Total Site Cost Estimate: \_\_\_\_\_

**OTHER FUNDING SOURCES**

Third party Financial Incentives: \_\_\_\_\_ Grants: \_\_\_\_\_

Other Monetary Awards: \_\_\_\_\_

Total Third Party Funding: \_\_\_\_\_

Net Cost (Cost Estimate minus Third Party Funding) \_\_\_\_\_

**DWP FUNDING REQUESTED**

Charging Station Type	Output (kW)	Max Unit Funding Amount	Quantity	Total
<b>DC Fast Chargers for EVs</b>				
Tier 1 Fleet DC Charging Stations	50 to 99	\$40,000		\$
Tier 2 Fleet DC Charging Stations	100 and above	\$60,000		\$
Tier 1 Publicly Accessible DC Charging Stations	50 to 99	\$55,000		\$
Tier 2 Publicly Accessible DC Charging Stations	100 and above	\$75,000		\$
<b>Level 2 AC Charging Stations for EVs</b>				
Level 2 Publicly Accessible AC Charging Stations	6.6 to 19.2	\$5,000		\$
Level 2 BlueLA AC Charging Stations	6.6 to 19.2	\$8,000		\$
<b>Maximum Funding</b>				<b>\$</b>

Total LADWP Funding Requested (Net Cost or Maximum Funding, whichever is less) \_\_\_\_\_

**CHARGING STATION INFORMATION**

Charging Station Make	Charging Station Model	Number of Charge Ports	A/C or D/C	Output Power (kW)	Quantity



# STANDARD PROVISIONS FOR CITY CONTRACTS

## TABLE OF CONTENTS

PSC-1	<u>Construction of Provisions and Titles Herein</u> .....	1
PSC-2	<u>Applicable Law, Interpretation and Enforcement</u> .....	1
PSC-3	<u>Time of Effectiveness</u> .....	1
PSC-4	<u>Integrated Contract</u> .....	2
PSC-5	<u>Amendment</u> .....	2
PSC-6	<u>Excusable Delays</u> .....	2
PSC-7	<u>Waiver</u> .....	2
PSC-8	<u>Suspension</u> .....	3
PSC-9	<u>Termination</u> .....	3
PSC-10	<u>Independent Contractor</u> .....	5
PSC-11	<u>Contractor’s Personnel</u> .....	5
PSC-12	<u>Assignment and Delegation</u> .....	6
PSC-13	<u>Permits</u> .....	6
PSC-14	<u>Claims for Labor and Materials</u> .....	6
PSC-15	<u>Current Los Angeles City Business Tax Registration Certificate Required</u> ....	6
PSC-16	<u>Retention of Records, Audit and Reports</u> .....	6
PSC-17	<u>Bonds</u> .....	7
PSC-18	<u>Indemnification</u> .....	7
PSC-19	<u>Intellectual Property Indemnification</u> .....	7
PSC-20	<u>Intellectual Property Warranty</u> .....	8
PSC-21	<u>Ownership and License</u> .....	8
PSC-22	<u>Data Protection</u> .....	9

**TABLE OF CONTENTS (Continued)**

**PSC-23** Insurance ..... 9

**PSC-24** Best Terms..... 9

**PSC-25** Warranty and Responsibility of Contractor..... 10

**PSC-26** Mandatory Provisions Pertaining to Non-Discrimination in Employment..... 10

**PSC-27** Child Support Assignment Orders..... 10

**PSC-28** Living Wage Ordinance ..... 11

**PSC-29** Service Contractor Worker Retention Ordinance ..... 11

**PSC-30** Access and Accommodations ..... 11

**PSC-31** Contractor Responsibility Ordinance..... 12

**PSC-32** Business Inclusion Program..... 12

**PSC-33** Slavery Disclosure Ordinance..... 12

**PSC-34** First Source Hiring Ordinance..... 12

**PSC-35** Local Business Preference Ordinance ..... 12

**PSC-36** Iran Contracting Act ..... 12

**PSC-37** Restrictions on Campaign Contributions in City Elections..... 12

**PSC-38** Contractors’ Use of Criminal History for Consideration of Employment Applications ..... 13

**PSC-39** Limitation of City’s Obligation to Make Payment to Contractor ..... 13

**PSC-40** Compliance with Identity Theft Laws and Payment Card Data Security Standards ..... 14

**PSC-41** Compliance with California Public Resources Code Section 5164..... 14

**PSC-42** Possessory Interests Tax..... 14

**PSC-43** Confidentiality..... 15

**Exhibit 1** Insurance Contractual Requirements..... 16

## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1.** Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### **PSC-2.** Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

### **PSC-3.** Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

**PSC-4. Integrated Contract**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

**PSC-5. Amendment**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

**PSC-6. Excusable Delays**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

**PSC-7. Waiver**

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

**PSC-8. Suspension**

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

**PSC-9. Termination**

A. Termination for Convenience

**CITY** may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
  - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
  - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
  - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
  - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
  6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
  7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
  8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

**PSC-10. Independent Contractor**

**CONTRACTOR** is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

**PSC-11. Contractor's Personnel**

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

**CONTRACTOR** shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

**PSC-12. Assignment and Delegation**

**CONTRACTOR** may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

**PSC-13. Permits**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

**PSC-14. Claims for Labor and Materials**

**CONTRACTOR** shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

**PSC-15. Current Los Angeles City Business Tax Registration Certificate Required**

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

**PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

#### **PSC-17. Bonds**

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

#### **PSC-18. Indemnification**

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

#### **PSC-19. Intellectual Property Indemnification**

**CONTRACTOR**, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

**PSC-20. Intellectual Property Warranty**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

**PSC-21. Ownership and License**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

**CONTRACTOR** agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

**CONTRACTOR** shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

**PSC-22. Data Protection**

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

**PSC-23. Insurance**

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

**PSC-24. Best Terms**

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

**PSC-25. Warranty and Responsibility of Contractor**

**CONTRACTOR** warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

**PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-27. Child Support Assignment Orders**

**CONTRACTOR** shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-28.** Living Wage Ordinance

**CONTRACTOR** shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-29.** Service Contractor Worker Retention Ordinance

**CONTRACTOR** shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-30.** Access and Accommodations

**CONTRACTOR** represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

**CONTRACTOR** understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-31. Contractor Responsibility Ordinance**

**CONTRACTOR** shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

**PSC-32. Business Inclusion Program**

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

**PSC-33. Slavery Disclosure Ordinance**

**CONTRACTOR** shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-34. First Source Hiring Ordinance**

**CONTRACTOR** shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-35. Local Business Preference Ordinance**

**CONTRACTOR** shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-36. Iran Contracting Act**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

**PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections**

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #\_\_\_\_\_. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at [ethics.lacity.org](http://ethics.lacity.org) or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

**PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications**

**CONTRACTOR** shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-39. Limitation of City’s Obligation to Make Payment to Contractor**

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

**PSC-40.** Compliance with Identity Theft Laws and Payment Card Data Security Standards

**CONTRACTOR** shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

**PSC-41.** Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

**PSC-42.** Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

**PSC-43. Confidentiality**

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

**EXHIBIT 1**

**INSURANCE CONTRACTUAL REQUIREMENTS**

**CONTACT** For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

**CONTRACTUAL REQUIREMENTS**

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

**7. California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

**8. Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

## Required Insurance and Minimum Limits

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Agreement/Reference: \_\_\_\_\_

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

	Limits
<p>___ <b>Workers' Compensation (WC) and Employer's Liability (EL)</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> Waiver of Subrogation in favor of City</p> <p><input type="checkbox"/> Longshore &amp; Harbor Workers</p> <p><input type="checkbox"/> Jones Act</p> </div> <div style="width: 45%; text-align: right;"> <p>WC _____</p> <p>Statutory _____</p> <p>EL _____</p> </div> </div>	
<p>___ <b>General Liability</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> Products/Completed Operations</p> <p><input type="checkbox"/> Fire Legal Liability</p> <p><input type="checkbox"/> _____</p> </div> <div style="width: 45%; text-align: right;"> <p><input type="checkbox"/> Sexual Misconduct _____</p> </div> </div>	
<p>___ <b>Automobile Liability</b> (for any and all vehicles used for this contract, other than commuting to/from work)</p>	_____
<p>___ <b>Professional Liability</b> (Errors and Omissions)</p> <p style="margin-left: 20px;">Discovery Period _____</p>	_____
<p>___ <b>Property Insurance</b> (to cover replacement cost of building - as determined by insurance company)</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> All Risk Coverage</p> <p><input type="checkbox"/> Flood _____</p> <p><input type="checkbox"/> Earthquake _____</p> </div> <div style="width: 45%; text-align: right;"> <p><input type="checkbox"/> Boiler and Machinery</p> <p><input type="checkbox"/> Builder's Risk</p> <p><input type="checkbox"/> _____</p> </div> </div>	_____
<p>___ <b>Pollution Liability</b></p> <p><input type="checkbox"/> _____</p>	_____
<p>___ <b>Surety Bonds - Performance and Payment (Labor and Materials) Bonds</b></p>	_____
<p>___ <b>Crime Insurance</b></p>	_____

**Other:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# Terms of Service

Blink Mobility LLC, a Blink Charging Company

Version: December 30, 2020

## **GENERAL TERMS & CONDITIONS FOR ACCESS TO AND USE OF THE BLINK MOBILITY SERVICE (“TERMS AND CONDITIONS”) THESE TERMS APPLY ONLY TO INDIVIDUAL AND SINGLE USER MEMBERS OF THE BLINK MOBILITY SERVICE**

These Terms and Conditions with the schedules and attachments hereto, including the Rate Offer, together with the Membership details, as well as the legally binding Blink Network terms and conditions, the Privacy Policy and the User Guide, form the Blink Mobility Contract (hereinafter collectively referred to as the “Contract”) between the Member (“You” or “Member” or “Your”) and Blink Mobility, LLC (“Blink Mobility” or “We” or “Us”) and define the Member’s and Blink Mobility’s respective rights and obligations.

Blink Mobility generally permits its Members (as hereinafter defined), as further detailed and limited by the Contract, the ability to:

- (a) reserve and operate self-service electric vehicles supplied by Blink Mobility (“Blink Mobility Cars”);
- (b) use the recharging site (“Blink Mobility Stations”) including parking locations for such Blink Mobility Cars (“Blink Mobility Parking Space”);
- (c) reserve the equipment installed at Blink Mobility Stations for recharging a Blink Mobility Car (“Charging Point”); and
- (d) use the technology software platform (including the smart phone app) and all updates, upgrades, patches, or new versions thereof (“Software”) that operates all of the foregoing, collectively referred to as the “Blink Mobility Services”.

**BY SELECTING AND CONFIRMING YOUR ACCEPTANCE WHERE INDICATED, YOU ACKNOWLEDGE AND CERTIFY THAT YOU HAVE READ, AND UNDERSTOOD, AND AGREE TO BE BOUND BY ALL OF THE TERMS, CONDITIONS, PROVISIONS AND NOTICES CONTAINED HEREIN, ALONG WITH ALL ATTACHMENTS, INCLUDING THE RATE OFFER, AS WELL AS THE MEMBERSHIP DETAILS, JUST AS IF YOU HAVE SIGNED THIS CONTRACT.**

**BY SELECTING AND CONFIRMING YOUR ACCEPTANCE WHERE INDICATED, YOU ALSO CERTIFY THAT YOU HAVE READ AND ACCEPT THE USER GUIDE LOCATED ON THE BLINK MOBILITY WEBSITE OR BLINK MOBILITY MOBILE APP, WHICH ARE CONSIDERED PART OF THESE TERMS AND CONDITIONS, AND YOU AGREE TO COMPLY WITH SUCH USER GUIDE.**

**THESE TERMS AND CONDITIONS CONTAIN, AMONG OTHER THINGS, IMPORTANT INFORMATION RELATING TO THE RATE OFFER, USE OF THE BLINK MOBILITY SERVICE, THE AUTO INSURANCE SUPPLIED, LIMITATIONS ON BLINK MOBILITY’S LIABILITY, MEMBER’S OBLIGATION TO COMPENSATE BLINK MOBILITY FOR VARIOUS BREACHES OF THIS CONTRACT AND AUTOMATIC RENEWAL OF MEMBERSHIP.**

**THE LEGALLY BINDING DOCUMENTS ARE, IN ORDER OF PRIORITY, THESE TERMS AND CONDITIONS, THE BLINK NETWORK TERMS AND CONDITIONS, THE PRIVACY POLICY AND THE USER GUIDE.**

**BY SELECTING AND CONFIRMING YOUR ACCEPTANCE WHERE INDICATED, YOU CERTIFY THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET OUT HEREIN, INCLUDING AN AUTOMATIC RENEWAL OF YOUR MEMBERSHIP.**

## **1. DEFINITIONS**

**Additional Fee** shall mean the additional fees payable by You to Blink Mobility which become due where indicated in these Terms and Conditions. The instances in which Additional Fees are due and the amounts payable for each instance are set out in Schedule 1.

**Applicable Laws** shall mean all laws, regulations, rules, ordinances and other mandatory requirements applicable to Your use of the Blink Mobility Services including, without limitation, all road traffic and parking regulations in force in California and Los Angeles.

**Blink Mobility** shall mean Blink Mobility, LLC, a California limited liability company.

**Blink Mobility Car** shall mean all of the equipment and accessories present in and provided with a Blink Mobility Car including Onboard Documents.

**Blink Mobility App** shall mean the mobile application operated by Blink Mobility allowing a Member full access to Blink Mobility service. Some features of Blink Mobility service may be available only on the Blink Mobility App and not on the Blink Mobility Website.

**Blink Mobility Zone** Shall mean Los Angeles, Ventura, and Orange Counties.

**Completely Unavailable** shall mean the Blink Mobility Service is completely unavailable for use. For the avoidance of doubt, unavailability of a Blink Mobility Car or Blink Mobility Parking Space at a particular location shall not mean that the Blink Mobility Service is completely unavailable for use.

**Community Membership** shall mean the special type of Blink Mobility Membership with discounted rates available to low-income customers as further detailed in these Terms and Conditions and in Schedule 1 attached to these Terms and Conditions.

**Customer Relations Center or CRC** shall mean the Blink Mobility information and help center, which operates 24 hours per day, 7 days per week, and which can be reached by phone at the Customer Relations Center phone number listed on the Blink Mobility Website and Blink Mobility App. The Customer Relations Center is available to Members and non-Members for processing their requests for information with respect to the Blink Mobility services (such as general information, Membership, account information, and claims). Calls between a Member and CRC may be recorded for training purposes, as well as for investigating claims, incidents, and accidents, By accepting these Terms and Conditions you consent to your calls to CRC being recorded.

**Insurance Coverage** shall mean the limited insurance policy provided by a third party Insurer to Blink Mobility which covers You up to certain limits when You use a Blink Mobility Car as more fully described in section 8 of these Terms and Conditions.

**Insurer** shall mean the insurer who issued the Insurance Coverage.

**Member** shall mean a consumer, it being specified that legal entities are excluded, who has subscribed to and is permitted to use the Blink Mobility Service in accordance with this Contract.

**Member's Account** shall mean the on-line space within the Blink Mobility website and Blink Mobility Mobile App, accessible by You following log-in, from which You can manage personal information including Your payment information, pay your bills, review statements and invoices, view Your rentals and any informational messages from Blink Mobility.

**Membership** shall mean the amount due for the type of Membership selected by You during the Membership application Fee process as set out in the Rate Offer in Schedule 1.

**Onboard Documents** shall collectively mean the vehicle registration, applicable certificate of insurance, and instructional manuals supplied to assist Member's understanding of operation of the Blink Mobility Cars and Blink Mobility Services.

**Penalty** shall mean the sum due and payable by You to Blink Mobility for certain violations, acts or omissions or other failures to comply with the terms of this Contract which become due where indicated in these Terms and Conditions, and "Penalties" shall be construed accordingly. The instances in which Penalties are due and the amounts payable for each Penalty are set out in Schedule 1.

**Personal Data** shall mean data, whether true or not, about an individual who can be identified: (a) from the data alone; or (b) from that data and other information which Blink Mobility has or is likely to have access to.

**Rate Offer** shall mean those charges applicable to the Membership listed in Schedule 1.

**Rental Fee** shall mean the fee payable by You to Blink Mobility for renting the Blink Mobility Car during the Rental Period, which is calculated in accordance with the type of Membership selected by a Member during the Membership application process as set out in Schedule 1 below subject to a minimum period of fifteen (15) minutes per rental.

**Rental Period** shall mean the period, commencing with You confirming your rental in the Blink Mobility App and ending at the time You plug the Blink Mobility Car into the Charging Point and select to lock the Car and end your rental in the Blink Mobility App, during which time You have possession and control of the Blink Mobility Car. A detailed description of the collection and return procedure is set out in the User Guide.

**Waitlist** refers to the reservation system which, in the event of the unavailability of a parking spot or a Blink Mobility car at the desired Blink Mobility station, makes an automatic reservation as soon as a spot or a car become available. Depending on the date, time and location of the reservation, a fee may be associated with such reservation.

## **2. ELIGIBILITY FOR MEMBERSHIP**

2.1 You are eligible to apply for a Blink Mobility Membership if You meet the following criteria ("Eligibility Criteria"):

2.1.1 You must be at least eighteen (18) years of age.

2.1.2 You must provide a photo of yourself and (a) a valid California Class C driver's license, (b) a valid out of state driver's license that would legally authorize you to drive under the laws of the State of California, or (c) proof of a foreign driver's license sufficient to lawfully enable you to operate a motor vehicle in the State of California as further described in Section 2.1.6 below.

2.1.3 You hold a valid credit or debit card in Your own name accepted by Blink Mobility and a bank account in Your own name with the authority to set up direct debit payments, for the entire duration of Your Contract and in order to allow the automatic renewal.

2.1.4 You do not owe any money to Blink Mobility.

2.1.5 You must certify that You have the mental and physical capacity to competently, safely and lawfully operate a motor vehicle.

2.1.6 Acceptable Foreign License Proof. If you hold a driver's License issued by a foreign country, you must, at the time of enrollment, supply to us proof, to our satisfaction, that you possess a currently valid (a) driver's license issued from your country of residence; (b) your International Driver's Permit; as well as (c) your passport; and (d) any other evidence or information requested by Blink Mobility to establish that you may lawfully operate a Blink Mobility Car throughout the Membership period. In all cases, you must comply with all California and local laws regulating the ability to lawfully operate a motor vehicle. For the avoidance of doubt, a holder of a provisional drivers' license (or a permit) is not permitted to become a Member.

2.2. Blink Mobility Community Membership is available to qualifying low-income individuals at the discounted rates as detailed in Schedule 1. To qualify for the Community Membership, you will be required to upload proof of income or proof of Your participation in one of the qualifying public assistance programs as detailed in Schedule 1, at the time of Your registration. Thereafter, you will be required to upload the qualifying documents annually to ensure Your continued eligibility. Blink Mobility reserves the right to modify the low-income eligibility requirements, including the list of qualifying public assistance programs at any time without notice.

2.3 If You meet the Eligibility Criteria, you can apply to become a Member by:

2.3.1. completing the Membership application process on the Blink Mobility Mobile App or the Blink Mobility website.

2.3.2. paying the first installment of the Membership fee, if any, using a valid bank issued debit card or major credit card (the "Payment Card").

2.3.3 setting up a direct debit authorization which authorizes Blink Mobility to withdraw all future installments of the Membership fees corresponding with Your selected Membership type, all Rental Fees due, all surcharges, tolls (including, without limitation, any FasTrak charges), fines and tickets issued against the Blink Mobility Car during any Rental Period, any Additional Fees, Penalties and damage charges that may become due, the reasonable expenses incurred by Blink Mobility in recovering any amounts due from the Member (including legal expenses or fees or the use of third parties to collect any Fees owed by the Member to Blink Mobility, and any late payment interests due (collectively referred to as " Fees ") chargeable from Your bank account;

2.3.4 authorizing Blink Mobility to pre-authorize the applicable Membership fees on Your Payment Card for the security deposit in accordance with section 6.1.

2.4. You authorize Blink Mobility, at any time, to verify the status of Your driving license. Holders of an expired, suspended, cancelled, withdrawn, restricted, or otherwise invalid driving license or whose driving license has been lost or stolen are not eligible to register for the Membership. If at any time during the Membership a Member loses his or her driving license, or the Member's driving license is stolen, expires or is suspended, cancelled, withdrawn, restricted, otherwise becomes invalid or ceases to meet the Eligibility Criteria, the Member must notify the Customer Relations Center as soon as possible. Blink Mobility reserves the right to suspend or terminate Membership of any person whose driving license has become invalid during the Membership. Members who drive Blink Mobility Cars without a valid license will not be eligible for Insurance Coverage and will be liable for any and all damages arising out of their use of the Blink Mobility Cars or Services.

2.5. You authorize Blink Mobility, at any time, to verify Your driving record, and Blink Mobility reserves the right to deny Membership to any person based on the content of that person's driving record, including without limitation, arrests or charges in relation to vehicle operation, including those which have yet to be fully adjudicated or did not result in a charge or prosecution.

2.6. You authorize Blink Mobility, at any time, to check Your credit and/or other equivalent data sources that identify any risk associated with provision of any Blink Mobility Services to You. We may decline to provide Blink Mobility Services to You, or cease providing Blink Mobility Services already underway, based upon the results of such checks.

2.7. You acknowledge and agree that meeting the Eligibility Criteria does not automatically entitle You to become a Member or to use the Blink Mobility Services, and approval of Your application to become a Member is at Blink Mobility's sole discretion. Such approval may be subject to additional criteria imposed by either Blink Mobility or its insurers, from time to time. Blink Mobility will notify You of its approval or rejection of your Membership application via email.

2.8. In the event that Blink Mobility rejects Your application for Membership, you agree that Blink Mobility will retain the first installment of the Membership fees as administrative charges.

2.9. For annual members, payments are automatically charged to the Payment Card on a monthly basis. Whenever the amount owed on a Membership exceeds \$50, Blink Mobility may charge the Payment Card on an earlier date without advance notice to You. You will be informed of this payment by text message or email. Blink Mobility may suspend access to the Services if You refuse to pay the advance payment, or if there are insufficient funds on the Payment Card, or while payment is pending.

2.10. IN THE EVENT THAT YOU OVERDRAW YOUR ACCOUNT AFTER ENROLLMENT, WE ARE NOT LIABLE FOR OVERDRAFT CHARGES, OR FOR ANY OTHER LOSSES OR LIABILITIES WHICH YOU MAY INCUR AS A RESULT. IF THE AUTHORIZATION OBTAINED AT ENROLLMENT EXCEEDS THE ACTUAL CHARGES INCURRED IN RELATION TO THESE TERMS AND CONDITIONS, THERE MAY BE A DELAY BETWEEN THE TIME THAT THE CHARGES ARE RECEIVED BY YOUR CARD ISSUER AND THE TIME THAT THE CARD ISSUER RELEASES THE FUNDS. WE MAY AUDIT ALL CHARGES WE ASSESS AND IF ERRORS ARE FOUND, YOU WILL PAY THE CORRECTED CHARGES. YOU AUTHORIZE US TO CORRECT ALL CHARGES WITH THE CARD ISSUER.

### **3. MEMBERSHIP**

3.3. When You apply for Membership, You are required to select Your Membership type from the options set out in Schedule 1 of these Terms and Conditions.

3.4. You are only permitted to have one Membership at a time and any application for a simultaneous Membership will be null and void.

3.5. "Membership Date" means the date selected by Blink Mobility when each of the following has been accomplished:

3.5.1. You have agreed to these Terms and Conditions and selected Membership type with the corresponding charges set out in the Rate Offer in Schedule 1.

3.5.2. The Customer Relations Center confirms that Blink Mobility has received and approved all of the required documentation for Membership.

3.5.3. We have sent You Your Blink Mobility Membership Card if You have opted to use a Blink Mobility Membership Card for the Blink Mobility Services.

3.5.4. The amount of Membership fees due to finalize the application has been received by Blink Mobility.

3.6. "Activation Date" means the date selected by You upon which date the Blink Mobility Services are first eligible to be used by You, which date shall be no later than thirty (30) days after the Membership Date. If You have not selected an Activation Date, the Membership Date will be considered as Your Activation Date.

3.7. Your Membership will start on the Activation Date and will automatically renew each month, on the same day of the month as the Activation Date ("Renewal Date"), until otherwise terminated by You or us in accordance with the Contract.

3.8. If you wish to terminate Your Membership, you must select the option to cancel Membership in your Member Account, or contact the Customer Relations Center with your request to cancel Membership. After submitting your request for cancellation, Your Membership will effectively end on the upcoming Renewal Date. Unless You terminate Your Membership in accordance with this section, a new Membership fee will become due on the Renewal Date.

3.10. The Contract will commence on the Membership Date or the Activation Date and continue until terminated by either Member or Blink Mobility in accordance with Section 3 of these Terms and Conditions.

3.11. Your Membership is personal to You and is non-transferable. You must not, under any circumstances, permit any other person to use the Blink Mobility Service under Your Membership. Permitting a third party to use your Membership will result in: (i) loss of insurance coverage and you being held responsible for any loss or damages occurring out of the third party's use of your Membership; and (ii) immediate revocation of your Membership.

3.12. Upon completion of the Membership application process, Blink Mobility will send You a Blink Mobility Charging card which You must use to initiate a charge session at a Blink Mobility Charging Point ("Blink Mobility Charging Card") as further described in the User Guide.

3.15. In the event that Your Blink Mobility Charging Card is lost, stolen or damaged, You must notify Blink Mobility immediately. If the Blink Mobility Charging Card is lost, or if the Blink Mobility Charging Card is damaged to the extent that a replacement is required, You will be liable to pay a Penalty as set out in Schedule 1.

3.16. Blink Mobility may amend the Contract at any time due to changes in Applicable Law and/or tax and such amendments shall be effective on the date Blink Mobility sends you a notification about the changes. In addition, Blink Mobility may amend the Contract at any time for any other reason including, without limitation, by changing Penalties and Fees, by way of 30 days' prior written notice to its Members. Otherwise, Blink Mobility will not change the amount of the rental Fee more than twice in any year, and will not increase either the rental Fee or the Membership Fee by more than 12% of the current fee.

3.17. If You do not wish to be bound by such changes, You are entitled to terminate Your membership within thirty (30) days of Blink Mobility's notice to amend the Contract.

3.18. Termination pursuant to section 3.17 above will release You from Your obligation to pay all Membership Fees that would apply to any period after the effective date of termination.

3.19. Notice to Members of any amendments will be delivered through a message in the Members' Accounts on the Blink Mobility website and the delivery date will be the date on which such amendment was posted. You will also receive an email notifying you that you have a message in Your Account.

### 3.20. Termination for Cause:

Blink Mobility may terminate Your Membership and the Contract with an immediate effect by giving You a written notice: (a) where an Additional Fee or Penalty becomes payable in any of the circumstances set out in Schedule 1; or (b) if You do not pay any Fees due to Blink Mobility within 30 days of receipt of a formal notice sent to You by Blink Mobility informing You that such Fees are outstanding. Blink Mobility may send this notice via email, by text message or by an alert in Your Member Account. Any termination under this section 3.20 does not affect Blink Mobility's right to charge the late payment interest on any outstanding amounts; or (c) if You materially breach any term or condition in the Contract. However, where it is possible for You to remedy the breach, we will give You a notice of this and allow You fourteen (14) days to remedy the issue before exercising our right to terminate; or (d) if You are involved in an accident involving a Blink Mobility Car that leads Blink Mobility to reasonably conclude that You are not suitable for continuing Membership; or (e) if You engage in any activity or conduct that Blink Mobility, in its reasonable opinion, determines to be inappropriate, negligent, unacceptable, offensive or abusive; or (f) if You cease to fulfill any of the Eligibility Criteria; or (g) if You intentionally or recklessly make any false or misleading statement to Blink Mobility; or (h) if You permit any other person (other than a Blink Mobility representative) to drive a Blink Mobility Car during Your Rental Period; or (i) if You share Your Blink Mobility Charging Card to allow a third party to initiate a charge session at a Charging Point.

3.21. Blink Mobility may also, at its sole discretion, terminate or suspend Your Membership without cause, and Your future use of any Blink Mobility Services may be denied. Please refer to Schedule 1 for further details on this.

3.22. If Blink Mobility suspends or terminates Your Membership for cause, Blink Mobility will not reimburse any funds to You. Following such suspension or termination, You will remain responsible for unpaid Membership fees and other amounts due for the remainder of the previously purchased Membership Period, as well as outstanding amounts arising from any other obligation that these Terms and Conditions impose on You. In addition, Blink Mobility may, at any time, determine in its sole and absolute discretion that in addition to termination of a current Membership, Your future use of any Blink Mobility Services may be denied.

3.23. Termination without Cause: Blink Mobility may terminate or suspend any Blink Mobility Membership, at any time, for any reason whatsoever. In the event that Blink Mobility terminates Your Membership pursuant to this section, Blink Mobility's sole and complete responsibility to You shall be to refund, within thirty (30) business days of the termination date, a pro-rata portion of any unused Membership purchased for which payment has been previously advanced.

## 4. USE OF BLINK MOBILITY SERVICE

**ALL BLINK MOBILITY CARS ARE EQUIPPED WITH AUDIO AND VIDEO RECORDING DEVICES, BY UTILIZING THE BLINK MOBILITY SERVICE, YOU EXPRESSLY ACKNOWLEDGE AND CONSENT TO BLINK MOBILITY'S AUDIO AND VIDEO RECORDING OF YOUR ENTIRE TRIP WITH BLINK MOBILITY.**

### 4.1 Reservation of Blink Mobility Cars and Parking Spaces:

4.1.1 As part of Blink Mobility service, a Member can reserve a Blink Mobility car at the place of the trip origination and a parking spot at the place of destination. Depending on the date and time as well as the location of the Station, Blink Mobility may charge a fee for the reservation as fully described in Schedule 1. While reservations are not required to use Blink Mobility service, they are encouraged.

4.1.2 After a Blink Mobility Car has been reserved, You have 30 minutes to arrive at the selected Blink Mobility Station and start your rental through the Blink Mobility App. If the Blink Mobility Car has not been rented within the reservation period and You have not cancelled Your reservation within the reservation period, You will be charged a Penalty as set out in Schedule 1.

4.1.3. If You fail to collect a Blink Mobility Car that You have reserved on three consecutive occasions within a 24-hour period, You will be suspended from the Blink Mobility Service for 24 hours from the time of the final failure to collect.

4.1.4 If You cancel Your Blink Mobility Car reservation within the reservation period, you will not be permitted to reserve another Blink Mobility Car for a period of 10 minutes from the time of cancellation and the reservation fee will still be charged.

4.1.5 After a Blink Mobility Parking Space has been reserved, You have 45 minutes to park at the reserved Blink Mobility Parking Space. After this period has elapsed, the Blink Mobility Parking Space will be released.

4.1.6. As Blink Mobility is a self-service operation, Blink Mobility will not be responsible to You if a Blink Mobility Parking Space is unavailable at any particular location or if We are unable to honor the reservation of a Blink Mobility Parking Space, in the event of an occurrence outside of Our control (such as the parking or standing by an unauthorized vehicle or person). However, if this does occur, please contact the Customer Relations Center and the representative will try to direct You to the next available Blink Mobility Parking Space. You will be allocated an additional fifteen (15) minutes rental free period to get to such Blink Mobility Parking Space and if You paid a reservation fee – it will be refunded to You.

4.2 Rental Packages. From time to time, Blink Mobility App will make a special offer to Members inviting to take advantage of a Rental Package by renting a Blink Mobility car for a certain period of time at a discounted pre-set price. The Blink Mobility App will display a choice of the Packages, depending on the availability. To take advantage of the Rental Package, Members will have to confirm their selection and accept the price and the rental, hereby reaffirming their acceptance of and compliance with these Terms and Conditions. More details about Rental Packages are stated in Schedule 1.

4.3 Starting a rental from the Blink Mobility App. Members will be able to start their rentals from the Blink Mobility App directly. You will select "Rent" and "Confirm" to begin your rental session. Once the rental is confirmed, a billing grace period will be granted to You for completion of the vehicle inspection. Upon expiration of the grace period, billing will begin for the rental. If You start the Car before expiration of the grace period, your billing will instead begin from the moment the Car is started. Every time you begin your rental through the Blink Mobility App, you reaffirm your acceptance of and compliance with these Terms and Conditions.

4.4 Waitlist. Upon introduction of the Waitlist feature to the Blink Mobility App, Members will be able to, in the event of unavailability of a Blink Mobility Car or a parking spot at the desired Charging Station choose one or several Stations of interest for the purposes of making a reservation. Once the choice is made, Blink Mobility App will display the price associated with this reservation and You will need to confirm and accept it in order to proceed. If confirmed, Blink Mobility App will automatically reserve for You a Blink Mobility Car or a parking spot as soon as they become available at the desired Station. If necessary, You can cancel the Waitlist option at any time.

4.5 The maximum rental period allowed is 24 hours. If Your rental period exceeded 24 hours, You must immediately return the Blink Mobility Car to the nearest Charging Station.

4.6 Restrictions on Use:

4.6.4 You must operate Blink Mobility Cars responsibly and with all due care and attention.

4.6.5 You must, at all times, comply with all Applicable Law, rules, regulations, policies and restrictions relating to Your use of Blink Mobility Cars.

4.6.6 You must complete an exterior and interior inspection of the Blink Mobility Car before departing the Blink Mobility Station. If the Blink Mobility Car is damaged or unclean, or if any of the Car's Accessories and Onboard Documents are missing, You must report the damage via the Blink Mobility App during the exterior and interior inspection process before starting the Car. Failure to report damage, uncleanliness or missing items prior to departure from the Blink Mobility Station will result in You being charged a Penalty in respect of such damage or uncleanliness or missing items.

4.6.7 You must take all reasonable care of the Blink Mobility Car. Excluding ordinary wear and tear, You must return the Blink Mobility Car to us in the same condition as when You received it.

4.6.8 You are required to maintain the cleanliness of the Blink Mobility Car and it is Your responsibility to remove all trash and all your personal belongings when returning a Blink Mobility Car and to otherwise leave the Blink Mobility Car in a clean condition for the next user. Blink Mobility shall not be responsible for any loss of your personal belongings in the event that you fail to remove such belongings prior to returning the Blink Mobility Car.

4.6.9 Whenever accessing or using the Blink Mobility Service, You shall carry valid driving license or other certification permitting You to drive a car in California as described in these Terms and Conditions. We, including, without limitation our staff, reserve the right to request that You present a valid ID and proof of your Blink Mobility membership, to verify that You are the Member who has been authorized to possess and operate the Blink Mobility Car.

4.6.10 You must ensure that the Blink Mobility Car remains locked, secure and parked in a safe location when it is not being driven, with all windows fully shut and the trunk closed.

4.6.11 You must at all times maintain possession of Your Blink Mobility Charging Card and will not share Your Blink Mobility Charging Card with any third party.

4.6.12 You and all passengers must use seat belts. If transporting children under 4'9 feet tall, they must be transported in the rear seat of the Blink Mobility Car in a child booster seat. A child booster seat is not provided by Blink Mobility. You are fully and solely responsible for the lawful and safe installation and usage of such child booster seat and for verifying that such use is lawful in the manner utilized.

4.6.14 You may not access or operate a Blink Mobility Car or allow anyone to access or operate it:

(a) if a Blink Mobility Car's battery state of charge falls below twenty percent (20%) or 40 miles );

(b) outside of the Blink Mobility Zone;

(c) to learn how to drive or to train another to drive;

(d) to transport animals (excluding service animals necessary to accommodate a disability);

(e) while engaging in any activity that would cause a Blink Mobility Car's interior to become soiled, wet, smelly or otherwise uncomfortable for the next user;

(f) to transport passengers or goods for a fee;

(g) to act as a courier;

(h) to be operated by anyone other than You whether or not for a fee;

- (i) as a for-hire vehicle as part of a transportation network company or any other for-hire or commercial purposes;
- (j) so as to be pushed or pulled for any reason whatsoever;
- (k) to tow or push any vehicle, trailer, or any other object;
- (l) outside normally maintained paved roadways or roadways suitable for a Blink Mobility Car;
- (m) to attach any items to the outside of a Blink Mobility Car;
- (n) while placing any Advertising outside or within a Blink Mobility Car. "Advertising" includes but is not limited to any language, shape, and/or image intended to inform the public or attract their attention, whether commercial, informational (private or commercial), cultural, or political;
- (o) to transport objects or substances (not limited to hazardous, flammable, corrosive, toxic, explosive, ionizing, or combustible materials) that, due to their nature or odor, may damage a Blink Mobility Car and/or delay the ability to make the Blink Mobility Car available again or otherwise could create a hazardous situation for Yourself or others;
- (p) to participate in automobile races, rallies, trials, or any other competitive event;
- (q) in violation of traffic laws or other laws and regulations, including through toll, car pool or fast track lanes without complying with applicable payment and other requirements;
- (r) when a Blink Mobility Car is loaded beyond the manufacturer's stated passenger and cargo capacity: a Blink Mobility Car is only designed to support (a) up to five passengers, including the driver, and (b) a load that should not exceed 850 pounds of total weight from passengers and cargo. Overloading the car may inhibit its safe or normal function;
- (s) when suffering from excess fatigue;
- (t) when under the influence of alcohol, drugs, medication, or any other legal or illegal substance that might alter or impair Your ability to safely and lawfully operate a Blink Mobility Car;
- (u) while smoking, eating, drinking or illegally using drugs in a Blink Mobility Car;
- (v) for any illegal purpose or for the commission of any crime, including the illegal conveyance of persons, drugs or contraband, or weapons;
- (w) to destroy, damage, or aid in the theft of a Blink Mobility Car;
- (x) to disassemble, service, or repair, any Blink Mobility Car or access any internal mechanical or electric component within a Blink Mobility Car;
- (y) if a Blink Mobility Car has been obtained by fraud or misrepresentation; and
- (z) if You are in violation of any of these Terms and Conditions and such failure to comply with these Terms and Conditions will give rise to Your full indemnification of Blink Mobility for any resulting harm or damage that may occur.

4.7 Maintaining the battery charge of the Blink Mobility car above 20% or 40 miles is critical. If during Your Rental Period the battery level falls under 20% or 40 miles, you must call Customer Service for instructions on where to terminate the rental. If the battery level falls below 10% or 20 miles, Blink Mobility reserves the right to manually end Your Rental Period and retrieve the Blink Mobility car in order to take it to the nearest Blink Mobility Station and recharge it.

4.8 At the time of registering for Blink Mobility Membership, You will be asked to provide your mobile phone number. By providing Your mobile phone number to Blink Mobility, You agree and acknowledge that Blink Mobility may send You text messages to Your mobile phone number for any purpose, including marketing purposes. You agree that these text messages may be regarding the products and/or services that You have previously purchased as well as products and/or services that Blink Mobility may market to You, including products or services of its partners and vendors. You acknowledge that this consent may be revoked at Your request but that until such consent is revoked, You consent to receive text messages from Blink Mobility and/or its partners and vendors on your mobile number.

## **5. PAYMENT OF FEES**

5.1 In order to enroll in the Blink Mobility service, You must provide a valid Payment Card that (i) has been issued to You; (ii) has an expiration date at least fourteen (14) days following the conclusion of the Membership Period for the Membership type that You selected; and (iii) unless prohibited by law, You have authorized, and hereby do authorize, Blink Mobility to charge the Payment Card for all Fees due to Blink Mobility as specified in these Terms and Conditions even after the expiration of Your Membership.

5.2 As a condition to, and in consideration of, Your enrolment in Blink Mobility, You agree to pay all Fees if and when they become due, and unless prohibited by law, You authorize Blink Mobility to charge Your Payment Card for all Fees.

5.3 You agree that You presently are and will in the future remain current with Your payment obligations to Blink Mobility even after the Membership is terminated and that Blink Mobility may charge Your Payment Card for any outstanding Fees after Your Membership Period has expired.

5.4 Blink Mobility will deliver periodic invoices to the Member. Such invoices will set out all Fees due to Blink Mobility as of the date of that invoice or paid to Blink Mobility since the later of: (i) the date of the previous invoice delivered to the Member, and (ii) the Activation Date. You may access all invoices via Your Account. You may request hard copies of invoices at an Additional Fee.

5.5 Blink Mobility reserves the right to temporarily suspend your Membership after any rental longer than 8 hours until the payment for this rental has been received by Blink Mobility.

5.6 You must amend Your contact and other account information (including the Member's payment information) on the Member Account whenever it changes so that information available to Blink Mobility is up to date throughout the entire duration of the Contract, and in particular before You reserve or rent a Blink Mobility Car.

5.7 If Your current Payment Card is cancelled during the term of this Contract, You must update Your Payment Card details via the Member Account on the Blink Mobility Website immediately upon cancellation of Your current Payment Card. For Payment Cards due to expire, this update must take place at least fourteen (14) days prior to the expiration date and in any event, no later than upon receipt of the new Payment Card.

5.8 You shall ensure that there are sufficient funds in Your bank account for payment of the Membership Fee, Rental Fees, Additional Fees, Penalties and/or any other amounts that might be due to Blink Mobility under this Contract and shall provide Blink Mobility with an alternative method of payment if such funds are not available or if Your Payment Card is cancelled by You or Your bank.

5.9 If we are unable to withdraw funds from Your account, we will send You a text message informing You of the issue. We may make a second and third attempt to withdraw funds from Your account if the first failed attempt. We may suspend Your Membership after the second failed attempt to withdraw funds from Your account until You have provided us with up to date payment information and paid us any monies owed to us. We will always let You know when we suspend Your Membership. You will also be charged an Additional Fee by way of an administration fee if a payment that is due to us from You is dishonored by Your bank or bounces.

5.10 Blink Mobility shall not be responsible for any overdraft or other fees charged by the Member's Payment Card company or bank.

5.11 All Fees under this Contract shall be paid in full without any set-off, counterclaim, deduction or withholding.

5.12 Blink Mobility may, in Blink Mobility's sole discretion, create promotional codes that may be redeemed by Members and credited against Fees, subject to any additional terms that Blink Mobility establishes on a per promotional code basis ("Promotional Code").

5.12.1 You agree that Promotional Codes: (a) are unique to the Member to whom they are issued, are non-transferable, and can only be used by the Member to whom they are delivered; (b) must only be used for the intended purpose, and in a lawful manner; (c) may not be duplicated, sold or transferred in any manner, or made available to the general public (whether posted to a public forum or otherwise), unless expressly permitted by Blink Mobility; (d) may be disabled by Blink Mobility at any time for any reason without liability to You; (e) may only be used pursuant to the specific terms that Blink Mobility establishes for such Promotional Code; (f) are not valid for, and cannot be exchanged for, cash; and (g) may expire prior to Your use of the Promotional Code. Blink Mobility reserves the right to withhold or deduct credit against Fees or other features or benefits obtained through the use of Promotional Codes by You in the event that Blink Mobility determines or believes that the use or redemption of the Promotional Codes was in error, fraudulent, illegal, or in violation of the applicable Promotional Code's terms or these Terms and Conditions.

5.13 Collections. Blink Mobility reserves the right to assign a delinquent Member account to a third-party collection agency. If you fail to make your account current promptly, Blink Mobility and / or its collections partner reserve the right to report this delinquency to credit bureaus and charge interest on the amount due in accordance with the applicable law. You acknowledge and agree that Your personal information may be shared with the third-party collection agency for the purposes of collecting debt owed to Blink Mobility.

## **6. SECURITY DEPOSIT AND PREAUTHORIZATION**

6.1 When You are becoming a Member, Blink Mobility may, at its sole discretion, require You to instruct Your bank to pre-authorize a Security Deposit for Blink Mobility's benefit. The amount of the Security Deposit will not be debited by Blink Mobility except in the circumstances set out below. However, the amount of the Security Deposit will be unavailable to You to withdraw from Your account until released by Your bank.

6.2 The amount of the Security Deposit shall be determined by Blink Mobility based on Your rental history and payment record. The maximum amount of any Security Deposit is equal to the highest total Rental Fees paid by You in any two calendar months (including where such calendar months are not consecutive).

6.3 Any Security Deposit pre-authorized by You will be withdrawn by Blink Mobility in the event of:

6.3.1 non-payment by You of any Fees or other sums due to Blink Mobility;

6.3.2 failure by You to return a Blink Mobility Car; and/or

6.3.3 payment of damages for which You are liable under this Contract, including any Additional Fees and Penalties that may become due.

6.4 In the absence of any outstanding balance at the termination of Your Membership, the security deposit will be returned to You within fourteen (14) days after the Membership terminates. The security deposit bears no interest.

6.5 At the time of Rental, Blink Mobility may place a preauthorization hold on your payment card.

## **7. TRAFFIC AND PARKING VIOLATIONS AND FINES**

7.1 You are personally responsible for Your breach of any applicable traffic and motor vehicle rules and regulations when using a Blink Mobility Car. You are also personally responsible for any breach of any parking laws, rules and regulations when using a Blink Mobility Parking Space.

7.2 You must pay all tickets, surcharges, tolls, fines or penalties arising in connection with Your use of a Blink Mobility Car. You are responsible and liable for each ticket, surcharge, toll, fine or penalty to the appropriate authorities. When Blink Mobility is notified about any Member's ticket, surcharge, toll, fine or penalty, Blink Mobility will pay the relevant amount on behalf of the Member who incurred it and will then charge that Member's Payment Card. When You are notified about a ticket, surcharge, toll, fine or penalty related in any way to your use of Blink Mobility Service, You must notify the Customer Relations Center within 3 days of Your receipt of the relevant ticket, surcharge, toll, fine or penalty and settle these charges directly with the issuing authority. You will be responsible for any penalties incurred from your failure to notify Blink Mobility of the ticket, surcharge, toll, fine or penalty.

7.3 In the alternative, Blink Mobility may elect to provide your personal identifiable information to the issuing authority and direct the issuer of the fine, penalty, toll or a ticket to settle the charges with You directly.

7.4 You acknowledge and agree that Blink Mobility may provide Your identity details and personal information to any law enforcement authorities or any authority that issued a ticket, fine or a penalty Blink Mobility reasonably believes is attributable to Your rental, on request and/or otherwise in connection with any alleged breach of Applicable Laws by You.

7.5 You must pay Blink Mobility the Penalty specified in Schedule 1 for each ticket and fine issued to Blink Mobility for the Blink Mobility Car used by You during the Your Rental Period to cover Blink Mobility's reasonable administrative costs in handling receipt of such ticket and/or fine.

7.6 If You cause a Blink Mobility Car to be immobilized or clamped, or towed for breach of any Applicable Laws, You will be liable to Blink Mobility as if You had abandoned the Blink Mobility Car and You must pay to Blink Mobility the Penalty specified in Schedule 1. You will also be liable to reimburse Blink Mobility for any fees or expenses paid to the relevant parking or towing authority or private operator of the relevant parking or towing facility.

7.7 Blink Mobility also reserves the right to retain a third-party company to monitor for, process and handle all tickets, fines and fees incurred by Blink Mobility Members while driving Blink Mobility Cars. You acknowledge and agree that Blink Mobility may share your personal information with such a third-party company for the purposes of handling tickets and fines incurred by You while driving a Blink Mobility Car. If You fail to pay Your tickets, fines and fees promptly, You may be charged a processing fee by the third-party company retained by Blink Mobility to handle the tickets, fines and fees on its behalf.

## **8. INSURANCE**

8.1 Subject to the applicable exceptions and specific terms and conditions of the policy providing coverage, the Insurance Coverage provided by Blink Mobility insures You against liability to a third party caused by or arising out of Your use of a Blink Mobility Car on the road in accordance with the terms of the Contract, in respect of death, personal injury and/or damage to property suffered by such third party.

8.2 Subject to Section 8.1, Blink Mobility does not warrant or represent that the Insurance Coverage is comprehensive or sufficient to meet Your needs.

8.3 Blink Mobility maintains third-party liability insurance for itself consistent with the State of California compulsory minimum financial responsibility requirements.

8.4 You acknowledge and agree that the Insurance Coverage may not cover in whole or in part, Your liability to Blink Mobility or to a third party, including for damage to a Blink Mobility Car, injury to You, injury to other people, and/or damage to or loss of You property or a third party's property, and that despite the Insurance Coverage, You may be liable directly to Blink Mobility and/or any third party to whom You have caused damage, injury or loss through Your use of the Blink Mobility Service. For the avoidance of doubt, the Insurance Coverage does not cover any damage to or loss of Your property through the use of the Blink Mobility Service.

8.5 Moreover, You acknowledge and agree that the Insurance Coverage will not cover you in a number of cases, including, without limitation:

- using a Blink Mobility Car by any other person other than the Member;
- using the Blink Mobility Service without a valid driving license;

- using the Blink Mobility Service while under the influence of drugs or alcohol;
- using the Blink Mobility Service outside the Blink Mobility Zone;
- participating in automobile races, rallies, trials or any other competitive event, and more generally, acting, driving a Blink Mobility Car or using the Blink Mobility Service inconsistently with the Contract as a whole, and
- making a false statement to the Insurer.
- using a Blink Mobility Car in a way that violates these terms and conditions.

8.6 You acknowledge that the availability to You or any third party (including any passenger in a Blink Mobility Car operated by You) of a claim under the Insurance Coverage does not affect Blink Mobility's right to bring a claim against You in respect to the damage caused by You resulting from a breach of this Contract, the insurance documentation referred to in this section, and/or Applicable Laws, except as set out in this section.

8.7 The circumstances referred to in the preceding section (in which Blink Mobility may bring a claim against You for any loss that Blink Mobility suffers as a result of damage to any Blink Mobility Car arising during a Rental Period) are where the damage arose as a result of or in connection with any: (a) breach of the Contract by You; (b) unlawful activity undertaken by You; (c) misrepresentation by You (either to Blink Mobility or in any accident report, insurance claim or police report); (d) improper use of a Blink Mobility Car (e.g. transport of flammable materials or explosives or use of a Blink Mobility Car as a for-hire vehicle or any other commercial purpose); (e) willful damage; (f) use of a Blink Mobility Car by anyone other than by You; and (g) failure to lock the doors and trunk of the Blink Mobility Car when it is unattended.

8.8 Blink Mobility reserves the right, at any time, without notice to You, to modify the Blink Mobility Insurance Coverage so long as it complies with the minimum standard of insurance coverage required by law to permit You to drive a Blink Mobility Car on the road.

8.9 In the event of any payment under this policy, Blink Mobility and its insurer are entitled to all the rights of the person to whom payment was made against another. That person must sign and deliver to Blink Mobility and its insurer any legal papers relating to that recovery, do whatever else is necessary to help Blink Mobility and its insurer exercise those rights and do nothing to prejudice the rights of Blink Mobility or its insurer.

8.10 When a person has been paid damages under the Blink Mobility Insurance Coverage and also recovers from another, the amount recovered from the other shall be held by that person in trust for Blink Mobility and its insurer and reimbursed to Blink Mobility and its insurer to the extent of any payment by Blink Mobility or its insurer.

8.11 Blink Mobility and its insurer may seek "subrogation" which is reimbursement from You in the event that You are at fault for an accident for which Blink Mobility or its insurer has provided payments to a third party for damages or injuries sustained by that third party.

8.12 In the event that You are at fault in an accident that triggers Blink Mobility's Liability Insurance Policy, and if the third-party damages are greater than Blink Mobility's insurance policy limits, You will be required to pay the difference between the third party's actual damages and what Blink Mobility's Insurance policy covered.

8.13 If there is another policy of insurance that may provide coverage for any third-party liability, including a personal automobile policy You may maintain, the insurance provided by Blink Mobility will be deemed excess to Your insurance to the extent permitted under California law.

## **9. RELEASE AND LIMITATION OF LIABILITIES; INDEMNITIES**

### 9.1 Release of Liability:

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU, ON BEHALF OF YOURSELF AND YOUR SUCCESSORS IN INTEREST (AS DEFINED BELOW) (COLLECTIVELY, "RELEASORS"), HEREBY RELEASE AND DISCHARGE US, OUR AFFILIATES (AS DEFINED BELOW) AND SUPPLIERS AND EACH OF OUR AND THEIR OFFICERS, DIRECTORS, MEMBERS, MANAGERS, SUCCESSORS, ASSIGNS, AGENTS AND EMPLOYEES (COLLECTIVELY, "RELEASED PARTIES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS (INCLUDING BUT NOT LIMITED TO LOSS OF INCOME, WAGES, SUPPORT, OR CONSORTIUM), INJURY, DEATH, DAMAGES (INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES), COSTS, EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS), HARM, CLAIMS, OR CAUSES OF ACTION (INCLUDING BUT NOT LIMITED TO CLAIMS FOR PERSONAL INJURY, WRONGFUL DEATH AND/OR PROPERTY DAMAGE), ARISING OUT OF OR RELATING TO (I) THE USE OF A BLINK MOBILITY CAR OR ANY COMPONENT, FEATURE, ACCESSORY OR CONFIGURATION OF A BLINK MOBILITY CAR, (II) ANY ACCIDENT OR INCIDENT INVOLVING A BLINK MOBILITY CAR, (III) THE USE OF A BLINK MOBILITY STATION, BLINK MOBILITY CHARGING POINT, OR BLINK MOBILITY PARKING SPOT OR ANY EQUIPMENT OR ACCESSORIES THEREON, (IV) YOUR ACTS OR OMISSIONS, OR (V) YOUR OR YOUR PASSENGERS' DAMAGE TO OR LOSS OF PERSONAL PROPERTY, IN EACH CASE (I) THROUGH (V), WHETHER IN STRICT LIABILITY, CONTRACT, OR TORT, REGARDLESS OF HOW SUCH INJURY, DAMAGE, OR LOSS MAY ARISE AND REGARDLESS OF WHETHER THE INJURY, DAMAGE, OR LOSS IS OCCASIONED IN WHOLE OR IN PART BY THE ACTIVE OR PASSIVE ORDINARY NEGLIGENCE OF ANY ONE OR MORE OF THE RELEASED PARTIES, OR ANY OTHER BREACH OF A LEGAL DUTY ARISING OUT OF COMMON LAW, STATUTE, OR CONTRACT.

### 9.2 Limitation of Blink Mobility's Liability:

TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLINK MOBILITY HEREBY DISCLAIMS AND SHALL NOT BE LIABLE TO YOU OR ANY OTHER PARTY OR THIRD PARTY, OR BE HELD RESPONSIBLE FOR ANY ECONOMIC, INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, ENHANCED, AND EXEMPLARY DAMAGES, AND LOST PROFITS, ARISING OUT OF OR RELATING TO YOUR ACTS OR OMISSIONS, TO THESE TERMS AND CONDITIONS, OR TO ANY BREACH OF THESE TERMS AND CONDITIONS, REGARDLESS OF WHETHER FORESEEABLE OR UNFORESEEABLE, WHETHER CLAIMED UNDER CONTRACT, TORT, FAILURE OF WARRANTY, OR ANY OTHER LEGAL THEORY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF BLINK MOBILITY TO YOU FOR ALL CLAIMS UNDER THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE FEES RECEIVED BY BLINK MOBILITY FROM YOU.

### 9.3 Disclaimer of Warranties:

YOU TAKE A BLINK MOBILITY CAR AS IS WITH ALL FAULTS. BLINK MOBILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR THAT BLINK MOBILITY CARS, STATIONS, OR BLINK MOBILITY CHARGING POINTS ARE FIT FOR ANY PARTICULAR PURPOSE.

### 9.4 Indemnity:

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU, ON BEHALF OF YOURSELF AND YOUR SUCCESSORS IN INTEREST, AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE RELEASED PARTIES FROM AND AGAINST ANY CLAIMS, ACTIONS SUITS, PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES AND COSTS) ARISING OUT OF OR RELATING TO YOUR USE OF BLINK MOBILITY SERVICE. YOU MAY PRESENT THE CLAIM TO YOUR INSURANCE CARRIER FOR SUCH EVENTS OR LOSSES; BUT IN ANY EVENT, YOU SHALL HAVE FINAL RESPONSIBILITY REGARDING ANY SUCH LOSSES AND TO ALL THIRD PARTIES.

### 9.5 Damage or Theft of Blink Mobility Car:

YOU ARE RESPONSIBLE FOR ANY AND ALL LOSS OF OR DAMAGE TO THE BLINK MOBILITY CAR THAT YOU CAUSE WHILE YOU ARE IN POSSESSION OF IT. SUCH LIABILITY IS LIMITED TO (1) LOSS OR DAMAGE TO THE BLINK MOBILITY CAR UP TO ITS FAIR MARKET VALUE RESULTING FROM COLLISION REGARDLESS OF THE CAUSE OF DAMAGE; (2) LOSS DUE TO THEFT OF THE BLINK MOBILITY CAR UP TO ITS FAIR MARKET VALUE; (3) PHYSICAL DAMAGE TO THE BLINK MOBILITY CAR UP TO ITS FAIR MARKET VALUE, RESULTING FROM VANDALISM OCCURRING AFTER, OR IN CONNECTION WITH, THE THEFT OF THE VEHICLE; (4) PHYSICAL DAMAGE TO THE BLINK MOBILITY CAR UP TO A TOTAL OF FIVE THOUSAND DOLLARS (\$5,000) RESULTING FROM VANDALISM UNRELATED TO THE THEFT OF THE BLINK MOBILITY CAR; (5) ACTUAL CHARGES FOR TOWING, STORAGE AND IMPOUND FEES PAID BY US, IF YOU ARE LIABLE FOR DAMAGE, AND (6) AN ADMINISTRATIVE CHARGE.

### 9.6 Definitions

For purposes of this section 9, "Affiliates" of Blink Mobility shall mean any natural person, firm, corporation, partnership, association, limited liability company, trust, or any other legal entity who, directly or indirectly, controls, is controlled by or is under common control with Blink Mobility, including, without limitation, any general partner, manager, managing member, officer, or director of Blink Mobility. For purposes of this section 9, "Successors in Interest" shall mean Your spouse, children, devisees, personal representatives, survivors, heirs, issue, assigns, creditors, successors, executors, administrators, legatees, insurers, estate beneficiaries and estate, any person wholly or partially dependent on You for support and maintenance, and any other person or entity acting for, on behalf of, or through You or having a property right in, or a claim against, a trust estate or the estate of a decedent.

9.7. The provisions of Section 9 set forth above shall relate to any and all claims and legal rights now existing or arising in the future, whether known or unknown. You acknowledge that You have read and understand Section 1542 of the California Civil Code which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Releasors hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to the release of any claims Releasors may have against the Released Parties.

## 10. SERVICE INTERRUPTIONS

10.1 While Blink Mobility uses its reasonable efforts to make the Blink Mobility Service available, the 24/7 availability of the Blink Mobility Service is not guaranteed. Because the Blink Mobility Service is a self-service operation, Blink Mobility shall not be liable if: (a) a Blink Mobility Car or Blink Mobility Parking Space is unavailable at any particular location; (b) Blink Mobility is unable to honor a reservation for a Blink Mobility Car or Blink Mobility Parking Space in the event of an occurrence outside of Blink Mobility's control, such as another Member failing to return a Blink Mobility Car at the end of their Rental Period or the parking of an unauthorized vehicle in the Blink Mobility Parking Space at the time reserved; or (c) Blink Mobility is unable to honor a reservation due to the Covid-19 pandemic.

10.2 If, for any reason, a Blink Mobility Service is Completely Unavailable for a period of more than 5 days, yearly Member's sole remedy shall be Blink Mobility's extension of the applicable Membership for an equivalent number of days that the Blink Mobility Service was Completely Unavailable.

## 11 DISPUTE RESOLUTION AND GOVERNING LAW

11.1 This Contract, and any legal suit, arbitration, action, or proceeding arising out of or related to this Contract, Your Membership, the Blink Mobility Services provided or to be provided and, generally, any act or omission involving You and Us, will be governed by and construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether because of the State of Your residence or any other reason) that would cause the application of laws of any jurisdiction other than those of the State of California or that would apply any rule of construction that allows or directs that ambiguities be construed against the drafter of a contract.

11.2 AS PERMITTED BY THE FEDERAL ARBITRATION ACT ("FAA"), YOU AND WE AGREE THAT ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS, THE ADVERTISING OF OUR SERVICES, YOUR INDUCEMENT TO BECOME A MEMBER, INCLUDING BUT NOT LIMITED TO CLAIMS OF OR RELATING TO UNLAWFUL, DECEPTIVE OR UNFAIR BUSINESS PRACTICES, MISREPRESENTATION, OR FALSE ADVERTISING, TERMINATION OF THE CONTRACT, OR THE VALIDITY OR BREACH THEREOF, WILL BE RESOLVED BY ARBITRATION IN LOS ANGELES COUNTY, CALIFORNIA, ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNDER AAA'S CONSUMER ARBITRATION RULES, EXCEPT THAT, INSTEAD OF ARBITRATION, (A) YOU MAY ASSERT A CLAIM IN SMALL CLAIMS COURT IN LOS ANGELES COUNTY, CALIFORNIA IF THE CLAIM QUALIFIES FOR JURISDICTION IN SUCH COURT; AND (B) WE MAY BRING A CLAIM AGAINST YOU BASED ON THESE TERMS AND CONDITIONS IN SMALL CLAIMS COURT IN THE CALIFORNIA COUNTY OF YOUR RESIDENCE, IF YOU ARE A CALIFORNIA RESIDENT, OR ARE PHYSICALLY LOCATED IN LOS ANGELES COUNTY, CALIFORNIA, IF YOU ARE NOT A CALIFORNIA RESIDENT. THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING ON ALL PARTIES,

EXCEPT FOR ANY RIGHT OF APPEAL PROVIDED BY THE FAA. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION OVER YOU. AAA'S CONSUMER ARBITRATION RULES ARE AVAILABLE ONLINE AT WWW.ADR.ORG. YOU MAY INITIATE A CLAIM AGAINST US IN ARBITRATION BY COMPLYING WITH RULE 2 OF THE CONSUMER ARBITRATION RULES LOCATED AT WWW.ADR.ORG.

11.3 Unless such power is reserved exclusively to the courts by law, the Arbitrator shall have the power to rule on any challenge to his or her own jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate. ARBITRATION REPLACES THE RIGHT TO GO TO COURT. YOU AGREE THAT YOU ARE VOLUNTARILY AND KNOWINGLY WAIVING ANY RIGHT THAT YOU MAY HAVE TO GO TO COURT.

11.4 You have the right to opt out of this mandatory arbitration provision, which would enable You to litigate disputes in a court before a judge, if You deliver to Us, within thirty (30) days of the acceptance of these Terms and Conditions, an explicit instruction to opt out, hand-signed and dated by You, via certified mail, return receipt requested, addressed to Blink Mobility Legal Director, 555 West Fifth Street, Los Angeles, CA 90013. If We do not receive Your written notice within this time period, Your right to opt out will terminate and the provisions of this section will apply. If You exercise the opt-out option, You may commence any action arising from or related to these Terms and Conditions and the Contract only in the Small Claims Court or Superior Courts sitting in Los Angeles County, California or the Federal Courts of the Southern District of California, sitting in Los Angeles, California.

11.5 EXCEPT WHEN PROHIBITED BY LAW AND TO THE EXTENT NOT PREEMPTED BY THE FAA TO BE INCLUDED IN A CLASS ACTION WAIVER, NEITHER YOU NOR WE MAY SERVE AS A REPRESENTATIVE, A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY IN ANY LEGAL ACTION AGAINST BLINK MOBILITY, ITS PARENT COMPANIES, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS AND OWNERS. YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, CONSOLIDATED, MASS, COLLECTIVE ACTION, OR REPRESENTATIVE PROCEEDING. FURTHER, UNLESS BOTH YOU AND WE AGREE OTHERWISE IN WRITING, THE COURT OR ARBITRATOR, AS APPLICABLE, MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CLASS, CONSOLIDATED, MASS, COLLECTIVE, OR REPRESENTATIVE PROCEEDING.

11.6 Except for such claims prohibited by law to have their respective statutes of limitations shortened, in any claim against Us, You must file for Arbitration for damages relating to or arising directly or indirectly from these Terms and Conditions or the Contract, no later than two (2) years after any portion of Your claim has accrued. You hereby waive the right to file an action for any loss, damage or liability related to or arising directly or indirectly from these Terms and Conditions or the Contract under any state or federal statute of limitations that may be longer.

## 12. GENERAL TERMS

12.1 The Member acknowledges and agrees that ownership of the Blink Mobility Cars, Blink Mobility Car Accessories and Blink Mobility Onboard Documents remains with Blink Mobility at all times.

12.2 Nothing in this Contract is intended to, or shall be deemed to establish any partnership, agency or joint venture between any Member and Blink Mobility.

12.3. Only the Member and Blink Mobility have rights under this Contract. No other person shall have any rights under this Contract. The Member may not transfer or assign any of the Member's rights or obligations under this Contract to any other person unless Blink Mobility agrees to this in writing before any such transfer. However, Blink Mobility may transfer its rights and obligations under this Contract to another organization at any time. Blink Mobility will notify You if it plans to do so.

12.4. The rights and remedies provided in this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

12.5. If Blink Mobility does not insist immediately that You do anything You are required to do under these Terms and Conditions, or if Blink Mobility delays in taking steps against You in respect of Your breaking this Contract, that will not mean that You do not have to do those things and it will not prevent Blink Mobility from taking steps against You at a later date. For example, if You miss a payment and Blink Mobility does not contact You immediately but continues to provide the Blink Mobility Service, Blink Mobility can still require You to make the payment at a later date.

12.6. The section headings in these Terms and Conditions are included for convenience only and shall not affect the interpretation of these Terms and Conditions.

12.7. Each of the sections of these Terms and Conditions operates separately. If any court or relevant authority decides that any of them (or any part of any of them) is unlawful, the remaining provisions will remain in full force and effect.

12.8. The Member agrees that the Member shall have no remedies in respect to any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

12.9. Under California law, residents of the state of California are entitled to the following specific consumer rights information:

a) Company Name: Blink Mobility LLC Address: 555 West 5th Street, Los Angeles, CA 90013

Telephone Number: 1(888) 998-2546 ext. 4

b) Any charges imposed by Us can be found in these Terms and Conditions, including Schedule 1.

c) If You have any complaints regarding Our Services, You may contact our Customer Relations Center at

1(888) 998-2546 ext. 4, or, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

12.10. You consent to receive communications from Us in electronic form, and agree that all Terms and Conditions, notices, disclosures and any other communications that We provide to You electronically satisfy any legal requirement that such communications would satisfy if they were in a print-on-paper writing. By selecting the "I Accept" button where indicated, You are signing the Terms and Conditions electronically (" Member E-Signature "), and such selection constitutes Your legal signature, acceptance and agreement as if these Terms and Conditions were actually signed by You in writing and such E- Signature has the same force and effect as a manual signature.

## SCHEDULE 1

### 1. RATE OFFER

1.1. The following summarizes the fees and other terms corresponding to each of the available membership options excluding any applicable sales and use taxes ("Rate Offer").

Figures shown below shall be rounded to two decimal places.

<b>Membership Type</b>	<b>Membership Fee</b>	<b>Per Minute Rental Fee</b>
Standard Membership	\$5.00 per month	\$0.20 per minute 80% off general membership fee
Community Membership	\$1.00 per month	\$0.15 per minute Twenty-five percent (25%) discount to Standard Membership Rental Fee

1.2. The Rental Fees are calculated on a pro rata basis, based on the rate set out in the table above, and the duration of the relevant Rental Period. The minimum rental period is fifteen (15) minutes, meaning that if You rent a Blink Mobility Car for less than fifteen (15) minutes, You will be charged Rental Fees as if You had rented that Blink Mobility Car for fifteen (15) minutes. Rental Fees are payable in addition to the Membership Fee and You cannot credit any instalments of the Membership Fee against the Rental Fee. For the purposes of calculating the Rental Fees: (a) any incomplete minutes in the Rental Period will be rounded up to the next minute; and (b) where the Rental Period is shorter than fifteen (15) minutes, the Rental Period will be rounded up to fifteen (15) minutes.

1.3 Blink Mobility rental fees are billed per minute of use of Blink Mobility cars under each Membership plan as fully stated in the Table above. From time to time, Blink Mobility App will display promotions and incentives when renting Blink Mobility cars at certain Stations or returning the rental to a certain Station. Members are able to take advantage of the special promotions and incentives by following the prompts within the Blink Mobility App. In addition, from time to time, Blink Mobility App may display a surcharge for renting a Blink Mobility car from or returning it to a particular Station. Members are able to either accept the surcharge and proceed with the rental or reject the surcharge and use a different Station for their rental.

1.4. If You do not follow the procedure for correctly returning the Blink Mobility Car the Rental Period may not end, and You will continue to be charged Rental Fees up to a maximum per Rental Period, even if You are actually no longer using the Blink Mobility Car. We therefore recommend that You wait in the vicinity of the Blink Mobility Car until You have received a text message or push notification from us, confirming that the Blink Mobility Car has been successfully returned, and that the Rental Period has ended.

1.5. All fees and charges listed in this Fee Schedule exclude applicable taxes, which will be added to the amounts charged to You by Blink Mobility.

## 2. RENTAL PACKAGES

2.1 From time to time, Blink Mobility App may display and offer a Rental Package allowing You to rent Blink Mobility Car for a predetermined period of time at the pre-set price. You will have an opportunity to either take advantage of the Rental Package offer by confirming it in the Blink Mobility App, or reject the offer and rent with the standard rates applicable to Your Membership.

2.2 The Rental Package price is not refundable. If You confirm the Rental Package, the entire Package price will be charged to Your account even if you end up returning the Blink Mobility Car earlier. The time left unused in the Rental Package is forfeited and cannot be attributable to a future rental. If, however, You keep using the Blink Mobility Car after the expiration of Your Rental Package, the standard per-minute rate attributable to your Membership will apply upon the expiration of the Rental Package. Coupons, free driving time or other promotions that may be available to You do not apply to the Rental Package offer but could be applied if You continue renting the Blink Mobility car after the expiration of the Rental Package.

2.3 You must remain within the Blink Mobility Zone even when taking advantage of the Rental Package.

## 3. PAID RESERVATION OF A BLINK MOBILITY CAR OR A PARKING SPOT

3.1 While reservations are not required to use Blink Mobility Service, they are strongly encouraged. While as a general rule, You can book a Blink Mobility Car or a parking spot free of charge, Blink Mobility reserves the right to charge a reservation fee, depending on the Station and date and time of the reservation. You can accept the charge and confirm the reservation at the time of making the reservation on the Blink Mobility App, on the Blink Mobility Website or inside the BlueCar on the built-in computer system. If You do not accept the charge – You can reject it and proceed to use Blink Mobility Service without the reservation.

3.2 Paid reservation of a Blink Mobility Car will remain valid for 30 minutes and paid reservation of a parking spot will remain valid for 45 minutes. Reservation fees are non-refundable even if You end up cancelling the reservation or never using the reserved car or parking spot. In addition, in case of non-use of the reserved vehicle or a parking spot, You will be charged a Penalty as stated below in Section 7 of this Schedule I. If, however, Your reserved Blink Mobility car or a parking spot becomes unavailable for any reason unrelated to You, Your reservation charge will be refunded to You.

3.3 The following price range could be charged for reserving a Blink Mobility Car or a parking spot:

Reservation	Membership Type	Price Range
Reservation of a Car at the origin of your trip / Reservation of a parking spot at the Charging Station of your destination	Standard Membership	Up to \$3 per reservation, depending on the location of the Station and the date and time of the reservation
	Community Membership	Up to \$2.25 per reservation, depending on the location of the Station and the date and time of the reservation

## 4. LOW INCOME MEMBERSHIP QUALIFICATION

You must meet the following criteria to qualify for the Blink Mobility Community Membership. You will be required to upload proof of eligibility during registration. You qualify if:

4.1 Your household's total gross annual income is at or less than the following annual limits, and You are able to provide proof of income,

### # of persons living in household and Total gross annual household income (before taxes)

1	≤ \$31,550	5	≤ \$48,700
2	≤ \$36,050	6	≤ \$52,300
3	≤ \$40,550	7	≤ \$55,900
4	≤ \$45,050	8	≤ \$59,500

4.2. Or You belong to a verified public assistance or benefits program, and You are able to provide proof of participation.

4.3 The following documents are accepted as proof of eligibility for the Blink Mobility Community Membership. Documents must clearly show Your name, the name of agency, program, or benefit, and the date of issuance or expiration date.

## Program and Proof Accepted

### **Medicaid / Medi-Cal :**

Medi-Cal Card OR Notice of Planned Action

---

### **Low Income Home Energy Assistance Program (LIHEAP) :**

Benefits Letter OR utility bill reflecting inclusion of a housing assistance credit

---

### **Supplemental Security Income (SSI) / Supplement Security Payment (SSP) :**

Computer-generated printout or bank statement(s) showing SSI/SSP deposits (3 months) OR benefit check stub from Social Security Administration

---

### **Federal Public Housing Assistance or Section 8:**

Section 8 Voucher OR Public Housing Assistance Lease Agreement OR Benefits Letter

---

### **Supplemental Security Income (SSI) / Supplement Security Payment (SSP) :**

Computer-generated printout or bank statement(s) showing SSI/SSP deposits (3 months) OR benefit check stub from Social Security Administration

---

### **CalFresh, Food Stamps or Supplemental Nutrition Assistance Program (SNAP):**

California EBT card (same name as applicant) OR Benefits Letter

---

You will have two weeks to provide Proof. Proof must have the recipient's name, address and effective dates of award. May not be accepted if proof is inadequate.

## **5. ADDITIONAL FEES**

The following Additional Fees will be imposed for the following events:

Chargeable Event : Request for paper copy of invoices

Charge per Occurrence: \$5

## **6. DAMAGE CHARGE**

Where, during a Rental Period a Blink Mobility Car is damaged (including but not limited to in a road traffic collision), and it is determined by the Blink Mobility Insurer that the Member was wholly or partially at fault for such damage, the Member shall pay to Blink Mobility the relevant Damage Charge. The amount of the Damage Charge payable is set out in the table below. Until the payment is received, the Member is suspended from using the Blink Mobility Service. The amount of the Damage Charge paid by the Member will be deducted from the amount due to Blink Mobility under Section 9.5 of the Terms and Conditions.

Accident : \$2,000

Blink Mobility may charge the Damage Charge to Members' payment cards in equal monthly increments. If in any given accident or incident caused in whole or in part by a Blink Mobility Member, Blink Mobility's total damages are less than \$2,000, Blink Mobility will only charge the amount of its actual damages. If Blink Mobility's total damages are greater than the Damage Charge, Blink Mobility will charge the total amount of damages in lump sum or in equal increments, in its sole discretion.

## **7. PENALTIES**

For certain violations, acts or omissions or other failures to comply with the terms of the Contract, in addition to Blink Mobility's right to terminate and/or suspend Member's Membership, and the other remedies detailed in this Contract, the following penalties may be levied against the Member by Blink Mobility at its sole discretion. These penalties are non-exclusive, and shall be in addition to such other remedies as may be available to Blink Mobility under this Contract, at law, and in equity.

In addition, Blink Mobility may, at any time, determine that in addition to cancellation of a current Membership, Member's future use of any Blink Mobility Services may be barred for a duration at Blink Mobility's sole discretion.

### **Food Distribution Program on Indian Reservations**

Notice of Action OR FDPIR participation document (benefit card) OR Benefits Letter or official notice of eligibility

---

### **Women, Infants and Children Program (WIC)**

### **Temporary Assistance for Needy Families (TANF)**

### **California Work Opportunity and Responsibility for Kids (CalWORKs)**

### **Welfare-to-Work (WTW)**

### **Bureau of Indian Affairs General Assistance**

Benefits Letter (showing name of program, date of award, name of beneficiary, and award amount)

---

### **Tribal TANF**

Benefits Letter OR benefits check stub from the Bureau of Indian Affairs General Assistance

---

### **Head Start Income Eligible (Tribal Only)**

A letter of participation or enrollment confirmation in a Tribal Head Start Program (including name of child)

---

### **Other Public Award/Benefit**

Proof must have the recipient's name, address and effective dates of award. May not be accepted if proof is inadequate

---

During Membership suspension and following Membership termination by Blink Mobility due to Member's misconduct or omission, Member shall continue to be liable for Membership charges and other fees applicable through the conclusion of the current Membership period, including any renewal period.

Replacement of lost or damaged Blink Mobility Membership Card	First loss/replacement	\$0
	Second loss/replacement	\$10
	Subsequent loss/replacement	\$15
Having made a reservation for a Blink Mobility Car, the Member fails to collect the reserved Blink Mobility Car or cancel the reservation within the reserved period	\$5	
Failure to return the Blink Mobility Car in accordance with the proper return procedure as set out in the User Guide (including, without limitation, failure to properly plug in the Blink Mobility Car and failure to park at a Blink Mobility Station)	\$20	Notwithstanding the Penalty, a failure to return a Blink Mobility Car in accordance with these Terms and Conditions will result in the continuation of the Rental Period. Accordingly You will also continue to be charged Rental Fees, up to a maximum of \$500 for that Rental Period. In addition to the above, You will also be liable for any penalties that may be imposed by the relevant authorities due to non-compliance with Applicable Laws.
Abandonment of the Blink Mobility Car	\$300	Notwithstanding the Penalty, an abandonment of a Blink Mobility Car is a failure to return a Blink Mobility Car in accordance with these Terms and Conditions which will result in the continuation of the Rental Period. Accordingly You will also continue to be charged Rental Fees, up to a maximum of \$500 for that Rental Period. In addition to the above, You will also be liable for any penalties that may be imposed by the relevant authorities due to non-compliance with Applicable Laws.
Failure to return a Blink Mobility Car to a Charging Point when the battery of the Blink Mobility Car is at 30% or less leading to the immobilization of the Blink Mobility Car	\$300	Notwithstanding the Penalty, You will also continue to be charged Rental Fees until the Blink Mobility Car is retrieved and returned to the Blink Mobility Charging Point, up to a maximum of \$500 for that Rental Period.
Parking in a Blink Mobility Parking Space reserved by another Member	\$25	
Failure to stay with a broken down Blink Mobility Car resulting from or arising out of an accident or incident until repair services arrive (where there are no injuries and it is safe to do so)	\$150	
Failure to immediately report an accident or any incident involving the Blink Mobility Car (including, without limitation, theft or vandalism of the Blink Mobility Car) to Blink Mobility within two (2) days of any such accident or incident	\$50	Notwithstanding the Penalty, Your Membership will be cancelled immediately, and You will not be permitted to re-subscribe to the Blink Mobility service for a period of 6 months from the date of the cancellation. In addition to the above, You will also be liable for any penalties that may be imposed by the relevant authorities due to non-compliance with the Applicable Laws.
Using the Blink Mobility Service with an invalid driving licence		Your Membership will be cancelled immediately, and You will not be permitted to re-subscribe to the Blink Mobility service for a period of 12 months from the date of the cancellation. In addition to the above, You will also be liable for any penalties that may be imposed by the relevant authorities due to non-compliance with the Applicable Laws.
Using the Blink Mobility Service while under the influence of drugs or alcohol	\$300	Notwithstanding the Penalty, Your Membership shall be cancelled immediately, and You shall not be permitted to re-subscribe to the Blink Mobility service for a period of 12 months from the date of the cancellation. In addition to the above, You shall also be liable for any penalties that may be imposed by the relevant authorities due to non-compliance with the Applicable Laws.
Material omission or incorrect information given by the Member during the Membership application process	\$50	Notwithstanding the Penalty, Your Membership shall be cancelled immediately, and You shall not be permitted to re-subscribe to the Blink Mobility Service for a period of 6 months from the date of the cancellation of membership.
Failure to cooperate with Blink Mobility's requests for information or assistance or failure to respond to repeated requests for information from Blink Mobility		Suspension or cancellation of Blink Mobility Membership at Blink Mobility's discretion.

Threats, insults, violence, or profanity, directed at Blink Mobility personnel	Suspension or cancellation of Blink Mobility Membership at Blink Mobility's discretion. In addition to the above, Blink Mobility reserves the right to commence legal proceedings against You.
Blink Mobility Car is impounded as a result of breach of any Applicable Laws by a Member	\$1,000
Blink Mobility Car is returned in an unclean condition at the end of the Rental Period	\$50
A fine is issued to the Blink Mobility Car by the relevant authorities during the Rental Period	\$30 administrative fee. In addition, You will also be liable for the fines that have been imposed by the relevant authorities due to non-compliance with Applicable Laws.
Usage of Blink Mobility Car by another person than the member, observed by Blink Mobility's personnel or relevant authorities	\$100 Notwithstanding the penalty, Your Membership will be cancelled immediately, except in a case where Your Blink Mobility or TAP Card and/or PIN was stolen and only if Blink Mobility has been notified and provided with a copy of a police report that You filed. For the avoidance of doubt, You will not be permitted to re-subscribe to the Blink Mobility Service for a period of 6 months from the date of the cancellation of membership.
Leaving the Blink Mobility Zone	\$100 Notwithstanding the Penalty, You will also be liable for the applicable towing fees.
Failure to update credit card information where the credit card used for the Security Deposit has been cancelled or expired	\$30
Failure to pay Fees to Blink Mobility within 60 days of the due date	\$25 Notwithstanding the Penalty, Your Membership shall be suspended until full payment of outstanding amounts including payment of this Fee is received by Blink Mobility.
Direct Debit transaction is returned unpaid	\$25
Cancellation of the Payment card without a replacement being provided in advance of such cancellation	\$25

Members will be notified of charges, penalties, suspension or cancellation of Membership by way of written notice through one of the following means:

1. Text message to the Members' mobile number that has been provided by the Member during the application process; or
2. Email to the Member Email Address; or
3. Notification message in the Member's Account
4. A letter sent to the Member's residential address that has been provided by the Member during the application process.

Notice shall be deemed to have been duly served immediately if delivered personally or made by text message or electronic mail or posted in the Member's Account. The effective date of suspension or cancellation of Membership shall be the date such notice is sent.

**Communications:**

Telephone: Blink Customer Service at 1-888-998-2546.

Or by mail:

Blink Network, LLC

Customer Support

407 Lincoln Road, Suite 704

Miami Beach, FL 33139

Copyright © 2020 Blink Charging Co. All Rights Reserved.

# MASTER DATA LICENSE AND PROTECTION AGREEMENT

Between

CITY OF LOS ANGELES acting by and through the Los Angeles Department of Transportation

And

**[INSERT NAME OF REQUESTER]**

This Master Data License and Protection Agreement (the “**Agreement**”) is made as of \_\_\_\_\_ (the “**Effective Date**”) by and between the City of Los Angeles acting by and through the Department of Transportation (“**LADOT**” or “**City**”), a municipal corporation of the State of California, and **[INSERT NAME OF REQUESTER, AND REQUESTER’S ADDRESS]** (“**Contractor**”), referred to herein collectively as “**Parties**” and individually as a “**Party**”.

**WHEREAS**, data relating to Mobility Service Providers (“**Provider**”) operating on the streets of Los Angeles will be made available to Contractor as a function of the City’s Mobility Data Specification (“**MDS**”) rules; and

**WHEREAS**, LADOT will enter into a contract with Contractor (the “**City Contract**”) pursuant to which Contractor will provide services to LADOT in order to store, process, analyze and present such data to facilitate, among other things, more informed transportation planning (“**Contracted Services**”).

**NOW THEREFORE**, in consideration of the covenants recited in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## 1. Definitions

**1.1 “City Data”** means any and all data provided to the Contractor by or on behalf of the City, including as a result of Contractor’s performance of the Contracted Services, through the City’s MDS rules, set out at <https://github.com/openmobilityfoundation/mobility-data-specification> or any successor MDS, including, without limitation, any data received through any application programming interface (“**API**”); and any and all output, copies, reproductions, improvements, modifications, adaptations, derivations, aggregations, or translations thereof, even if such data was obtained by, transferred to, or reproduced, improved, modified, adapted, derived, or aggregated by Contractor prior to the effective date of this Agreement.

**1.2 “Deliverables”** means any reports, results, or analyses of City Data as processed by or through MDS.

**1.3 “Mobility Manager Software”** shall mean the MDS-compatible software provided by Contractor to enable the City, through Agency API and Provider API to control, monitor in real time, analyze, regulate by creating policies or otherwise, score, license and fine Providers, as well as to verify the quality of the City Data supplied by Providers, as more fully described in the Product Description as attached to City Contract as Schedule B. in the attached Schedule A.

## 2. License

**2.1 City Data.** The Parties agree that Contractor has no ownership of and, except as expressly provided in Section 2.5 of this Agreement, acquires no rights in City Data. As between the parties, City retains all right of ownership, title, and interest in and to City Data, including all intellectual property rights therein.

**2.2** Except as specified in Section 2.2.1, City retains all right of ownership, title, and interest in and to any Deliverables and any work products originated and prepared using any part of City Data, including all intellectual property rights therein. Contractor hereby assigns to City all goodwill, copyright, trademark, patent, trade secret, and all other intellectual property rights worldwide in any work products originated and prepared using any part of City Data, except as specified in Section 2.2.1. Contractor further agrees to execute any documents necessary for City to perfect, memorialize, or record City’s ownership of rights provided herein.

**2.2.1** Contractor, and its licensors, if any, retains all right, title, and interest in and to the Mobility Manager Software and all intellectual property rights therein. In addition, Contractor, and its licensors, if any, retains all right, title, and interest in and to those work products that are mere improvements or modifications to the Mobility Manager Software including updates to the functionality of tools provided therein.

**2.3** Contractor agrees that a monetary remedy for breach of this Agreement may be inadequate, impracticable, or difficult to prove and that a breach may cause City irreparable harm. City may therefore enforce this requirement

by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude City from seeking or obtaining any other relief to which City may be entitled.

**2.4** To the extent authorized in Section 9.6 of this Agreement, City acknowledges and agrees Contractor may use third-party subprocessors (“**Subprocessor**”) that may view, access, or possess City Data. Any subcontract entered into by Contractor related to the provision of Contracted Services with a Subprocessor shall include provisions sufficient to contractually bind Subprocessor such that City’s ownership, rights, and control of City Data and Contractor’s obligations to protect City Data, are preserved and protected as intended herein.

**2.4.1** Contractor’s use of employees and independent contract staff to perform Contracted Services (“**Personnel**”) shall be formalized with such Personnel in writing and shall include employee policy or contract provisions sufficient to bind those Personnel such that Contractor’s obligations and City’s rights are preserved and protected as intended herein.

**2.5** Subject to the confidentiality and other terms of this Agreement, LADOT grants Contractor a non-transferable (except as expressly contemplated by Section 9.5), non-exclusive, terminable at-will, license to use, analyze, host, store, and process City Data, for the purpose of performing the Contracted Services for LADOT. Contractor shall not use, analyze, host, store, or process City Data for any other purpose. Nothing in this Agreement shall prevent Contractor from improving the **[INSERT TERM FROM CLAUSE 1.3]** with City Data processed in the course of providing the Contracted Services, to the extent that no City Data is used, stored, or retained beyond the scope and term of this Agreement.

**2.5.1** Contractor shall not exploit or commercialize City Data for any reason. Except as authorized in Section 4 of this Agreement, Contractor shall not disclose, sell, assign, or otherwise provide any part of City Data to any third party.

### **3. Data Protection.**

**3.1 In General.** The protection of personal privacy and personally identifiable data shall be an integral part of the business activities of Contractor, and Contractor shall use all reasonable efforts to prevent inappropriate or unauthorized use of City Data at any time and safeguard the confidentiality, integrity, and availability of City Data and comply with the following conditions:

**3.1.1.** Contractor shall implement and maintain appropriate administrative, technical and organizational security measures in order to safeguard against unauthorized access, disclosure, or theft of City Data. Such security measures, as further described below, shall be reasonable and appropriate in light of the sensitivity and volume of City Data held by Contractor, the size and complexity of Contractor’s business, and the cost of available tools to improve security and reduce vulnerabilities. Contractor agrees to protect City Data using security means and technology necessary to meet this reasonableness standard and agrees, in any event, that such security measures shall be no less stringent than the measures Contractor applies to its own personal or confidential data.

**3.1.2** Unless otherwise stipulated in writing, Contractor shall encrypt all City Data at rest and in transit with controlled access. The Contractor shall apply and support encryption solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Whenever and wherever applicable, Contractor shall apply and support industry standards or better for tokenization, fraud-use protection, format-preserving encryption, and data encryption technology.

**3.1.3** At no time shall any City Data be copied, disclosed, or retained by Contractor or any party related to Contractor, including its Subprocessors, for use in any process, publication, or transaction that is not specifically authorized by Section 4 of this Agreement or by the City in writing.

**3.1.4** In accordance with Section 3.1.1, Contractor shall secure and protect all City Data from hacking, viruses, ransomware, and denial of service and related attacks. All City Data held by Contractor must be encrypted in accordance with Section 3.1.2. and Contractor shall take the measures required by this Section 3 to secure, and protect such City Data at all times.

**3.2 Data, Development and Access-Point Location.** Contractor shall provide its services to the City and its end users solely from data centers in the continental United States of America. Storage of City Data at rest shall be located in the continental United States of America. Contractor shall not allow its Personnel or Subprocessors to

store City Data on portable devices, including personal computers, except for devices that are used and kept only at Contractor's continental United States of America headquarters or data centers. Contractor may permit its Personnel and Subprocessors to access City Data remotely only as required to provide Contracted Services. Contractor shall neither access, nor allow a third-party access to City Data from any location outside of the continental United States of America. Contractor shall not provide any services under this Agreement from a location outside of the continental United States of America, absent receipt of City's express approval.

**3.2.1 Access Limitations.** Contractor, insofar as this is possible, shall use precautions, including, but not limited to, physical software and network security measures, personnel screening, training and supervision, and appropriate agreements to:

**3.2.1.1** Prevent anyone other than City, Personnel, and Subprocessors with a specific need to know, for a purpose authorized under this Agreement, from monitoring, using, gaining access to City Data;

**3.2.1.2** Protect appropriate copies of City Data from loss, corruption, or unauthorized alteration; and

**3.2.1.3** Prevent the disclosure of City and Contractor usernames, passwords, API keys, and other access control information to anyone other than authorized City personnel.

**3.2.2 Security Best Practices.** Contractor shall implement the following security best practices with respect to City Data and to any service provided:

**3.2.2.1 Least Privilege:** Contractor shall authorize access only to the minimum amount of resources required for a function.

**3.2.2.2 Separation of Duties:** The Contractor shall divide functions among its staff members to reduce the risk of one person committing fraud undetected.

**3.2.2.3 Role-Based Security:** The Contractor shall restrict access to authorized users and base access control on the role a user plays in the Contractor's organization.

**3.2.3 Credential Restrictions.** Contractor shall restrict the use of, and access to, administrative credentials for accounts and system services accessing City Data, to only those of Contractor's Personnel and Subprocessors whose access is essential for the purpose of providing the Contracted Services or performing obligations under this Agreement. Contractor shall require Personnel and Subprocessors to log on using an assigned user-name and password when administering City accounts or accessing City Data. These controls must enable Contractor to promptly revoke or change access in response to terminations or changes in job functions, as applicable. Contractor shall encrypt all passwords, passphrases, and PINs, using solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Contractor will implement any City request to revoke or modify user access within twenty-four hours or the next business day of receipt of City's request. Contractor will disable user accounts after at most 10 consecutive invalid authentication attempts.

**3.2.4 Physical and Environmental Security.** Contractor facilities that process City Data must be housed in secure areas and protected by perimeter security such as barrier access controls including security guards and picture identification badges that provide a physically secure environment from unauthorized access, damage, and interference.

### **3.3 System Administration and Network Security.**

**3.3.1 Operational Controls.** Contractor shall implement operational procedures and controls designed to ensure that technology and information systems are configured and maintained according to prescribed internal standards and consistent with applicable Industry Standard Safeguards. Examples of Industry Standard Safeguards are ISO/IEC 27002:2005, NIST 800-44, Microsoft Security Hardening Guidelines, OWASP Guide to Building Secure Web Applications, SOC 2 Type 2, and the various Center for Internet Security Standards. Moreover, Contractor shall use application security and software development controls designed to eliminate and minimize the introduction of security vulnerabilities.

**3.3.2 Antivirus.** Contractor shall have and maintain antivirus protection configured to automatically search for and download updates (daily, at a minimum) and perform continuous virus scans. Malware and threat detection must be updated continuously, and software patches provided by vendors must be downloaded and implemented in a

timely manner. If Contractor is unable to implement these controls in a timely manner, Contractor shall notify City in writing.

**3.3.3 Vulnerability Management and Patching.** Contractor shall employ vulnerability management and regular application, operating system, and other infrastructure patching procedures and technologies designed to identify, assess, mitigate, and protect against new and existing security vulnerabilities and threats, including viruses, bots, and other malicious code.

**3.3.4 Network Controls.** Contractor shall have, shall implement, and shall maintain network security controls, including the use of firewalls, layered DMZs and updated intrusion, intrusion detection and prevention systems, reasonably designed to protect systems from intrusion or limit the scope or success of any attack or attempt at unauthorized access to City Data.

**3.3.5 Logging and Monitoring.** Unless prohibited by applicable law, Contractor shall, and shall require Subprocessors to, continuously monitor its networks and Personnel for malicious activity and other activity that may cause damage or vulnerability to City Data. Contractor shall maintain logs of administrator and operator activity and data recovery events related to City Data.

**3.3.6 Changes in Service.** Contractor shall notify the City of any changes, enhancement, and upgrades to the System Administration and Network Security, or changes in other related services, policies, and procedures, as applicable, which can adversely impact the security of City Data.

### **3.4 Policies, Assessments, and Audits.**

**3.4.1 Policies.** Contractor shall, and shall require Subprocessors to, establish and maintain a formal, documented, mandated, company-wide information security program, including security policies, standards, and procedures (collectively “Information Security Policy”), and communicate the Information Security Policy to all of its respective Personnel in a relevant, accessible, and understandable form. Contractor shall regularly review and evaluate the Information Security Policy to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks. Upon execution of this Agreement and thereafter within three (3) days of City’s request, Contractor shall make available for review by the City Contractor’s Information Security Policy and any related SOC audits or other evidence that Contractor has in place appropriate policies and procedures regarding information protection and security.

**3.4.2 Vulnerability and Risk Assessments.** At least annually, Contractor shall perform vulnerability tests and assessments of all systems that contain City Data. For any of Contractor’s applications that process City Data, such testing must also include penetration tests using intercept proxies to identify security vulnerabilities that cannot be discovered using automated tools, and code review or other manual verifications to occur at least annually.

**3.4.3 Right of Audits by City/Security Review Rights.** City and its agents, auditors (internal and external), regulators, and other representatives as City may designate, may inspect, examine, and review the facilities, books, systems, records, data, practices, and procedures of Contractor (and any Personnel and Subprocessors that Contractor may use) that are used in rendering services to City to verify the integrity of City Confidential Information and to monitor compliance with the confidentiality and security requirements for City Confidential Information. In lieu of an on-site audit, at City’s discretion and upon request by the City, the Contractor agrees to complete, within fourteen (14 days) of receipt, an audit questionnaire provided by the City regarding the Contractor’s data privacy and information security program. Contractor shall comply with all recommendations that result from such inspections, tests, and audits within reasonable timeframes.

**3.5 Data Backup and Emergency Recovery.** Contractor shall employ a multilayered approach to backups and disaster recovery including the use of a primary data center and a backup data center. Contractor shall perform both local and remote backups of the complete server infrastructure including server operating systems, applications, and data. Contractor shall perform Disaster Recovery Tests no less than semi-annually. Contractor shall maintain and comply with a reasonable written plan (the “DR Plan”) setting forth procedures for (a) mitigating disruption to systems during and after an earthquake, hurricane, other natural disaster, war, act of terrorism, act of cyberterrorism, and other natural or man-made disaster, including without limitation Force Majeure Events (as that term is used in PSC-6, Excusable Delays, of the Standard Provisions for City Contracts (Rev. 10/17)[v.3] (collectively, a “Disaster”); and (b) restoring Service functionality promptly after a Disaster. The DR Plan will include procedures no less protective than industry standard, and Contractor shall update the DR Plan as the industry standard changes.

**3.6 Data Return and Destruction.** At the conclusion of the Agreement and as instructed by City, Contractor shall (at its sole cost) return, delete, or destroy City Data then in its possession or under its control including, without limitation, originals, and copies of such City Data in accordance with Section 4.1.2. The following types of information are excluded from this requirement: (i) City Data that becomes a part of the public domain, including through court filings; and (ii) City Data that Contractor is required to maintain, by law, regulations, or by the terms of this Agreement, but only for the time period required. For the avoidance of doubt, anything that is stored on routine backup media solely for the purpose of disaster recovery will be subject to destruction in due course rather than immediate return or destruction pursuant to this paragraph, provided that Personnel are precluded from accessing such information in the ordinary course of business prior to destruction.

**3.6.1** Contractor shall implement and utilize appropriate methods to ensure the destruction of City Data. Such methods shall be in accordance with recognized industry best practices and shall leave no data recoverable on Contractor's computers or other media.

**3.6.2 Certification of Destruction.** Contractor agrees to certify that City Data has been returned, deleted, or destroyed from its systems, servers, off-site storage facilities, office locations, and any other location where Contractor maintains City Data within 45 days of receiving City's request that the information be returned, deleted, or destroyed. Contractor shall document its verification of data removal, including tracking of all media requiring cleaning, purging or destruction.

**3.7 Data Breaches.** Contractor shall notify City in writing as soon as reasonably feasible, but in any event within forty-eight hours, or if later, the next business day after Contractor's discovery of any unauthorized access of City Data or Contractor becoming reasonably certain that such unauthorized access has occurred (a "Data Breach"), or of any event that compromises the integrity, confidentiality or availability of City Data (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. Contractor shall begin remediation immediately. Contractor shall provide daily updates if requested by City, and, in any event, reasonably frequent updates, regarding findings and actions performed by Contractor until the Data Breach or Security Incident has been resolved to City's satisfaction. Contractor shall conduct an investigation of the Data Breach or Security Incident and shall share a report of the investigation findings with City. At City's sole discretion, City and/or its authorized agents shall have the right to conduct an independent investigation of a Data Breach. Contractor shall cooperate fully with City and its agents in that investigation. If the City is subject to liability for any Data Breach or Security Incident that arises as a result of Contractor's negligent performance of services for the City or Contractor's breach of this Section 3, the Contractor shall fully indemnify and hold harmless the City and defend against any resulting actions.

**3.8** This Section 3 applies only to City Data under Contractor's care; in Contractor's possession, custody, or control; or being accessed by Contractor.

**3.9** City shall be responsible for the security of City usernames, passwords, API keys and other credentials required to access the **INSERT TERM FROM CLAUSE 1.3**, to the extent such usernames, passwords, API keys and other credentials are in City's care, custody, or control. City shall be responsible for City's own disclosure of any City Data provided to City by Contractor or that City accessed through the **INSERT TERM FROM CLAUSE 1.3**.

**3.10** This Section 3 shall not apply to any data or information to which the confidentiality obligations set forth in Section 4.1.2 do not apply.

#### **4. Confidentiality**

**4.1 City's Confidential Information.** For purposes of this Section 4.1, "Confidential Information" means any nonpublic information whether disclosed orally or in written or digital media, received by Contractor that is either marked as "Confidential" or "Proprietary" or which the Contractor knows or should have known is confidential or proprietary information. City Data shall be treated as Confidential Information by Contractor under this Agreement, even if such data is not marked "Confidential" or "Proprietary" or was obtained by or transferred to Contractor prior to the effective date of this Agreement.

**4.1.2 Protection of Confidential Information.** Except as expressly authorized herein, Contractor shall (a) hold in confidence and not disclose any Confidential Information to third parties and (b) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement or performing the Contracted Services. Contractor shall limit access to Confidential Information to Contractor Personnel and

Subprocessors disclosed under Section 9.6, (1) who have a need to know such information for the purpose of Contractor performing its obligations or exercising its rights under this Agreement, or performing Contracted Services; (2) who have confidentiality obligations no less restrictive than those set forth herein; and (3) who have been informed of the confidential nature of such information. In addition, the Contractor shall protect Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At LADOT's request or upon termination or expiration of this Agreement, the Contractor will return to LADOT any Deliverables not provided to the City and Contractor will destroy (or permanently erase in the case of electronic files) all copies of Confidential Information, and Contractor will, upon request, certify to City its compliance with this sentence.

**4.1.3 Exceptions.** The confidentiality obligations set forth in Section 4.1.2 shall not apply to any Confidential Information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Contractor; (b) is lawfully provided to the Contractor by a third party free of any confidentiality duties or obligations; (c) was already known to the Contractor at the time of disclosure free of any confidentiality duties or obligations; or (d) the Contractor can demonstrate was independently developed by Personnel of the Contractor without reference to the Confidential Information. In addition, the Contractor may disclose Confidential Information to the extent that such disclosure is necessary for the Contractor to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Contractor promptly notifies LADOT in writing of such required disclosure, cooperates with LADOT if LADOT seeks an appropriate protective order, and the Contractor discloses no more information that is legally required.

**4.2 Contractor's Confidential Information.** For purposes of this Section 4.2, "Confidential Information" means any nonpublic information received by City that is either marked as "Confidential" or "Proprietary" at the time of disclosure, or, if provided orally, through verbal identification as confidential at the time of disclosure that, under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. "Confidential Information" under this Section 4.2 is further limited to information that is a "trade secret," as defined in subdivision (d) of Section 3426.1 of the California Civil Code, or paragraph (9) of subdivision (a) of Section 499c of the California Penal Code, including but not limited to Contractor's (a) business plans, methods, and practices; (b) personnel, customers, and suppliers; (c) inventions, processes, methods, products, patent applications, and other proprietary rights; or (d) specifications, drawings, sketches, models, samples, tools, computer programs, technical information, or other related information, which is maintained by the Contractor as confidential.

**4.2.2 Protection of Confidential Information.** Except as expressly authorized herein, City shall hold in confidence and not disclose any Confidential Information to third parties and not use Confidential Information for any purpose other than fulfilling its obligations under this Agreement or the City Contract or realizing the benefits of the Contracted Services delivered thereunder. City shall limit access to Confidential Information to employees and contractors (1) who have a need to know such information for a purpose authorized under this Agreement; (2) who have confidentiality obligations no less restrictive than those set forth herein; and (3) who have been informed of the confidential nature of such information. In addition, City will protect Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At Contractor's request, City will, to the extent permitted by the State of California's records retention laws, destroy (or permanently erase in the case of electronic files) all copies of Confidential Information, and City will, upon request, certify to Contractor its compliance with this sentence.

**4.2.3 Exceptions.** The confidentiality obligations set forth in Section 4.2.2 shall not apply to any Confidential Information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the City; (b) is lawfully provided to the City by a third party free of any confidentiality duties or obligations; (c) was already known to the City at the time of disclosure free of any confidentiality duties or obligations; or (d) the City can demonstrate was independently developed by personnel of the City without reference to the Confidential Information. In addition, the City may disclose Confidential Information to the extent that such disclosure is necessary for the City to enforce its rights against Contractor under this Agreement or as required by law, including the California Public Records Act (CPRA), or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the City promptly notifies Contractor in writing of such required disclosure and the City discloses no more information than is legally required.

**4.2.4** Contractor undertakes and agrees to defend, indemnify and hold harmless City and any of City's boards, officers, agents, and employees from and against all suits, claims, and causes of action brought against City for City's refusal to disclose Confidential Information to any person making a request pursuant to the CPRA. Contractor's obligations herein include, but are not limited to, all reasonable attorney's fees (both in house and outside counsel), reasonable costs of litigation incurred by City or its attorneys (including all reasonable actual, costs incurred by City, not merely those costs recoverable by a prevailing party, and specifically including reasonable costs of experts and consultants) as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against City, through and including any appellate proceedings. Contractor's obligations to City under this indemnification provision shall be due and payable on a monthly, on-going basis within thirty (30) days after each submission to Contractor of City invoices for all fees and costs incurred by City, as well as all damages or liability of any nature. Contractor shall receive prompt written notice from City within five (5) business days of receipt of any (1) communication to City challenging City's refusal to disclose Confidential Information, and (2) any complaint or petition to the court challenging City's refusal to disclose Confidential Information. Further should Contractor choose to intervene in any court action relating to the City's refusal to disclose Contractor's information, City shall not oppose Contractor's motion to intervene. Contractor shall have no obligations to City under this provision in any circumstance where Contractor provides written confirmation to City that 1) all of the requested records at issue are not Confidential Information and 2) City may release said records to the requester.

**4.3 Compliance with Privacy Laws.** Contractor is responsible for ensuring that Contractor's performance of its obligations and exercise of its rights under this Agreement complies with all applicable local, state, and federal privacy laws and regulations, as amended from time to time. If this Agreement or any practices which could be, or are, employed in performance of this Agreement become inconsistent with or fail to satisfy the requirements of any of these privacy laws and regulations, City and Contractor shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and Contractor shall complete and deliver any documents necessary to show such compliance. The City acknowledges and agrees that Contractor is not responsible for giving any notices to or obtaining any consents from any other party in order for Contractor to process the City Data as contemplated by this Agreement.

**5. Warranties.** Contractor represents and warrants that:

**5.1 Disabling Code.** No software or services to which the City is provided access and use hereunder contains any undisclosed disabling code (defined as computer code designed to interfere with the normal operation of the software or the City's hardware or software) or any program routine, device or other undisclosed feature, including but not limited to, a time bomb, virus, drip-dead device, malicious logic, worm, Trojan horse, or trap door which is designed to delete, disable, deactivate, interfere with or otherwise harm the software or the City's hardware or software.

**5.2 Virus/Malicious Software.** Contractor has used its best efforts to scan for viruses within Contractor's networks and information systems, and no malicious system will be supplied under this Agreement.

**5.3 Information Security.** Contractor's information security procedures, processes, and systems will at all times meet or exceed (i) the requirements of this Agreement; and (ii) all applicable information security and privacy laws, and legally binding standards, rules, and requirements related to the collection, storage, processing, and transmission of personally identifiable information.

**6. Indemnification; Limitation of Liability**

**6.1 Indemnification.** Except for the active negligence or willful misconduct of City, or any of its boards, officers, agents, employees, assigns, and successors in interest, Contractor shall defend, indemnify, and hold harmless City and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees (both in house and outside counsel), reasonable cost of litigation (including all actual litigation costs incurred by City, including but not limited to, costs of experts and consultants), damages, or liability of any nature whatsoever, for death or injury to any person, including Contractor's Personnel and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by Contractor, Subprocessors, subcontractors, or their boards, officers, agents, Personnel, assigns, and successors in interest. The rights and remedies of City provided in this Section shall not be exclusive and are in addition to any

other rights and remedies provided by law or under this Agreement. This provision will survive expiration or termination of this Agreement.

**7. Data Disclaimer.** All data provided by or on behalf of City pursuant to this Agreement are provided “as is.” City makes no representation or warranty, express or implied, regarding the data’s accuracy, completeness or use. There are no express or implied warranties of merchantability or fitness for a particular purpose, or that the use of the data will not infringe any patent, copyright, trademark, or other proprietary rights. Without limiting the generality of the foregoing, City does not represent or warrant that the data or access to it will be uninterrupted or error free.

## **8. Term**

**8.1 Term.** The term of this Agreement shall be coextensive with the City Contract.

**8.2 Survival.** The provisions of Sections 2, 3, 4, and 6 will survive the termination or expiration of this Agreement.

**8.3 Retroactive Application.** The Parties agree that, to the extent permitted by applicable law, the provisions of Sections 2, 4, 6, and 7 of this Agreement shall be applied retroactively to any and all Contracted Services performed by Contractor, and any of its Personnel or Subprocessors, even if those acts and actions occurred or were in progress prior to the effective date of this Agreement.

## **9. General Provisions**

**9.1 Governing Law and Venue.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Each party hereby expressly consents to the exclusive personal jurisdiction and venue in the state and federal courts of Los Angeles County, California for any lawsuit filed there against it by the other party arising from or related to this Agreement.

**9.2 Export.** Contractor agrees not to export, report, or transfer, directly or indirectly, any City Data, or any products utilizing such data, in violation of United States export laws or regulations. Without limiting the foregoing, Contractor agrees that (a) it is not, and is not acting on behalf of, any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States or other applicable government body has prohibited export transactions (e.g., Iran, North Korea, etc.); (b) is not, and is not acting on behalf of, any person or entity listed on a relevant list of persons to whom export is prohibited (e.g., the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, the U.S. Commerce Department Denied Persons List or Entity List, etc.); and (c) it will not use any City Data for, and will not permit any City Data to be used for, any purpose prohibited by applicable law.

**9.3 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**9.4 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**9.5 No Assignment.** Except as provided in Section 9.6, Contractor will not assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of LADOT, and any attempted such assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

**9.6 Subprocessors.** City acknowledges and expressly agrees that Contractor may retain Subprocessors in the course of providing Contracted Services. Contractor shall make available to City a current list of Subprocessors and their respective services immediately upon execution of this Agreement. When Contractor engages any new Subprocessor after the execution of this Agreement, Contractor will notify LADOT of such Subprocessor at least 30 days before the Subprocessor accesses or processes any City Data. Any and all Subprocessors shall be bound by the obligations of Contractor under this Agreement; notwithstanding the foregoing, Contractor remains responsible for compliance of any such Subprocessor with the terms of this Agreement.

**9.7 Notices.** All notices required to be given pursuant to the terms of this Agreement shall either be personally delivered or delivered by certified mail return receipt requested to:

If to LADOT:

Seleta J. Reynolds, General Manager  
Los Angeles Department of Transportation  
100 South Main Street, 10<sup>th</sup> Floor  
Los Angeles, California, 90012

With copies to:

[INSERT NAME, TITLE]  
Los Angeles, Department of Transportation  
100 South Main Street, 10<sup>th</sup> Floor  
Los Angeles, California, 90012

If to Contractor:

[INSERT NOTICE ADDRESS]

Attention: [INSERT NAME/TITLE/EMAIL]

Or to any such other address as the parties may designate in writing, from time to time. All mailed notices shall be deemed received three days after being deposited in the U.S. mail.

**9.8 Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

**9.9 Entire Agreement.** No-shrink-wrap, click-wrap, privacy policy, or other terms and conditions or agreements (“Additional Contractor Software Terms”) provided with any products, services, documentation, or software hereunder, or under the Contracted Services agreements, shall be binding on the City, even if use of the foregoing requires an affirmative “acceptance” of those Additional Contractor Software Terms before access is permitted. All such Additional Contractor Software Terms will be of no force or effect and will be deemed rejected by the City in their entirety. This Agreement is the final, complete and exclusive agreement of the parties with respect to the licensing, use and protection of City Data, and supersedes and merges all prior discussions between the Parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of each Party.

**In Witness Whereof**, the parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

**THE CITY OF LOS ANGELES**

**[INSERT COMPANY NAME]**

By: \_\_\_\_\_

Seleta J. Reynolds  
General Manager  
Department of Transportation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

MICHAEL N. FEUER, City Attorney

By\*\*: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit 6

### DEFINITIONS AND TERMS

Capitalized terms used but not otherwise defined throughout this Agreement shall have the meanings indicated below:

1. "Additional Station Infrastructure" shall mean charging station infrastructure and fixtures installed by Contractor following the Effective Date of 2<sup>nd</sup> Amendment.
2. "Affiliate" shall mean, with respect to any person, any other person that directly or indirectly controls, is controlled by or is under common control with such person, and in the case of Contractor includes Bollore S.A. and its affiliates and co-venturers.
3. "Agreement" shall have the meaning ascribed to such term in the introductory paragraph.
4. "Ambassadors" shall have the meaning ascribed to such term in Section 2.1.4.
5. "Ancillary Services" shall have the meaning ascribed to such term in Section 3.28.2.
6. "BCA" shall have the meaning ascribed to such term in Section 1.1.3.
7. "BEV" shall have the meaning ascribed to such term in Section 3.2.1.
8. "BlueCalifornia" shall have the meaning ascribed to such term in the introductory paragraph.
9. "BOE" shall have the meaning ascribed to such term in Section 1.1.3.
10. "CARB" shall mean have the meaning ascribed to such term in the Recitals of this Agreement.
11. "CARB Grant" shall have the meaning ascribed to such term in Section 1.1.6.
12. "Charge Points" shall mean the specific EVSEs deployed by BlueCalifornia for the Service and including specific technology for remote monitoring and reservations.
13. "City" shall have the meaning ascribed to such term in the introductory paragraph.
14. "City Representative" shall have the meaning ascribed to such term in Section 1.1.1.
15. "City Standard Provisions" shall mean all provisions provided for in Exhibit 2, which is appended to the Agreement for reference.
16. "City's Work" shall have the meaning ascribed to such term in Section 3.14.1.
17. "Confidential Information" shall have the meaning ascribed to such term in Section 4.4.1.
18. "Contractor" shall have the meaning ascribed to such term in the introductory paragraph.
19. "Contractor Representative" shall have the meaning ascribed to such term in Section 1.1.4.
20. "Customer Call Center" shall have the meaning ascribed to such term in Section 3.6.
21. "Disclosing Party" shall have the meaning ascribed to such term in Section 4.4.1.
22. "Effective Date" shall have the meaning ascribed to such term in the introductory paragraph.
23. "Employee" shall have the meaning ascribed to such term in Section 4.4.3.
24. "EV" shall mean an electric vehicle.
25. "EVSE" shall mean electric vehicle supply equipment deployed by Contractor for the Service, including fixtures and specific technology for remote monitoring and reservations. "Charger" and "Charging Station" are generic industry terms used to refer to EVSE.
26. "Final Approval" shall have the meaning ascribed to such term in Section 3.15.5.
27. "Good Reason" shall have the meaning ascribed to such term in Section 3.12.1.
28. "Governmental Entity" shall mean any court, government agency, department, commission, board, bureau or instrumentality of the United States, any local, county, state, federal or political subdivision thereof, or any foreign governmental entity of any kind.
29. "Initial Term" shall have the meaning ascribed to such term in Section 2.2.1.
30. "Initial Station Infrastructure" or "Station Infrastructure" shall mean charging station infrastructure installed prior to the Effective Date.

## Exhibit 6

31. "Installation Requirements" shall mean the work planned to install Station Fixtures and their connection to electrical and telecommunications network, including parts of the City's Work, all of which work shall comply with all Laws.
32. "Kiosk" shall mean a typical self-service kiosk facility placed at the various Stations and provided and used by the Contractor for its exclusive use to service its Members, and shall include kiosks used for reservations and enrollment.
33. "LADBS" shall have the meaning ascribed to such term in Section 1.1.3.
34. "LADOT" shall have the meaning ascribed to such term in the introductory paragraph.
35. "LADWP" shall have the meaning ascribed to such term in Section 1.1.3.
36. "LAFD" shall have the meaning ascribed to such term in Section 1.1.3.
37. "LAPD" shall have the meaning ascribed to such term in Section 1.1.3.
38. "Law" shall mean any applicable local, county, state, or federal, statute, regulation, ordinance, rule, order, decree, judgment, consent decree, settlement agreement, export control restriction or governmental requirement enacted, promulgated, entered into, agreed or imposed by any Governmental Entity having jurisdiction.
39. "Losses" means readily quantifiable, non-speculative damages, losses, obligations, claims, encumbrances, penalties, costs and expenses, including costs of investigation and defense and reasonable attorney's fees and costs where expressly permitted by this Agreement, but excluding any incidental, consequential, punitive or exemplary damages, special damages, indirect damages, unrealized expectation, lost profits or other similar items, and under no circumstances shall any damages be calculated using a "multiplier" or any similar method having a similar effect.
40. "Mediator" shall have the meaning ascribed to such term in Section 4.3.3.2.
41. "Member" means an individual who has completed Contractor's enrollment process for the use of the Service.
42. "MOU" shall have the meaning ascribed to such term in Section 3.26.1.
43. "Notice to Proceed" shall have the meaning ascribed to such term in Section 3.11.1.
44. "Operational Costs" shall mean Contractor's operational costs associated with the implementation of Phase II.
45. "Party" or "Parties" shall have the meaning ascribed to such term in the introductory paragraph.
46. "Phase I" shall refer to all work, preparation, and expenses in connection with the City's sponsored EV car-sharing service prior to the Effective Date of this Amendment, including, among others, the Station Infrastructure and fixtures.
47. "Phase II" shall refer to all work, preparation, and expenses in connection with the City's sponsored EV car-sharing service after the Effective Date of this Amendment, including, among others, the Station Infrastructure and fixtures.
48. "Project" shall have the meaning ascribed to such term in the Recitals of this Agreement.
49. "Public Opening" shall have the meaning ascribed to such term in Section 3.9.1.2.
50. "Receiving Party" shall have the meaning ascribed to such term in Section 4.4.1.
51. "Renewal Term" shall have the meaning ascribed to such term in Section 2.2.2.
52. "RFQ" shall have the meaning ascribed to such term in the Recitals of this Agreement.
53. "Service(s)" shall have the meaning ascribed to such term in the Recitals of this Agreement.
54. "Start-up Costs" shall have the meaning ascribed to such term in Section 2.1.1.

## Exhibit 6

55. "Station(s)" shall mean any and all space(s) in Los Angeles, California of which the Contractor is granted exclusive use and common use under this Agreement and any other location as may be agreed to between the Parties.
56. "Station Fixtures" shall mean the Reservation Kiosk, Charge Points, Meter Pedestal, Enrollment Kiosk if any, cabling, and any other removable structure at the Stations owned by the Contractor.
57. "Station Infrastructure" shall mean any conduit whether underground or above ground installed by Contractor at a Station, and any concrete pad, stand, or other permanent structure built to support any Station Fixtures and enable the Service, all of which shall be and remain the property of Contractor except as expressly otherwise provided in this Agreement and provided, further, that that the conduit installed from the electrical service point to the meter pedestal at each Station shall become the property of LADWP.
58. "Steering Committee" shall have the meaning ascribed to such term in Section 3.26.1.
59. "SUMC" shall have the meaning ascribed to such term in Section 3.1.1.7.
60. "Tax" shall mean any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permittees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.
61. "Temporary Closure" shall mean any interruption to or any suspension of the Services by the City due to inaccessibility or non-usability of a Station by the Contractor for any reason including, but not limited to parking bans, weather-related street closures, sidewalk closures related to building construction, activities of third parties, sidewalk construction or repair, street construction or repair, utility work, and similar activities.
62. "Term" shall have the meaning ascribed to such term in Section 2.2.2.
63. "User Agreement" shall have the meaning ascribed to such term in Section 3.3.2.
64. "Vehicle" shall have the meaning ascribed to such term in Section 3.2.2.
65. "Vehicles" shall mean the Contractor's fleet of vehicles designed primarily for the carriage of passengers that the Contractor owns, leases and/or rents, and which are properly available or will become available for use as provided herein.



# Vehicle Maintenance & Aging



Vehicles are **assessed daily** to ensure they meet Blink Mobility standards of customer satisfaction

Vehicles will undergo **routine inspection and maintenance** in accordance with manufacturer requirements and maintenance schedule, as outlined in the vehicle owners manual

Maintenance Schedule Additional Required Services	12 000 km/7,500 mi	24 000 km/15,000 mi	36 000 km/22,500 mi	48 000 km/30,000 mi	60 000 km/37,500 mi	72 000 km/45,000 mi	84 000 km/52,500 mi	96 000 km/60,000 mi	108 000 km/67,500 mi	120 000 km/75,000 mi	132 000 km/82,500 mi	144 000 km/90,000 mi	156 000 km/97,500 mi	168 000 km/105,000 mi	180 000 km/112,500 mi	192 000 km/120,000 mi	204 000 km/127,500 mi	216 000 km/135,000 mi	228 000 km/142,500 mi	240 000 km/150,000 mi
Rotate tires and perform Required Services.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Replace passenger compartment air filter. (1)			✓			✓			✓			✓			✓			✓		✓
Drain and fill vehicle coolant circuits. (2)																				✓
Replace brake fluid. (3)																				
Replace windshield wiper blades. (4)	✓		✓		✓		✓		✓		✓		✓		✓		✓		✓	
Replace hood and/or body lift support gas struts. (5)										✓										✓
Replace air conditioning desiccant. (6)																				

**Footnotes — Maintenance Schedule Additional Required Services**

(1) Or every two years, whichever comes first. More frequent passenger compartment air filter replacement may be needed if driving in areas with heavy traffic, poor air quality, high dust levels, or environmental allergens. Passenger compartment air filter replacement may also be needed if

there is reduced airflow, window fogging, or odors. Your GM dealer can help determine when to replace the filter.

(2) Or every five years, whichever comes first. See *Cooling System* ⇨ 238.

(3) Replace brake fluid every five years. See *Brake Fluid* ⇨ 241.

(4) Or every 12 months, whichever comes first. See *Wiper Blade Replacement* ⇨ 244.

(5) Or every 10 years, whichever comes first. See *Gas Strut(s)* ⇨ 246.

(6) Replace air conditioning desiccant every seven years.





## At 4 years of age or 75,000 miles :

- An additional aging assessment, evaluating vehicle condition and consumer acceptance readiness, will be introduced. This vehicle condition report will be conducted on a **semiannual basis**
- All components must be deemed in good, excellent, fully functional, or original condition (or must be restored to such condition) **before qualifying for reentry into the fleet**
- Vehicle condition **report results** shall be made available for review by the City upon request

# Vehicle condition report will assess :

## Underhood

Engine Compartment, 12V Battery, Fluids, Wiring, Hoses, Propulsion Battery Pack, Power Control Module, Electric Motor, Differential, External Charging Circuit, Other

## Battery

Resistance, Capacity, Range, Other

## Underbody

Frame, Transmission, Differential/Drive Axle, Suspension, Brake System, Regenerative Breaking System, Steering, Other

## Exterior

Hood, Front, Front Bumper, Quarter Panels, Fenders, Doors, Roof, Rear, Rear Bumper, Trunk/Tailgate, Trim, Wiper Blades, Charging Door and Port, Paint, Other

## Wheels

Tires, Hubs, Rims/Hubcaps, Other

## Glass

Windshield, Windows, Rear Window, Mirrors, Other

## Interior

Seats, Headliner, Carpet, Door Panels, Glove Box, Vanity Mirrors, Restraint Systems/Seatbelts, Dashboard/Console, Dashboard Gauges, Air Conditioning, Heater, Defroster, Other

## Electrical

Power Locks, Power Seats, Power Steering, Power Windows, Audio System, Navigation/Infotainment System, Safety Systems, Headlights, Taillights, Signal Lights, Brake Lights, Parking Lights, Other

## Road Test

Engine, Acceleration, Steering, Braking, Suspension, Other





# Many **resources** available

---



**AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
MOBILITY DEVELOPMENT PARTNERS FOR  
TECHNICAL ASSISTANCE EXPANDING OF THE BLUELA ELECTRIC VEHICLE  
CARSHARING PROGRAM IN DISADVANTAGED COMMUNITIES**

This Agreement (“Agreement” or City Contract” is made and entered into by and between the City of Los Angeles (hereinafter referred to as “City”), a municipal corporation acting by and through the Los Angeles Department of Transportation (hereinafter referred to as “LADOT”), and Mobility Development Partners, LLC, an Illinois limited liability company (hereinafter referred to as “Contractor” or “MDP”), referred to collectively, as “Parties” and individually as “Party”, is entered into with reference to the following:

**WITNESSETH**

WHEREAS, the Contractor was identified and selected for their expert and technical services to partner with City in the California Air Resources Board (hereinafter referred to as “CARB”) carshare expansion application; and

WHEREAS, the Parties secured grant funding totaling \$3.0 million dollars from the CARB to expand the BlueLA EV Carsharing Program in Disadvantaged Communities (hereinafter referred to as the “Project”); and

WHEREAS, on March 19, 2019 the City Council and the Mayor granted LADOT authority to enter into a Contract with MDP to partner with the City in the CARB carshare expansion application and award process (C.F. 19-0131); and

WHEREAS- enter into agreement C-13444 on November 18, 2019 through December 31, 2020; and

WHEREAS, on DATE the City Council and the Mayor granted LADOT authority to enter into a Contract with MDP for the expansion of the carsharing program in Disadvantaged communities (C.F. 19-0131); and

WHEREAS, the City, as lead applicant, has requested MDPs support in administering and providing technical assistance (“Services”) to the Project; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the Parties hereto agree as follows:

**SECTION I. INTRODUCTION AND CONDITION PRECEDENT**

A. Parties to this Contract

The parties to this Contract are:

1. The City of Los Angeles, a municipal corporation, having its principal offices at 200 North Spring Street, Los Angeles, California 90012.
  2. The Contractor, Mobility Development Partners, LLC, an Illinois limited liability company, having its principal office at 2650 West Montrose, Suite 104, Chicago, Illinois 60618.
- B. Representatives of the Parties and Services of Notices: the representative of the respective parties who are authorized to administer this Contract and to whom formal notices, demands, and communications shall be given are as follows:

- The representative of City shall be, unless otherwise stated in this Contract:

Seleta J. Reynolds  
General Manager  
City of Los Angeles  
Department of Transportation  
100 South Main Street, 10th Floor  
Los Angeles, California 90012  
Email: [seleta.reynolds@lacity.org](mailto:seleta.reynolds@lacity.org)

With copy to Anita Tang, LADOT, Carshare Program Manager  
Email: [anita.tang@lacity.org](mailto:anita.tang@lacity.org).”

- The representative of the Contractor shall be, unless otherwise stated in this Contract:

Creighton Randall  
Chief Executive Officer  
Mobility Development Partners, LLC  
2650 West Montrose, Suite 104  
Chicago, Illinois 60618  
Email: [creighton@mobilitydevelopment.org](mailto:creighton@mobilitydevelopment.org)

1. *Notices.* Formal notices, demands, and communications to be given by either party shall be made in writing and may be affected by personal delivery or mail. The breach of Contract, liquidated damages, or performance penalties will be sent via certified mail.
2. *Changes.* If the name of the person designated to receive the notices, demands, or communications or the address of such person is changed, written notice shall be given, in accordance with this Section within five (5) working days of said change.

C. Conditions Precedent

*Insurance Requirements.* Contractor shall comply with all the insurance requirements under this Contract and all insurance verification must be produced on City Insurance Endorsement forms. Required insurance and minimum limits are included in the City’s Standard Provisions for City Contracts (Revised 10/17 - v.3), see Exhibit A.

## **SECTION II. TERMS OF AGREEMENT**

### **A. Term**

Unless terminated earlier pursuant to Exhibit A PSC-9 Termination, the term of this Contract shall be from the date of attestation by the City Clerk to March 31, 2023. If the time allotted for completion of the MDP's services is exceeded through no fault of MDP, additional time to complete performance may be allowed if written notice of the estimated length of the delay is given to City within two (2) weeks of the MDP's discovery of the delay and City approves in writing the additional time. If the delay is beyond the control of MDP and City, any additional time to complete the affected services will only be granted to the extent it is allowed by City.

### **B. Termination**

Pursuant to Exhibit A, Standard Provisions for City Contracts (Revised 10/17 - v.3) PSC- 9 Termination.

## **SECTION III. DUTIES AND RESPONSIBILITIES OF CITY**

In fulfillment of the lead role on the Project, City is responsible for ensuring the overall success of the project, and is primarily responsible for the following tasks:

- A. Participate in negotiation of the expanded electric vehicle carsharing contracts in disadvantaged communities, and provide direction to the ongoing construction process.
- B. Provide technical assistance with the procurement/negotiation process with the selected e-bike/e-scooter sharing operators(s)
- C. Manage the Steering Committee and outreach management process
- D. Conduct operational analysis of the expanded program through Mobility Data Services Specifications
- E. Co-deploy survey tools with the carshare operator
- F. Press and public relations around Project
- G. Participation on Project calls and in-person meetings as needed
- H. Review and submission of CARB quarterly and final reports, including accounting reports, expenditure and income information, and supporting documentation

## **SECTION IV. DUTIES AND RESPONSIBILITIES OF CONTRACTOR / SCOPE OF WORK**

### **A. Duties and Responsibilities of Contractor**

1. In assisting City in achieving overall success on the Project, MDP is responsible for fulfillment of the tasks as outlined in Title of Exhibit B Document (Exhibit B), which is attached hereto and made part hereof.
2. In rendering services hereunder, MDP shall be and remain an independent Contractor. It is expressly understood and acknowledged by the parties hereto that any amounts payable hereunder shall be paid in gross amount, without reduction for any federal or state withholding or other payroll taxes, or any other governmental taxes or charges. MDP is responsible for assuming and remitting any applicable federal or state withholding taxes, estimated tax payments, social security payments, unemployment compensation payments, or any other fees or expenses whatsoever.
3. MDP shall refrain from any action that would create or tend to create obligations, expressed or implied, on behalf of City, it being understood that MDP is not and shall not be the legal representative or agent of City and that MDP shall not be authorized to make any promise, warranty, or representation except as specifically provided for in this agreement or as otherwise agreed to in writing between parties.

**B. Service Delivery**

Upon receipt from City a Notice to Proceed for specified work, MDP shall perform the work according to the terms and conditions as set forth in this Agreement and Exhibit B.

MDP shall submit invoices for review and approval to City for all work performed.  
All invoices must be submitted to:

Seleta J. Reynolds, General Manager  
City of Los Angeles  
Department of Transportation  
100 South Main Street, 10th Floor  
Los Angeles, California 90012

**SECTION V. DATA, COMMUNICATIONS, AND BRANDING**

Ownership: All information, data, documents, and intellectual property under the G14-LCTI-03 Grant are property of CARB and City. No information, data, documents, intellectual property received or generated under this Grant shall be released without CARB and City's approval.

**SECTION VI. COMPENSATION**

- A. City shall compensate MDP with the approved budget of \$558,206 ("Service Fees") during the term of this Contract for the satisfactory performance of tasks and reimbursable expenses outlined in Exhibit B. MDP shall submit invoices no more frequently than monthly. The invoices shall include a summary of work performed for the period being billed, percentage of work completed for each task, and overall percentage.

- B. MDP shall maintain a system of internal fiscal control in accordance with commonly accepted accounting practices as approved by City. Internal fiscal control is comprised of a plan of organization to safeguard its assets, check the adequacy and the reliability of its accounting data, promote operating efficiency, and the assured adherence to prescribed management policies.
- C. MDP agrees that, should City determine that MDP's record keeping, reporting techniques, or data collection are inadequate to allow for effective monitoring and evaluation of the program, City shall have the right to demand whatever records it deems adequate to correct such deficiencies in matters pertaining to the execution of the Contract. Should these books and records still not meet the minimum standards of the accepted accounting practices of City, City reserves the right to withhold any or all payments to MDP until such time as they meet these standards.
- D. In compliance with City requirements under Charter Section 262(a), MDP agrees to submit invoices that conform to City standards and include, at a minimum, the following information:
  - 1. Name and address of company or firm
  - 2. Name and address of City department being billed
  - 3. Date of the invoice and period covered
  - 4. Reference to contract number
  - 5. Description of completed task and amount due for the task
  - 6. Certification by a duly authorized officer
  - 7. Remittance address
- E. All invoices shall be submitted on the company's letterhead that contain the company's official logo, or contain other unique and identifying information such as name and address of company or individual, and signed by authorized officer of the corporation. Evidence that tasks have been completed, in the form of a report, shall be attached to the invoices, as applicable.
- F. Invoices and supporting documentation shall be prepared at the sole expense and responsibility of MDP. City will not compensate MDP for any costs incurred for invoice preparation.
- G. City may request in writing, changes to the content and format of the invoice and supporting documentation at any time. City reserves the right to request additional supporting documentation to substantiate costs at any time.
- H. Payment to MDP may be withheld by City if MDP fails to comply with the provisions of the Contract.

**SECTION VII. CONFIDENTIALITY**

- A. Each party hereby acknowledges that by virtue of its entering into and performing under this Contract, such party (the “Receiving Party”) shall have access to Confidential Information (as defined below) of the other party (the “Disclosing Party”). Unless the Receiving Party has obtained the express prior written consent of the Disclosing Party, to the extent as permitted by law under no circumstances whatsoever shall the Receiving Party at any time:
  - 1. Communicate to any persons (other than the Disclosing Party) any Confidential Information of the Disclosing Party;
  - 2. Permit access by any persons (other than the Disclosing Party) to any Confidential Information of the Disclosing Party; or
  - 3. Use any Confidential Information of the Disclosing Party for the Receiving Party’s own account or for the account of any persons (other than the Disclosing Party).
  
- B. For purposes of this Contract, “Confidential Information” shall mean data and any confidential and proprietary information of the Disclosing Party. The Disclosing Party acknowledges and agrees that Confidential Information does not include:
  - 1. Information properly in the public domain, or
  - 2. Information independently developed by the Receiving Party without reliance on or reference to the confidential and proprietary information of the Disclosing Party. For the avoidance of doubt, all data shall subject to the terms of the Data License.

**SECTION VIII. MISCELLANEOUS**

A. Notices

All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given:

- 1. When delivered by hand;
- 2. When received by the addressee if sent by a nationally recognized overnight courier (receipt requested);
- 3. On the date sent by facsimile (with confirmation of transmission) or electronic mail if sent before or during the normal business hours of the recipient, and on the next day if sent after normal business hours of the recipient; or
- 4. On the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

Such communications shall be sent to the respective Party(ies) at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section VIII A):

If to MDP:       The Mobility Development Partners (MDP)  
                      2650 West Montrose, Suite 104  
                      Chicago, Illinois 60618

If to City:        City of Los Angeles  
                      Department of Transportation  
                      100 South Main Street, 10th Floor  
                      Los Angeles, California 90012

B. Headings

The headings in this Contract are for reference only and shall not affect the interpretation of this Contract.

C. Severability

If any term or provision of this Contract is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

D. Amendment and Modification; Waiver

This Contract may only be amended, modified, or supplemented by an agreement in writing signed by each of the Parties. No waiver by any Party of any of the provisions herein shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after such waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Contract shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

E. Assignment

No Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Parties. Any purported assignment or delegation in violation of this Section F shall be null and void. No assignment or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder. This Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

F. Relationship of the Parties

The Parties to this Contract are independent contractors. There is no relationship of agency, partnership, joint venture, employment, or franchise between the Parties. Neither Party has the authority to bind the other or to incur any obligation on its behalf.

**G. No Third-Party Beneficiaries**

This Contract is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Contract.

**H. Counterparts and Electronic Signatures.**

This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same contract. A signed copy of this Contract delivered by facsimile, electronic mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract. The Parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

**I. Records**

Unless otherwise required by law, or requested or required by City, MDP shall maintain detailed records for a minimum of seven (7) years of all costs associated with this Contract and these records shall be made available to City on request.

**SECTION IX. NON-EXCLUSIVE**

The LADOT and the Contractor understand and agree this is a non-exclusive Agreement to provide services to the LADOT and that the LADOT reserves the right to enter into an agreement with other contractors/consultants to provide similar services during the term of this Agreement

**SECTION X. STANDARD PROVISIONS FOR CITY CONTRACTS**

Hereby incorporated by reference into this Contract are the Standard Provisions for City Contracts (Rev. 10/17) [v.3], which are attached hereto as Exhibit A and included herein by reference.

**SECTION XI. MUNICIPAL LOBBYING ORDINANCE**

Contractor is required to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if Contractor qualifies as a lobbying entity under Los Angeles Municipal Code §48.02. CEC Form 50 is attached to this Agreement as Attachment A. Agreements submitted without a completed CEC Form 50 by contractors that qualify as a lobbying entity under Los Angeles Municipal Code §48.02 may be subject to penalties, termination of contract, and debarment.

**SECTION XII. PROHIBITED CONTRIBUTORS - CITY CHARTER §470(c)(12)**

Charter §470(c)(12) and related ordinances state that proposers may not make campaign contributions to and/or engage in fundraising for certain elected City officials or candidates for elected City office from the time they submit a proposal until either the contract is approved or, for successful proposers, twelve (12) months after the contract is signed. Principals and subcontractors performing \$100,000 or more in work on the contract, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

The Contractor is required to complete CEC Form 55 certifying compliance with Charter Section 470(c)(12), attached hereto as Attachment B. Contractors who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or [www.ethics.lacity.org](http://www.ethics.lacity.org).

**SECTION XIII. CONTRACTOR RESPONSIBILITY ORDINANCE**

A. Contractor Responsibility Ordinance

Unless otherwise exempt in accordance with the provisions of the Ordinance, this Agreement is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of the Los Angeles Administrative Code, which requires Contractor to update its responses to the responsibility questionnaire within thirty (30) calendar days after any change to the responses previously provided if such change would affect Contractor’s fitness and ability to continue performing the agreement. In accordance with the provisions of this Ordinance, by signing this Agreement, Contractor pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this agreement, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. The Contractor further agrees to:

1. Notify the awarding authority within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the Contractor is not in compliance with all applicable federal, state and local laws in performance of this agreement;
2. Notify the awarding authority within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that the Contractor has violated the provisions of Section 10.40.3(a) of the Ordinance;
3. Ensure that its subcontractor(s), as defined in the Ordinance, submit a Pledge of Compliance to awarding authorities; and
4. Ensure that its subcontractor(s), as defined in the Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify Awarding Authorities within thirty (30) calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Ordinance in performance of the subcontract.

Contractor must complete and return the enclosed Contractor Responsibility Questionnaire attached hereto as Attachment C.

**B. Contractor Responsibility Ordinance Pledge of Compliance**

Los Angeles Administrative Code § 10.40 et seq. (Contractor Responsibility Ordinance) provides that, unless specifically exempt, City contractors working under service contracts of at least \$25,000 and three (3) months, contracts for the purchase of goods and products of at least \$100,000, contracts for the purchase of garments of at least \$25,000, and construction contracts of any amount; public lessees; public licensees; and certain recipients of City financial assistance or City grant funds, must comply with all applicable provisions of the Ordinance. Contractor must complete and return the enclosed Contractor Responsibility Ordinance Pledge of Compliance form attached hereto as Attachment D.

Further information regarding the requirements of the ordinance is available at:  
<https://bca.lacity.org/Ordinances>

**SECTION XIV. CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS**

The City of Los Angeles has adopted an ordinance (Ordinance No. 172401) requiring all contractors and subcontractors performing work for the City comply with all State and Federal reporting requirements and wage and earning assignments relative to legally mandated child support. Contractor must complete and return the enclosed Certification of Compliance with Child Support Obligations form attached hereto as Attachment E and agree to comply with all terms and conditions within.

**SECTION XV. EQUAL BENEFITS ORDINANCE**

Unless otherwise exempted in accordance with the provisions of this Ordinance, this Agreement is subject to the applicable provisions of the Equal Benefits Ordinance (EBO) Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Agreement, the Contractor certifies and represents that the Contractor will comply with the EBO. The Contractor agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:
  - 1. “During the performance of an Agreement with the City of Los Angeles, the Contractor will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles’ Equal Benefits Ordinance may be obtained from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance at (213) 847-1922.”
- B. The failure of the Contractor to comply with the EBO will be deemed to be a material breach of the Agreement by the Awarding Authority.

- C. If the Contractor fails to comply with the EBO the Awarding Authority may cancel, terminate or suspend the Agreement, in whole or in part, and all monies due or to become due under the Agreement may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the Bureau of Contract Administration determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the EBO, the Awarding Authority may terminate the Agreement on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

Contractor must complete and electronically sign the Equal Benefits Ordinance Compliance Affidavit on [www.labavn.org](http://www.labavn.org).

**SECTION XVI. SLAVERY DISCLOSURE ORDINANCE**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this Agreement is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as may be amended from time to time. Contractor certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Agreement.

Contractor shall complete and upload a Disclosure Ordinance Affidavit, on [LABAVN.org](http://LABAVN.org)

**SECTION XVII. DISCLOSURE OF BORDER WALL CONTRACTING ORDINANCE**

Contractor shall comply with Los Angeles Administrative Code Section 10.50 *et seq.*, 'Disclosure of Border Wall Contracting.' City may terminate this Contract at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in Los Angeles Administrative Code Section 10.50.1.

Contractor shall complete and upload a Disclosure Ordinance Affidavit, on [www.LABAVN.org](http://www.LABAVN.org).

**SECTION XVIII. CERTIFICATION OF COMPLIANCE WITH THE AMERICANS WITH DISABILITY ACT**

The City is a covered entity under Title II of the Americans with Disabilities Act, 42 U.S.C.A. Section 12131 et seq. Contractor must comply with the Americans with Disabilities Act and complete and return the Certification of Compliance with the Americans with Disabilities Act form attached hereto as Attachment G.

**SECTION XIX. FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE**

Contractor shall be subject to the Fair Chance Initiative for Hiring Ordinance (Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance). The Ordinance provides, among other things, that contractors/subcontractors with at least 10 employees are: prohibited from seeking a job applicant's criminal history information until after a job offer is made; must post Fair Chance Initiative for Hiring Ordinance information in conspicuous places at worksites; and cannot withdraw a job offer based on an applicant's criminal history unless a link has effectively been made between the applicant's criminal history and the duties of the job position.

Contractor seeking additional information regarding the requirements of the Fair Chance Initiative for Hiring Ordinance may visit the Bureau of Contract Administration's website at <http://bca.lacity.org>.

#### **SECTION XX. CONTRACTOR PERFORMANCE EVALUATION ORDINANCE**

At the end of this contract, the City will conduct an evaluation of the Contractor's performance. The City may also conduct evaluations of the Contractor's performance during the term of the contract. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the Contractor assigns to the contract. A Contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City evaluation and allowed 14 calendar days to respond. The City will use the final City evaluation, and any response from the Contractor, to evaluate proposals and to conduct reference checks when awarding other personal services contracts.

#### **SECTION XXI. ENTIRE AGREEMENT**

This Agreement, its exhibits and attachments, contains the complete Agreement between the parties and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. No verbal agreements(s) or conversation(s) with any officer or employee of either party will affect or modify the terms and conditions of this Agreement.

#### **SECTION XXII. NUMBER OF PAGES AND ATTACHMENTS**

This Agreement is executed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes thirteen (13) pages and two (2) Exhibits which constitute the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the City of Los Angeles and the Contractor have caused this agreement to be executed by their duly authorized representatives.

**THE CITY OF LOS ANGELES**

**MOBILITY DEVELOPMENT PARTNERS, LLC, an Illinois Limited Liability Company**

By: \_\_\_\_\_  
Seleta J. Reynolds  
General Manager  
Department of Transportation

By: \_\_\_\_\_  
Creighton Randall  
CEO and Principal Consultant

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**  
Michael N. Feuer, City Attorney

By: \_\_\_\_\_  
Jonathan Groat  
Deputy City Attorney

Date: \_\_\_\_\_

**ATTEST:**  
Holly L. Wolcott, City Clerk

By: \_\_\_\_\_

Date: \_\_\_\_\_

City Agreement Number: \_\_\_\_\_

# STANDARD PROVISIONS FOR CITY CONTRACTS

## TABLE OF CONTENTS

PSC-1	<u>Construction of Provisions and Titles Herein</u> .....	1
PSC-2	<u>Applicable Law, Interpretation and Enforcement</u> .....	1
PSC-3	<u>Time of Effectiveness</u> .....	1
PSC-4	<u>Integrated Contract</u> .....	2
PSC-5	<u>Amendment</u> .....	2
PSC-6	<u>Excusable Delays</u> .....	2
PSC-7	<u>Waiver</u> .....	2
PSC-8	<u>Suspension</u> .....	3
PSC-9	<u>Termination</u> .....	3
PSC-10	<u>Independent Contractor</u> .....	5
PSC-11	<u>Contractor’s Personnel</u> .....	5
PSC-12	<u>Assignment and Delegation</u> .....	6
PSC-13	<u>Permits</u> .....	6
PSC-14	<u>Claims for Labor and Materials</u> .....	6
PSC-15	<u>Current Los Angeles City Business Tax Registration Certificate Required</u> ....	6
PSC-16	<u>Retention of Records, Audit and Reports</u> .....	6
PSC-17	<u>Bonds</u> .....	7
PSC-18	<u>Indemnification</u> .....	7
PSC-19	<u>Intellectual Property Indemnification</u> .....	7
PSC-20	<u>Intellectual Property Warranty</u> .....	8
PSC-21	<u>Ownership and License</u> .....	8
PSC-22	<u>Data Protection</u> .....	9

**TABLE OF CONTENTS (Continued)**

**PSC-23** Insurance ..... 9

**PSC-24** Best Terms..... 9

**PSC-25** Warranty and Responsibility of Contractor..... 10

**PSC-26** Mandatory Provisions Pertaining to Non-Discrimination in Employment..... 10

**PSC-27** Child Support Assignment Orders..... 10

**PSC-28** Living Wage Ordinance ..... 11

**PSC-29** Service Contractor Worker Retention Ordinance ..... 11

**PSC-30** Access and Accommodations ..... 11

**PSC-31** Contractor Responsibility Ordinance..... 12

**PSC-32** Business Inclusion Program..... 12

**PSC-33** Slavery Disclosure Ordinance..... 12

**PSC-34** First Source Hiring Ordinance..... 12

**PSC-35** Local Business Preference Ordinance ..... 12

**PSC-36** Iran Contracting Act ..... 12

**PSC-37** Restrictions on Campaign Contributions in City Elections..... 12

**PSC-38** Contractors’ Use of Criminal History for Consideration of Employment Applications ..... 13

**PSC-39** Limitation of City’s Obligation to Make Payment to Contractor ..... 13

**PSC-40** Compliance with Identity Theft Laws and Payment Card Data Security Standards ..... 14

**PSC-41** Compliance with California Public Resources Code Section 5164..... 14

**PSC-42** Possessory Interests Tax..... 14

**PSC-43** Confidentiality..... 15

**Exhibit 1** Insurance Contractual Requirements..... 16

## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1.** Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### **PSC-2.** Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

### **PSC-3.** Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

**PSC-4. Integrated Contract**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

**PSC-5. Amendment**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

**PSC-6. Excusable Delays**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

**PSC-7. Waiver**

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

**PSC-8. Suspension**

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

**PSC-9. Termination**

A. Termination for Convenience

**CITY** may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
  - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
  - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
  - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
  - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
  - 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
  - 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
  - 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

**PSC-10. Independent Contractor**

**CONTRACTOR** is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

**PSC-11. Contractor's Personnel**

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

**CONTRACTOR** shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

**PSC-12. Assignment and Delegation**

**CONTRACTOR** may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

**PSC-13. Permits**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

**PSC-14. Claims for Labor and Materials**

**CONTRACTOR** shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

**PSC-15. Current Los Angeles City Business Tax Registration Certificate Required**

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

**PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

#### **PSC-17. Bonds**

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

#### **PSC-18. Indemnification**

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

#### **PSC-19. Intellectual Property Indemnification**

**CONTRACTOR**, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

**PSC-20. Intellectual Property Warranty**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

**PSC-21. Ownership and License**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

**CONTRACTOR** agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

**CONTRACTOR** shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

**PSC-22. Data Protection**

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

**PSC-23. Insurance**

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

**PSC-24. Best Terms**

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

**PSC-25. Warranty and Responsibility of Contractor**

**CONTRACTOR** warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

**PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-27. Child Support Assignment Orders**

**CONTRACTOR** shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-28. Living Wage Ordinance**

**CONTRACTOR** shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-29. Service Contractor Worker Retention Ordinance**

**CONTRACTOR** shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

**CONTRACTOR** understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-31. Contractor Responsibility Ordinance**

**CONTRACTOR** shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

**PSC-32. Business Inclusion Program**

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

**PSC-33. Slavery Disclosure Ordinance**

**CONTRACTOR** shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-34. First Source Hiring Ordinance**

**CONTRACTOR** shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-35. Local Business Preference Ordinance**

**CONTRACTOR** shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-36. Iran Contracting Act**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

**PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections**

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #\_\_\_\_\_. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at [ethics.lacity.org](http://ethics.lacity.org) or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

**PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications**

**CONTRACTOR** shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-39. Limitation of City’s Obligation to Make Payment to Contractor**

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

**PSC-40.** Compliance with Identity Theft Laws and Payment Card Data Security Standards

**CONTRACTOR** shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

**PSC-41.** Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

**PSC-42.** Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

**PSC-43. Confidentiality**

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

**EXHIBIT 1**

**INSURANCE CONTRACTUAL REQUIREMENTS**

**CONTACT** For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

**CONTRACTUAL REQUIREMENTS**

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

**7. California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

**8. Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.



## EXHIBIT B

### SUBCONTRACT SCOPE OF WORK - MOBILITY DEVELOPMENT PARTNERS (MDP)

#### TASKS

##### 1. Assistance with General Project Management Tasks, including:

- Weekly small group project management teleconference calls with key City staff, up to ten (10) visits to Los Angeles for in-person meetings and on-site engagement;
- Participation in periodic teleconference calls with both City and California Air Resources Board (CARB);
- Development of position description and guidance in onboarding of the City's Infrastructure Manager position.
- Periodic "on-call" review and recommendations around project design, timeline, and progress towards stated goals, as appropriate; and
- Input and participation as appropriate on external communications around project, including preparation of reports and presentation materials from time to time

##### Task 1 Deliverables:

- Project Kickoff with CARB and Press Announcement
- Draft Job Description for Infrastructure Manager

##### 2. Technical Assistance to City in Negotiation of Mobility Services Contracts, including both renegotiation of the expanded carsharing services contract (ostensibly with BlueLA) and assistance with design of an interview, solicitation, and procurement/negotiation process around an electric bikesharing or scooter sharing service.

##### Carsharing components for negotiation will include:

- Revisions to the construction management process and timeline;
- Density of station locations in disadvantaged communities;
- Term of contract and depreciation schedule for capital components of project;
- Pricing of membership and usage rates, and income-based discounts;
- Acceptance of pre-paid debit cards;
- EVSE selection, procurement and ownership;
- Marketing and advertising partnership(s) and role of project Steering Committee;
- Policy around public access to charging and parking stalls;
- Participation in Mobility Data Standard.

Following renegotiation of the carsharing contract, MDP will work with LADOT staff to develop a process around and solicitation for recruiting electric bikesharing and/or scooter sharing companies that can serve a similar geography and membership base to the BlueLA program.

This component will involve a series of interviews with mobility companies and regional stakeholders (including exploration of alignment with city infrastructure, programs and policies) to

## EXHIBIT B

determine the best course of action prior to issuing a solicitation. MDP will then assist LADOT in developing an RFP or RFQ for these services and will assist in evaluation of and negotiation with qualifying electric bikeshare and/or scooter providers

### Task 2 Deliverables:

- Memo outlining objectives for renegotiation of carsharing contract
- Carsharing contract renewed
- Research memo exploring state of the practice in public-private partnerships for electric bikeshare and scooter sharing with respect to disadvantaged communities
- Development and review of RFI for electric bikeshare and/or scooter sharing
- Development and review of RFP or RFQ -or- recommendations to revision of permitting process for electric bikesharing and/or scooter sharing
- Electric bikeshare or scooter sharing provider(s) selected
- Bike/scooter provider under contract

### 3. Management of Steering Committee and Outreach Management Process

Recommendations are forthcoming from LA Thrives, the Shared Use Mobility Center, BlueLA and Steering Committee members with respect to marketing and outreach based on experience with the first phase of the BlueLA project. Concurrently, MDP is developing a revised Outreach Plan developing in partnership with LA Thrives. In this task, MDP will be responsible for:

- Recommending a detailed budget plan for spend down of the \$508k allocated to outreach, marketing, advertising and steering committee participation;
- Recruiting for and reconstituting the Steering Committee;
- Convening Steering Committee on a schedule and with an agenda to be determined following development of the revised Outreach Plan;
- Assistance to City in managing Marketing Contractor(s) according to Outreach Plan, including:
  - Hiring or contracting for a Street Team Manager,
  - Contracting with a Community-based Organization for deployment of a Street Team
- Providing assistance to City, Steering Committee, and BlueLA in planning and executing a series of community forums following renewal of operations and marketing contracts;
- Providing guidance to the Steering Committee in advocating/fundraising for in-kind and grant support to augment and continue these efforts.

### Task 3 Deliverables:

- Memo regarding reconstitution of Steering Committee and recommending spend-down of Marketing Budget
- Steering Committee formalized and Marketing Contractor(s) designated
- Phase 2 Community Forums delivered
- Marketing Plan Executed
- Phase 2 Marketing Report (draft and final)

## EXHIBIT B

### **4. Assistance to City in Pursuing EVSE improvements and Financing Strategies**

As the City and BlueLA consider commitments to municipal infrastructure, construction, vehicles, and equipment (total capital investment for Phase 2 is expected to range from \$10-\$12 million), three critical components to consider regarding the EVSE are:

- Feasibility, cost, and timing of upgrading from current 3.3kW chargers
- Depreciation schedule of both Phase 1 and Phase 2 stations relative to contract period
- The City's level of interest in more significant capital stake in program

MDP will consider these factors and assemble a Research Report recommending financing options and, if desired, fundraising strategies for a larger municipal role in program infrastructure moving forward. Remaining time in this task will be allocated towards pursuing infrastructure financing or fundraising strategies that LADOT has deemed viable.

Task 4 Deliverable: Infrastructure Research Report and Recommendations

### **5. Revision and Implementation of Survey Tools**

Project partners during Phase 1 took a collaborative approach to survey development, but the burden of deploying and following up on the survey was left solely to BlueLA. In Phase 2, MDP will share the burden of survey deployment with the operator. Shortly after project kickoff, the methodology and questions of the Initial Participant Survey will be reviewed and this process will be streamlining so that MDP can securely (and anonymously) follow-up with recent applicants.

MDP will be solely responsible for reporting on results of these Initial Participant Surveys to the City and CARB on a monthly basis. MDP will also assist BlueLA with collection of an annual member survey in mid-2019 and mid-2020. These two survey tools together will provide an understanding of participants' transportation needs, auto ownership, carbon impacts, perceptions of advanced technology vehicles and car sharing, and demographic information.

Task 5 Deliverables:

- Revised Survey Collection Plan
- Monthly Initial Participant Survey Results
- Annual Member Survey Collection

### **6. Analysis of Enrollment, Utilization, Performance Data**

As the program moves towards participation in the Mobility Data Standard, MDP will assist the LADOT in conducting a deep operational analysis of the program performance. The MDP role in this task is to support LADOT in more actively managing the carsharing program as better data becomes available. Funds for this task will be held until such time as LADOT and BlueLA can jointly develop real-time reporting through the Mobility Data Standard.

Task 6 Deliverable: TBD

## EXHIBIT B

### 7. Reporting

This task will augment existing resources available for Quarterly and Final Reporting to CARB.

MDP will assist LADOT in:

- Reporting on outreach and marketing activities from Task 3
- Summarizing Survey data from Task 5
- Summarizing Membership, Utilization and Performance information from Task 6
- Estimating Greenhouse Gas (GHG) emissions using methodology approved by CARB

MDP will also assist LADOT in compilation of the CARB Final Project Report

Task 7 Deliverables:

- Assistance to CARB Quarterly Reports
- Assistance to Final Project Report

### Summary of Tasks and Fees:

<b>LA EV Carshare Phase 2 - MDP Fee Estimates</b>		
	Schedule	Total
Task 1 - Assistance with General Project Management	Months 1 - 33	\$ 12,600
Task 2 - Negotiation of Mobility Services Contracts	Months 1 - 3	\$ 21,902
Task 3 - Management of Steering Committee & Outreach	Months 4 - 33	\$ 457,984
Task 4 - EVSE Improvements & Financing	Months 1 - 16	\$ 12,600
Task 5 - Revision and Implementation of Survey Tools	Months 3 - 33	\$ 19,800
Task 6 - Analysis of Enrollment, Utilization, & Performance	Months 1 - 33	\$ 19,720
Task 7 - Reporting	Months 1 - 33	\$ 13,600
<b>TOTAL</b>		<b>\$ 558,206</b>

<b>Billing Rates</b>		
Employee Classification/Title		Hourly Rates
CEO / Principal Consultant		\$ 105.00
Senior Project Manager		\$85.00
Planning Associate		\$ 60.00
Outreach and Project Manager		\$ 50.00