

BIKE SHARE AGREEMENT

by and between

MOTIVATE INTERNATIONAL INC.

and

THE CITY OF BOSTON

April 18, 2017

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## **BIKE SHARE AGREEMENT**

This agreement ("**Agreement**"), effective as of the date of last signature below ("**Effective Date**"), is entered by and between Motivate International Inc., a Delaware corporation with a principal place of business at 220 36<sup>th</sup> Street #2, Brooklyn, NY 11232 ("**Motivate**") and the City of Boston, a municipal corporation with a principal place of business at Boston City Hall, One City Hall Square, Boston Massachusetts, 02201 (the "**City**"). The City and Motivate may be referred to herein individually as a "**Party**" or jointly as the "**Parties**."

### **RECITALS**

WHEREAS, the City endeavors to create a reliable, sustainable, accessible bicycle transportation system; and

WHEREAS, the City believes a robust bicycling culture is related to the long-term health and economic success of its residents and businesses; and

WHEREAS, in 2011 the City implemented a bicycle share system that has grown to a network of approximately 195 stations and that is available to residents and visitors at a low cost; and

WHEREAS, the bicycle share system has expanded into neighboring municipalities outside of the jurisdiction of the City and whereas the City participates in a regional bike share governance council to ensure commonly accessible and reliable bicycle share service across the metro-Boston region; and

WHEREAS, on or about August 15, 2016, the Metropolitan Area Planning Council ("**MAPC**") an independent public body of the Commonwealth, on behalf of the City and other participating municipalities and pursuant to G.L. c. 7, § 22A, issued a Request for Proposals (together with subsequent clarifications, amendments, and addenda thereto, hereinafter referred to collectively as the "**RFP**," which, together with Motivate's proposal in response to the RFP ("**Motivate's Proposal**") are, subject to the order of priority set forth in Section 7.1, hereby incorporated by reference) that contemplated the grant of an exclusive right to operate a regional bicycle sharing system, including equipment purchasing, installation, maintenance and operations services, and the grant of a semi-exclusive right to sell sponsorship rights associated with a regional bicycle sharing system; and

WHEREAS, the RFP provided that the successful proposer, as evaluated and selected by the evaluation team, would obtain the right to negotiate a contract with each individual municipality participating in the collective procurement; and

WHEREAS, on or about August 15, 2016 MAPC selected Motivate as offering the most advantageous proposal of the responsive proposals submitted by responsible proposers, and whereas MAPC notified Motivate of its selection on October 19, 2016;

NOW THEREFORE, in consideration of the respective covenants and promises contained herein, the Parties agree as follows:

### **DEFINED TERMS**

Words that are capitalized, and that are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Agreement. Any of such defined terms, unless the context otherwise requires, may be used in the singular or plural, depending on the reference. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. Some

defined terms are first defined in the text of this Agreement, and some are first defined in Exhibit A (Definitions), which is a glossary of all defined terms in this Agreement. If there is any difference between the definitions of a defined term in the main body of this Agreement and a definition of that term in Exhibit A (Definitions), the definition in the main body of this Agreement controls.

## 1. SCOPE OF WORK

1.1. **Scope of Work.** Motivate agrees to perform the services set forth in Exhibit B (Scope of Work) attached hereto, and as otherwise set forth in this Agreement (collectively, the “**Work**” or the “**Scope of Work**”) for the City’s portion of the regional bike share system (the “**Boston System**”). It shall be Motivate’s responsibility to provide both the specific services set forth in this Agreement and sufficient services to fulfill the purposes of the Work. Nothing in this Agreement shall be construed to limit Motivate’s responsibility to manage the details and execution of the Work. All Work shall be performed in compliance with the Contract Documents, subject to the order of priority set forth in Section 7.1. The Work performed under this Agreement shall be carried out in strict compliance with all applicable federal, state, and local laws and regulations, including, without limitations, all laws, regulations, and ordinances.

1.2. **Regional Nature of System.** The municipality-owned, metro-Boston bike share system (“**System**”) operates in municipalities outside the jurisdiction of the City of Boston. The City participates in the regional Boston Area Regional Bike Share Governance Council that includes Project Officers and other staff from the participating municipalities. The Council works to ensure a functional, interoperable, and sustainable System through shared decision-making and input on common processes, goals, and evaluations of the System.

Motivate is required to meet and cooperate with the Council. A Regional Memorandum of Agreement (“**Regional MOA**”) among the municipalities and Motivate establishes processes, goals, and decision-making methods for the System that are also relevant to this Agreement.

1.3. **Changes to Work.** The City may order adjustments or changes to the Work consisting of additions, deletion, or other revisions. Such adjustments or changes to the Work by the City will not result in any change to the revenue-sharing agreement established between the City and Motivate, unless such adjustments or changes to the Work are material and the Parties have mutually agreed in writing to this Agreement memorializing any resultant changes. If any particular work or request therefor is not within the scope of the Work, or is a material change, or Motivate believes will call for more compensation to Motivate, then Motivate shall immediately notify the City Project Officer in writing of this belief. Within fifteen (15) business days after any change or event which Motivate believes calls for more compensation, Motivate shall provide to the City Project Officer a written proposal that sets forth: (i) a complete description of the particular work that Motivate believes is not within the scope of the Work; (ii) the amount of additional compensation claimed; (iii) the basis for such claimed additional compensation; and (iv) all supporting documentation for the amount. If such change impacts the bike share system beyond the Boston System, changes to the regional Memorandum of Agreement may also be required. Motivate will not be required to undertake, and will not be compensated for, performing any work that is not within the scope of the Work or that constitutes a material change to the Work unless: (i) a written proposal complying with this Section 1.3 has been submitted within the time specified above; (ii) such change has been discussed and agreed upon by the Council, if applicable; (iii) a written amendment has been signed by the City and Motivate; and (iv) a City Purchase Order is issued covering the cost of the work to be provided under the amendment.

1.4. **Inspection.** The City and its agents and representatives have the right at any reasonable time to inspect any portion of the Work, including examination of all materials, plans, specifications, drawings, and other matters relating to the Work, in order to verify that the Work is progressing in an expeditious

and continuous matter; provided, however, such inspection by the City is solely for the purpose of protecting the City's rights and interests and will under no circumstances impose any liability on the City.

1.5. **Correction of Defective Work.** Subject to the terms and conditions hereof, and further subject to any responsibilities of the City or third parties as set forth in the Statement of Work, Motivate shall be solely responsible for the correction of defective or non-conforming Work.

1.6. **Suppliers.** Motivate and the City shall mutually agree upon Suppliers for the Capital Equipment (which currently includes Capital Equipment manufactured by PBSC, 8D, and Motivate). Motivate may negotiate and enter into Supply Agreements with Suppliers subject to and in accordance with the applicable terms hereof. The City shall have the right to review and approve Supply Agreements and any amendments thereto. The City shall be a third party beneficiary under any Supply Agreements and shall have the right to seek recovery directly from the Supplier thereunder, including, without limitations, under Supply Agreement warranties. Motivate shall not be liable to the City for the performance, acts or omissions of the Suppliers, provided that, following Equipment Acceptance, Motivate shall ensure during the Term that the Capital Equipment performs in accordance with specifications for such Capital Equipment as specified in the Supply Agreements (except to the extent the failure of such Capital Equipment arises out of a Supplier Defect or a Force Majeure Event).

The City reserves the right to obtain Capital Equipment directly from Suppliers. Motivate is not responsible, operationally or financially, including through liquidated damages, for any limitations of Capital Equipment selected by the City that is not compatible with the existing Boston System or negatively impacts the Work.

## **2. SYSTEM FUNDING AND USES; PAYMENTS; REPORTING**

2.1. **Source of Funding.** Except as otherwise specified in this Agreement, Motivate shall perform the Work at its expense. The City is not responsible for any costs of performing the Work, including but not limited to operations, except for the Capital Equipment (other than the Guaranteed Capital Equipment) and Additional Services that are described in Exhibit C (Pricing Sheet) or as otherwise set forth herein.

2.2. **Sponsorship Funds.** Subject to and in accordance with the terms hereof, Motivate shall have the right to procure Sponsors for the System as more particularly described in Exhibit B (Scope of Work). The Parties will collaborate regarding efforts to secure Sponsors including identifying target Sponsors, developing pitch materials and strategies, and participating in initial sales meetings and conference calls with prospective Sponsors.

2.3. **Public Funds.** The City's Revenue Share; revenue from the existing sponsor agreements set forth in Exhibit D (Existing Sponsor Agreements) ("**Existing Sponsor Agreements**"); municipal funds; funds paid to the City under the Outfront Agreement or other advertising agreements (other than any advertising funds subsequently agreed between the Parties to belong to Motivate) and other funds paid directly to the City are collectively considered "**Public Funds**" hereunder. For the avoidance of doubt, Public Funds are not subject to revenue sharing. The City may use some portion of its Public Funds to pay Motivate for Services and Capital Equipment as described in Exhibit C (Pricing Sheet).

2.3.1. Motivate shall honor through the ends of their terms all aspects of (i) Existing Sponsor Agreements and (ii) Group Membership and Group Subscription discounts, including in each case those that have indefinite terms; provided, however, that the City may not enter into any new such agreements that would conflict with the rights of the Title Sponsor.

2.3.2. Motivate shall honor that certain Advertising Agreement by and between the City of Boston and OUTFRONT Media, Inc. (formerly known as Van Wagner Communications, LLC,

“Outfront”) dated as of April 8, 2013 (“**Outfront Agreement**”) governing advertising within the Map Frames of each Station within the City, as in effect as of the Effective Date, to the end of its term, December 31, 2020. This contract is included in Exhibit E (Agreement with Outfront Media). Funds from this contract shall be considered Public Funds.

2.3.3. The City may provide additional funding for the Boston System through, but not limited to, government and agency funds; grants provided by philanthropic organizations; donations from institutions or other entities; advertisements within the City’s Map Frames; and/or mitigation from development.

2.4. **Conditions to Sponsorship Agreements.** The City, participating in the Council and according to the processes set forth in the Regional MOA, shall have the right to approve the Title Sponsor prior to the execution of a binding Sponsorship Agreement. Preference will be given to Title Sponsors that are brand-aligned (e.g., promote active, healthy living) or brand-neutral (e.g., generally unrelated fields such as finance). Title Sponsors that are potentially against brand are discouraged. Subject to the Title Sponsor approval requirement described in this Section 2.4, Motivate may enter into Sponsorship Agreements that conform to the following requirements and any other applicable requirements of this Agreement:

2.4.1. Motivate may offer exclusive rights to the Title Sponsor and Secondary Sponsors, in Motivate’s reasonable discretion based on the amount of the financial commitment of each such Sponsor to the System.

2.4.2. Motivate may exercise its rights to sell Secondary Sponsorships hereunder either directly or through a sponsorship agency, provided that Motivate shall retain all responsibility for fulfilling the obligations hereunder at its own cost notwithstanding the engagement of any such sponsorship agency;

2.4.3. Motivate shall have the right to provide Sponsors with incentives and other promotional elements related to the System as consideration for a Sponsor’s support of the System, provided that such incentives conform to all applicable provisions of local, state, and federal law, including discounts on standard pricing for all products and free memberships.

2.4.4. Nothing contained herein shall require Motivate to enter into Sponsorship Agreements unless all of the terms therein are acceptable to Motivate.

2.4.5. The Parties agree that no entity shall be approved as a Sponsor hereunder if such entity (whether a business or other organization) restricts membership or access based upon any category protected under local, state, or federal law.

2.4.6. Each Sponsorship Agreement shall expressly provide that:

(a) Upon a breach and failure to cure by Motivate of the Sponsorship Agreement, the City shall have the right (but not the obligation) to cure any breach of Motivate under such Sponsorship Agreement;

(b) That the City shall have no liability to the Sponsor or any third party as a result of or arising out of the acts or omissions of Motivate, its officers, agents, employees or contractors under the Sponsorship Agreement or in connection with the Boston System or the System;

(c) Sponsor will indemnify the City for any negligent act or omission of Sponsor under the Sponsorship Agreement;

(d) The Sponsorship must comply with the Sponsorship Policy and that no provision

of the Sponsorship Agreement shall be valid and binding to the extent that such provision is inconsistent with any of the terms of the Sponsorship Policy that are for the benefit of the City; and

(e) Motivate may not assign the Sponsorship Agreement to any other party (other than to a parent, subsidiary or affiliate of Motivate) without the City's written approval of such assignment in the City's reasonable discretion.

2.4.7. Motivate shall make commercially reasonable efforts to include in each Sponsorship Agreement a provision allowing for assignment of such Sponsorship Agreement to the City upon mutual agreement of Motivate and the City.

2.5. **Sponsorship Policy.** Motivate acknowledges and agrees that the following Sponsorship Policy ("**Sponsorship Policy**") applies to all Sponsors and all components of the System:

2.5.1. Any content provided by the Sponsor which is in violation of any law, or violates any regulation or formal written rule of the City of Boston, or is false, misleading or deceptive, contrary to moral or ethical standards, or contrary to community standards is prohibited. The City of Boston prohibits tobacco advertising and alcohol advertising within a one hundred foot (100') radius around the entrances and exits of schools, places of worship, and parks. All other alcohol advertising shall be presumptively in contravention of moral, ethical and community standards, but may be permitted by the City of Boston (only by prior written approval) in any specific instance, in the exercise of rigid scrutiny and in the City of Boston's sole discretion;

2.5.2. Any type of content which is false and/or misleading, which promotes unlawful conduct or illegal goods, services or activities, or which is otherwise unlawful or obscene by objective community standards shall be prohibited. In this regard, any content which constitutes the public display of patently offensive sexual material is hereby deemed obscene, in contravention of moral, ethical and community standards shall be prohibited;

2.5.3. Unless otherwise agreed to by the City, recognition of Sponsors on Bicycles or Docks is limited to text of Sponsor name, including font treatment, and logo, but may not include corporate slogans, contact information or text suggesting a call to action by consumers. Public interest messaging that the City determines to be non-commercial in nature may also be included. Sponsors may elect to provide the same allowable information from a non-profit organization of their choice as long as the non-profit organization meets all the other Sponsorship Policy criteria and provides services within the City's boundaries; and

2.5.4. If Sponsor recognition on System website, mobile application and social media sites includes public interest messaging or promotional offers to Subscribers and users from Sponsors, Motivate shall provide users a clear and simple way to opt out of such public interest messages and/or promotional offers.

2.6. **Sponsorship Administrative Fee.** Motivate will pursue Title Sponsorship using either its own employees or subcontractors to execute such elements of the Work; provided, however, that if Motivate uses a subcontractor and hires such subcontractor (i) within four (4) months of the Effective Date, then Motivate will be responsible for paying any broker fee of such subcontractor, and (ii) on or after four (4) months after the Effective Date, then Motivate may pay such subcontractor, out of the gross proceeds of the Title Sponsorship, a Sponsorship Administrative Fee of up to 15% of the gross Title Sponsorship fee. Notwithstanding the foregoing, for any subsequent Title Sponsorship after the first Title Sponsorship, Motivate will be responsible for paying any broker fee of a Title Sponsorship subcontractor.

2.6.1. **Funding Types without Sponsorship Administrative Fees.** Motivate shall have no right to

a Sponsorship Administrative Fee on the following types of funding: Secondary Sponsorships; government and public agency funds; funds provided by philanthropic and service organization grants or loans, such as foundations or nonprofit organizations; any other funding granted solely to the City; and gifts to the City provided for non-monetary consideration.

**2.7. Subscriber Pricing Plan.** Motivate may charge applicable taxes, including sales tax on all Subscriber and Usage Fee rates. The Subscriber and Usage Fees and other fees charged to Subscribers shall be as set forth as in Exhibit B (Scope of Work) for the beginning of the Term, and may be amended from time to time in accordance with the Regional MOA.

**2.7.1. Annual and Monthly Subscribers.** Motivate shall at minimum provide (i) an annual subscription with unlimited trips of an initial free ride time per trip and (ii) a monthly subscription with unlimited trips of an initial free ride time per trip. Overage fees shall apply to trips of more than the applicable initial free ride time. Annual subscribers shall be able to pay on a monthly basis, so long as total annual costs do not exceed a one-time payment for the subscription by more than 20%.

**2.7.2. Group Subscribers.** Motivate shall provide a subscription to corporations or other entities that establish an account through which such entity's individual employees, residents, students, and/or other related affinity group may become a subscriber at a discounted rate. Such subscriptions shall include unlimited trips of up to an initial free ride time. Overage fees shall apply to trips of more than the initial free ride time.

**2.7.3. Low-Income Subscribers.** Motivate shall at minimum provide to low-income Subscribers a discounted annual subscription and a discounted monthly subscription with unlimited trips of an initial free ride time per trip. Overage fees shall apply to trips of more than the initial free ride time. Annual low-income subscribers shall be able to pay on a monthly basis.

**2.7.4. Casual Subscribers.** Motivate shall provide at least one option for individuals to purchase a short-term Subscription to the System. Such subscription could be a 24-hour subscription to the System that includes unlimited trips of an initial free ride time per trip with overage fees for trips of more than the initial free ride time.

**2.7.5. Overage Fees.** An overage fee shall be charged to all subscribers who take trips longer than the initial free ride period allowed by their subscription type.

**2.7.6. Municipal Employee Subscribers.** Motivate shall make a specific group membership available only to employees of the City, wherein employees will be eligible to purchase an annual subscription at a discounted rate. Such subscription shall include unlimited trips of up to 30 minutes per trip. Overage fees shall apply to trips of more than 30 minutes. The City shall not pay Motivate any funds in addition to those received by Motivate directly from the employee who subscribes. Subscribers shall be responsible for any fees associated with the subscription.

**2.8. System Revenues.** Motivate shall collect and retain all System Revenues. Motivate shall report System Revenues to the City in accordance with the reporting requirements set forth herein.

**2.9. Revenue Sharing.**

**2.9.1. Payments to the City.** Within 90 days following the end of each Contract Fiscal Year during the Term (unless a different payment date is specified in Section 2.9.2 below), Motivate shall pay to the City an amount equal to the City's share, as determined by the Regional MOA, of:

- (a) 10% of the excess, for such Contract Fiscal Year, of cumulative Title



Sponsorship Funds over six million dollars (\$6,000,000), as such cumulative amount is calculated from the commencement of the Title Sponsorship Agreement through the end of such Contract Fiscal Year;

(b) 10% of the excess of Subscriber Revenues for such Contract Fiscal Year over three million dollars (\$3,000,000); and

(c) 10% of all Secondary Sponsorship Funds for such Contract Fiscal Year (together with the amounts described in subsections (a) and (b) of this section, the City's "**Revenue Share**").

For example, if at the end of the third Contract Fiscal Year, cumulative Title Sponsorship Funds equal \$9,000,000 and at the end of the fourth Contract Fiscal Year, cumulative Title Sponsorship Funds equal \$12,500,000, Motivate's payment obligation to the City under subsection (a) above will be the City's share, as determined by the Regional MOA, of, \$300,000 for the third Contract Fiscal Year and \$350,000 for fourth Contract Fiscal Year, calculated as follows:

for the third Contract Fiscal Year:  $(\$9,000,000 - \$6,000,000) \times .10 = \$300,000$ ; and

for the fourth Contract Fiscal Year:  $(\$12,500,000 - \$9,000,000) \times .10 = \$350,000$ .

2.9.2. Payment Dates. Notwithstanding the foregoing, (i) the portions of the Revenue Share described in subsections (a) and (c) of Section 2.9.1 shall be paid within thirty (30) days of the end of each Contract Fiscal Year quarter; and (ii) if the portion of the Revenue Share described in subsection (b) of Section 2.9.1 accrues to \$100,000 before the end of a given Contract Fiscal Year, Motivate shall promptly make an interim payment of such amount, and may subtract such amount from the total Revenue Share payment to be made after the end of the applicable Contract Fiscal Year.

2.9.3. Revenue Share Account. Motivate will pay to the City its Revenue Share by depositing such amounts in a commercial checking account accessible only to approved Motivate and City representatives ("**Boston Revenue Share Account**"). The City may, at any time, satisfy payment obligations to Motivate under this Agreement by directing Motivate in writing (which may be in the form of email), to withdraw funds from the Boston Revenue Share Account. All bank fees on the Boston Revenue Share Account will be solely the City's responsibility and may be paid from amounts therein. Upon the expiration or termination of this Agreement, the entire balance of the Boston Revenue Share Account shall be transferred to the City.

2.9.4. System Reinvestment. In addition to the payments to the City under Section 2.9.1, Motivate shall spend an amount equal to 10% of the excess of cumulative Title Sponsorship Funds over fifteen million dollars (\$15,000,000) on System Reinvestment, as defined in, and in accordance with, the Regional MOA.

2.10. **Operations Costs.** Motivate acknowledges and accepts the risk of an operating loss. Under no circumstances will the City reimburse Motivate for any such losses.

2.11. **Invoicing.**

2.11.1. Taxes. The City, as a municipal corporation and political subdivision of the Commonwealth of Massachusetts, is a tax-exempt unit of local government under the laws of the Commonwealth of Massachusetts. Prices must not include federal, state, local, or other taxes designated now or hereafter. To the extent that any tax applies in connection with the provision or operation of the Boston System, Motivate shall be responsible for the payment of such tax and all activities related thereto. No provision of this Agreement shall be construed to provide Motivate or any of its subcontractors with an exemption, exclusion, deferral, offset, or other relief from any assessment, tax,

levy, or penalty which is now or which may hereafter be authorized by law.

2.11.2. **Invoicing.** Motivate shall submit any invoices in a timely fashion and in accordance with any deadlines set forth in this Agreement. In no event may any invoice reflect charges in excess of the applicable prices set forth in Exhibit C (Pricing Sheet). Motivate shall provide invoices in PDF form, delivered electronically to the Project Officer. Invoices will not be processed for payment until receipt of a properly completed and accurate invoice. Invoice payment terms, including any offered prompt payment discounts, shall start on the date of the invoice. Invoices shall be paid by the City within forty-five (45) days of the date of the invoice.

### **3. LICENSE; OWNERSHIP**

3.1. **License to Operate.** Subject to the terms and conditions set forth in this Agreement, the City hereby grants to Motivate an exclusive license to operate a Bike Share System within the municipal boundaries of Boston (the "**License**"). The License will cease upon expiration or termination of the Agreement. Motivate has no property interest in or to the System other than (a) the License, which expires upon the termination of this Agreement; and (b) all titles in and to System components purchased exclusively with Motivate Funds (if any).

3.2. **License to Use System Marks, City Marks, Sponsor Marks, and Motivate Marks.** Subject to the terms and conditions set forth in this Agreement, the City and Motivate agree to cooperate to license and or sub-license, their respective interests in the City Marks, the System Marks, the Sponsor Marks, and/or the Motivate Marks (as applicable) for use in association with promoting the System.

3.3. **Ownership.** The City is the sole owner of, and holds title to, all components of the Boston System purchased with Public Funds and to the Guaranteed Capital Equipment, free and clear of all liens, encumbrances, financing statements, and rights of third parties or entities (except to the extent such components include licenses from third parties, such as, for illustrative purposes only, a license to use the software of the Supplier to operate the System, or to the extent such components are subject to patents of Motivate or third parties in connection with the design and manufacture thereof). Motivate acknowledges and agrees that the City has the right to file UCC financing statements, instruments, and documents and such other action as may be required to perfect or continue the perfection of the City's interest in that portion of the System purchased with Public Funds. Motivate will own any bicycle share equipment, spare parts, tools and other materials that Motivate purchases exclusively with its own funds, with the exceptions of (i) spare parts to the extent they have been incorporated into the Capital Equipment and (ii) the Guaranteed Capital Equipment (together with such exceptions, "**Motivate Equipment**"); provided, however, that upon expiration or termination of this Agreement, Motivate will offer the City the opportunity to purchase Motivate Equipment at its fair market value, as such value is mutually agreed between the Parties, or if the Parties cannot reach an agreement, then as such value is determined by a third-party appraiser jointly selected and paid for equally by the Parties. Motivate shall purchase all Capital Equipment in the City's name in quantities mutually agreed upon between Motivate and the City. Capital Equipment and Motivate Equipment must be purchased separately to allow for clear attribution of ownership.

3.4. **News Releases and Public Announcements.** Subject to the terms hereof, the Parties shall work together (and with the Council and Title Sponsor, if and as applicable) to issue press releases, written public statements, and respond in writing to media inquiries regarding this Agreement and the System; provided, however, that the City may independently issue press releases, written public statements, or marketing communications regarding this Agreement and the System that do not mention any Sponsor with whom Motivate has entered a Sponsorship Agreement, other than as part of the System name.

Except as otherwise specified herein, no Party shall make any statement to the press or issue any material for publication through any medium of communication with respect to the System or this Agreement without prior written approval of the other Party hereto, provided, however, that, (a) in the event of any operation matters pertaining to the System that are time-sensitive and outside the usual course (such as closing for weather), Motivate shall have the right to make announcements to Subscribers and on the System website/mobile application regarding such matters without the prior approval of the City, (b) nothing contained herein shall limit Motivate's right, in the performance of its obligations hereunder, to make announcements and issue statements to promote the System, System-related events, and promotions for the purpose of promoting the System, including in connection with the use of City Marks, System Marks, and/or Sponsor Marks, and (c) nothing contained herein shall limit the right of City personnel outside of the Boston System project staff to respond orally to spontaneous press inquiries regarding the System. In making any such announcements, Motivate shall speak on behalf of the System, not on behalf of Motivate International Inc.

Except with respect to the performance of its obligations hereunder or in promoting the System or bike share generally, Motivate shall not use in its external advertising, marketing programs, or other public promotional efforts, any data, pictures, or other representations of the System, except with prior specific written authorization from the City. Any approvals required under this Section 3.4 shall not be unreasonably withheld.

#### **4. INTELLECTUAL PROPERTY**

**4.1. System Marks.** The Title Sponsor will create and select the official name and logo of the System, which shall be part of the System Marks, subject to approval by Motivate and the PMs, which approval shall not be unreasonably withheld. The PMs will provide initial guidance to the Title Sponsor prior to the creation and selection of the official name and logo of the System. The PMs or the Title Sponsor shall be responsible at their own cost and expense for clearing, registering, and maintaining active registrations for such System Marks, as further set forth in the Regional MOA. System Marks that do not incorporate Sponsor Marks shall be the Intellectual Property of the PMs, unless otherwise agreed to or approved by the PMs. The City acknowledges that the System Marks may or may not include City Marks and may consist of or incorporate Sponsor Marks. Subject to the terms hereof, Motivate shall have the right to sublicense the System Marks to Sponsors for the purpose of promoting and raising funds for the System as contemplated herein. The PMs shall grant to Motivate a non-exclusive, royalty-free license to use and sublicense the System Marks in connection with the System for the Term. Any newly created System Mark shall be the Intellectual Property of the PMs except to the extent that it is or incorporates the Intellectual Property of a Sponsor or Motivate.

**4.2. City Marks.** The City hereby grants to Motivate a non-exclusive, royalty-free license to use, during the Term, the City Marks and Intellectual Property of the City to, upon prior written approval of the City, operate and promote the System in accordance with the terms hereof. Upon expiration or termination of this Agreement, Motivate's license in and to City Marks and Intellectual Property of the City will be immediately terminated and Motivate shall cease use of the City Marks and Intellectual Property of the City. If requested by the City, all physical, electronic, and other tangible representations of same will be destroyed or returned to the City at no additional cost or expense to the City.

**4.3. Motivate Marks.** Motivate hereby grants to the City a non-exclusive, royalty-free license to use (and, if applicable to sublicense to Sponsors to use), during the Term, the Motivate Marks to, upon prior written approval of Motivate, promote the System in accordance with the terms hereof. Upon expiration or termination of this Agreement, the City's license in and to Motivate Marks will be immediately terminated and the City shall cease use of the Motivate Marks and Intellectual Property of Motivate.

4.4. **Sponsor Marks.** Motivate and/or the City, as applicable, will each obtain or assist the other Party in obtaining non-exclusive licenses or sublicenses to use, during the Term of any Sponsorship Agreement (including the Title Sponsorship Agreement), any and all of the Sponsor Marks to promote the System in accordance with the terms hereof; provided, however, that each Party's use of Sponsor Marks will comply with reasonable quality control measures required by a Sponsorship Agreement to which the City, Motivate, and the Sponsor have given their advance written approval. Upon expiration or termination of this Agreement, unless otherwise agreed to in writing by the Parties and each Sponsor, each Party's license in and to Sponsor Marks will be immediately terminated and each Party shall cease use of the Sponsor Marks and Intellectual Property of Sponsor.

4.5. **Approvals.** In order to maintain consistency and quality with respect to the style and appearance of the City Marks and the Motivate Marks, before (a) commencing production of any commercial or other advertisement, promotion, or other materials for use hereunder using any of the City Marks by Motivate or any of the Motivate Marks by the City, or (b) releasing any advertising, publicity, or press releases or other press materials using any of the City Marks by Motivate or any of the Motivate Marks by the City (subject to Section 3.4 hereof), the producing/releasing Party shall submit as applicable, the concept, artwork, design, text, and/or photographs for same to the other Party hereto at least five (5) business days prior to production or release of such item for review (approval not to be unreasonably withheld). In addition, the Parties agree that they shall review concepts and designs of any advertising, promotional or other materials using the other Party's Marks at regularly scheduled marketing meetings. Under no circumstances shall a use of any Party's Marks be approved which reflects unfavorably upon or disparages any Party hereto or a Sponsor; provided however, that the foregoing clause is not intended to prevent any Party from expressing its opinion regarding its experiences in contracting with or engaging in a business relationship with another Party or a Sponsor. All approvals shall be in writing (confirmed e-mail communication shall be sufficient). In the course of performing its obligations or exercising its rights hereunder, each Party may request that the other Party provide certain material (e.g., camera-ready artwork for such Party's Marks, as applicable) in connection with the development of promotional material hereunder (including but not limited to the development of signage and print and other media promotional materials). Each Party agrees to provide such material as reasonably requested by the other Party for such development, in a timely manner and free of charge, provided it has such material in its possession.

4.6. **Intellectual Property Acknowledgement and Protection.** Each Party acknowledges that it acquires no title or interest in the Intellectual Property of the other Party by virtue of the licenses set forth herein. Any goodwill attaching to the use of the Intellectual Property of any Party hereto as it appears in materials created by any Party hereto shall be the sole property of the owner of such Intellectual Property or its designees and is hereby irrevocably assigned to such owner or its designees. Each Party shall cause to appear on all advertising and promotional materials used in exercising the rights (to the extent such materials use the Marks of the other Party) hereunder appropriate copyright and/or trademark notices as designated by the other Party. Neither Party shall, during the Term or thereafter, attack the rights or interests of the other Party or its designees in and to the Intellectual Property of the other Party. The Parties agree to reasonably assist each other in protecting the System Marks, including but not limited to reporting to the other Party any material infringement or imitation of System Marks of which it becomes aware.

4.7. **Copyright.** The copyright to any work developed under this Agreement by Motivate exclusively for the City or the PMs jointly ("**Work Product**") will be the exclusive property of the City. The City agrees to grant to Motivate a royalty-free, nonexclusive, worldwide and irrevocable license to use, solely in connection with the operation of the Boston System during the Term, any such copyright developed by Motivate solely for the City. Motivate does not convey to the City, nor does the City obtain, any copyright to any works that were created or produced separate from this Agreement, were preexisting

material (not already owned by the City) or contain any preexisting material, or were created or produced by Motivate for application in a different system operated by Motivate.

4.8. **Patent.** If during the Term Motivate creates for use specifically and exclusively in the Boston System any patentable items, processes or inventions (other than any Intellectual Property of Motivate existing as of the Effective Date), then the City shall own such patentable item, process or invention as its Intellectual Property and the City agrees to grant to Motivate a royalty-free, nonexclusive and irrevocable license to use such patentable item, process or invention solely in connection with the operation of the Boston System during the Term. Motivate does not convey to the City, nor does the City obtain, any right to any patentable items, processes or inventions utilized by Motivate that were created or produced separate from this Agreement, were preexisting material (not already owned by the City) or contain any preexisting material, or were created or produced by Motivate for application in a different system operated by Motivate. Without limiting the foregoing, the City acknowledges and agrees that the sale of the Capital Equipment to the City are sales that do not result in any exhaustion of any patent or other intellectual property rights in the Capital Equipment.

4.9. **Third Party Intellectual Property.** Motivate covenants to save, defend, hold harmless and indemnify the City, and all of its officers, officials, departments, agencies, agents and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and reasonable attorney's fees), charges, liability or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured, supplied or used in the performance of this Agreement, including its permitted use by the City. If Motivate uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood, without exception, that Motivate is responsible for any royalties or costs arising from the use of such design, device, or materials in any way involved with the Work.

## **5. TERM AND TERMINATION; DEFAULT**

5.1. **Term.** This Agreement and the Work hereunder will commence on the Effective Date and shall remain in effect, unless earlier terminated in accordance with the terms of this Agreement, until the date that is five (5) years after the Effective Date or April 1, 2022, whichever is earlier ("**Initial Term**"). This Agreement may thereafter be renewed by the City, in its sole discretion, for up to two (2) successive periods of two (2) years each (each a "**Renewal Term**") (the Initial Term together with all Renewal Terms, the "**Term**").

5.2. **Renewal.** Twelve (12) months prior to the end of the Initial Term, the City shall evaluate Motivate to determine whether a renewal is beneficial to the City. Among other factors, such evaluation shall consider:

- Success in securing Sponsorships to support the System's continued expansion and operation;
- Execution of comprehensive marketing strategies that grow enthusiasm for the System;
- Growth in Subscriptions and trips;
- Ability to deliver, on time, Capital Equipment for guaranteed expansion and ad-hoc expansion and repair;
- System reliability, as measured by increased number of available bikes and docks;
- Satisfactory maintenance of Capital Equipment and Rental Sites;
- Positive user experience through call center, website, and mobile application;
- Accuracy of financial reporting;
- Timeliness of monthly reports; and
- Cooperation with the Council.

The City shall provide Motivate nine (9) months' advance written notice of renewal.

**5.3. Termination for Convenience.** The City may terminate this Agreement, in whole or in part, whenever the City determines that such termination is in the City's best interests. Any such termination shall be effected by the delivery to Motivate of a written notice of termination at least thirty (30) days before the date of termination, specifying the extent to which the Agreement is terminated and the Termination Date, provided, however, that no termination for convenience will be effective until Motivate's receipt of the Termination for Convenience Fee (as defined below). Upon receipt of a termination notice for the City's convenience, Motivate shall promptly discontinue all efforts to purchase or site Capital Equipment. Motivate's acceptance of the Termination for Convenience Fee shall act as a full and final release of any claim by Motivate against the City arising out of early termination of this Agreement under this Section 5.3.

Sections 5.3 and 5.4 apply only to termination for convenience. The City retains the right under the Agreement to terminate the Agreement and the License for cause in accordance with Section 5.6, and termination for cause does not obligate the City to pay the Termination for Convenience Fee.

**5.4. Process upon Termination for Convenience.** If the City exercises its right to terminate the Agreement pursuant to Section 5.3, then in addition to amounts owed under this Agreement for Work performed in accordance with the Agreement prior to the Termination Date, the City will pay Motivate, as the "Termination for Convenience Fee," the lesser of (i) the not-to-exceed amounts set forth in Section 5.5, and (ii) the sum of the following amounts described in Sections 5.4.1 through 5.4.3:

5.4.1. the cost of any Guaranteed Capital Equipment that has been ordered as of the notice of termination, at the prices set forth in Exhibit C (Pricing Sheet);

5.4.2. an amount equal to 15% of the balance of any Title or Secondary Sponsorship Funds to be paid to Motivate under any Sponsorship Agreement, assuming in each case that such Sponsorship Agreement were to stay in effect for the duration of its full term (including renewals), provided in each case that the relevant Sponsor has agreed (whether by assignment of its Sponsorship Agreement to, or by entering into a new agreement with, the City or a Replacement Operator) to continue paying sponsorship funds in connection with such sponsorship; and

5.4.3. Motivate's actual cost of (i) any non-cancelable material and equipment that is not capable of use except in the performance of the terminated Work and has been specifically procured for the sole purpose of this Agreement but not incorporated in the terminated Work; (ii) any termination costs or penalties under any third-party agreement related to the Work, including any lease for real property; (iii) any breakage, default, or pre-payment expenses under any financing arrangement related to the Work or under any Sponsorship Agreement; and (iv) winding down its operations in the metro Boston area, including severance. Motivate shall make commercially reasonable efforts to mitigate its costs described in this Section 5.4.3. Motivate shall provide documentation of its costs described in this Section 5.4.3 within thirty (30) days of receipt of a notice of termination for convenience. If the City objects to any information or figures provided in such documentation, the City shall state its objections in writing within fifteen (15) days. The Parties will work in good faith to resolve, clarify, or provide further documentation of any disputed information.

**5.5. Not-to-Exceed Amounts.** The Termination for Convenience Fee shall in no event exceed the following amounts, as applicable depending on the Termination Date:

<u>Termination Date</u>	<u>Not-to-Exceed Amount</u>
on or before April 1, 2018	\$4,154,150.00

April 2, 2018 to April 1, 2019	\$3,408,399.00
April 2, 2019 to April 1, 2020	\$1,504,320.00
April 2, 2020 to April 1, 2021	\$1,146,736.00
April 2, 2021 to April 30, 2026	\$789,152.00

**5.6. Termination for Cause.**

**5.6.1. Default by the City.** The City shall be in default under this Agreement if: (i) the City breaches a material provision of this Contract other than any payment obligation by the City, whether by action or inaction, and such breach continues and is not remedied within forty-five (45) days after the City receives written notice from Motivate specifying the breach; provided, however, that in the case of a breach that cannot with due diligence be cured within forty-five (45) days, the City shall not be in default hereunder if and so long as the City commences the cure within forty-five (45) days after the City receives written notice from Motivate and thereafter diligently prosecutes such cure to completion, or (ii) the City breaches any payment obligation hereunder.

**5.6.2. Default by Motivate.** Motivate shall be in default under this Agreement if Motivate breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within forty-five (45) days after Motivate receives written notice from the City specifying the breach; provided, however, in the case of a breach that cannot with due diligence be cured within forty-five (45) days, Motivate shall not be in default hereunder if and so long as Motivate commences the cure within forty-five (45) days after Motivate receives written notice from the City and thereafter diligently prosecutes such cure to completion.

**5.6.3. Termination in the Event of Default.** If a default occurs, then, in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement, the non-defaulting Party may terminate this Agreement by providing to the defaulting Party a written notice of termination, including an effective date of termination that is no less than thirty (30) days from the date the defaulting Party receives such notice.

**5.7. Process upon Termination for Cause.** In the event of an early termination by the City for cause, the City shall pay to Motivate on the Termination Date: (i) any amounts owed under this Agreement for Work performed in accordance with the Agreement prior to the Termination Date; and (ii) the City's share, as determined by the Regional MOA, of an amount equal to 15% of the balance of any Title or Secondary Sponsorship Funds to be paid to Motivate under any Sponsorship Agreement for which a Sponsorship Administrative Fee was not paid to a subcontractor, assuming in each case that such Sponsorship Agreement were to stay in effect for the duration of its full term (including renewals), provided in each case that the relevant Sponsor has agreed (whether by assignment of its Sponsorship Agreement to, or by entering into a new agreement with, the City or a Replacement Operator) to continue paying sponsorship funds in connection with such sponsorship. In the event of an early termination by the City due to a default by Motivate, then Motivate shall be liable for the reasonable out-of-pocket costs incurred by the City to procure substitute performance, in addition to any other liabilities incurred by Motivate under this Agreement through receipt of notice of such termination.

**5.8. Transition of the Boston System.** Upon termination or expiration of this Agreement, upon written request of the City, the City and Motivate shall mutually work together to assure the orderly transition of all services provided by Motivate to an alternative provider designated by the City to ensure to the greatest extent possible that the operation of the System is maintained without interruption, provided that the City shall pay Motivate a reasonable fee for any transition services it requires that are

outside of the scope of the Work. Motivate will endeavor to include in all subcontracts for performance of the Work the following, or a substantially similar, provision:

“Assignment: This agreement may not be assigned by either party without the prior written consent of the other, except that Motivate may transfer this agreement to the City of Boston, or its designee, in the City of Boston’s sole discretion, as part of a transition of the services provided by Motivate to the City of Boston to an alternate provider designated by the City of Boston.”

**5.9. Insufficient Funding.** All funds for payments by the City to Motivate under this Agreement are subject to the City’s ability to raise sufficient Public Funds or other City-appropriated funds. In the event that the City is unable to raise sufficient Public Funds or other City-appropriated funds, the City shall, without termination charge or any other liability to the City, terminate that portion of the Work on: (i) the last day of the then current Contract Fiscal Year; or (ii) when the Public Funds and funds appropriated for the then current year for the Work under this Agreement are expended; whichever event occurs first. The City shall, upon request by Motivate, apprise Motivate of the status of Public Funds and requests for appropriation. Motivate may rely on any purchase order approved by the City Auditor as a representation by the City that the funds in such purchase order have been appropriated. It is agreed by the Parties that in the event of non-appropriation of funds, the City shall remain responsible to pay for any payment obligations incurred by the City prior to said non-appropriation of funds.

**5.10. Final Payment.** After Motivate has completed all Work and corrections to the satisfaction of the Project Officer or his/her designee and has delivered all required documentation, Motivate may submit an invoice for final payment. The final invoice shall be accompanied by all documents required in the Agreement and shall reflect the actual amount due to Motivate. By submitting the final invoice Motivate shall certify that, upon receipt of timely payment in full of such final invoice, all of the debts for labor, materials, equipment and supplies incurred in connection with this Agreement will have been fully paid.

## **6. AUDIT RIGHTS AND RECORD MAINTENANCE**

**6.1. Audit Rights.** The City shall have the right at any reasonable time and upon reasonable written notice to Motivate, but no more frequently than once per Contract Fiscal Year, to inspect and audit during normal business hours any records, documents, or other information, which pertain to (i) data collected and maintained by Motivate to (x) comply with the reporting requirements of Exhibit B (Scope of Work), Article II, Sections 7.4, 22.1 and 22.2 or (y) assess its compliance with the KPIs (as defined below), or (ii) payments by the City to Motivate hereunder. The City may hire an independent auditor for such audit. The costs of any audit shall be borne by the City unless such audit reveals an underpayment or overcharge by Motivate to the City in excess of Fifty Thousand Dollars (\$50,000) with respect to any individual Contract Fiscal Year, or in excess of an aggregate of One Hundred Thousand Dollars (\$100,000) for multiple Contract Fiscal Years, in which case Motivate shall pay all reasonable out-of-pocket costs, expenses and fees relating to the audit. In either event, an underpayment (together with reasonable interest) shall be remitted by Motivate to the City (together with the costs of the audit, if applicable) within thirty (30) days of the date Motivate receives the audit report.

**6.2. Internal Controls.** Motivate must track all costs and expenses of the System that are the responsibility of the PMs, in such a way that such costs and expenses can be allocated among the PMs.

**6.3. Review and Copying.** Motivate shall provide to the City, within fifteen (15) business days of the City’s request, copies of any records kept or maintained by Motivate, which pertain to (i) customer complaints, or (ii) Capital Equipment. Such records may be made available in electronic form.

**6.4. Maintenance of Records.** Motivate shall at all times maintain all records subject to audit or



review under this Article 6 for the entire Term of this Agreement and thereafter for the later of: (i) the longest period of time required in any of the Contract Documents; or (ii) a period of four (4) years.

## **7. CONTRACT DOCUMENTS**

**7.1. Contract Documents; Interpretation.** In the event the terms, conditions, or covenants of the Contract Documents vary from each other and/or from this Agreement, the Contract Documents shall be interpreted in the following order of priority: (i) this Agreement; (ii) the Regional MOA; (iii) City Documents; (iv) Motivate's Proposal; (v) the RFP; except that nothing in this Agreement shall be deemed or interpreted to reduce the scope of work set forth in the RFP as limited by the plan of work set forth in Motivate's Proposal.

**7.2. Compliance.** The Parties recognize that the City has assumed certain obligations under the Contract Documents that require performance by Motivate. Motivate shall not, by act or omission, cause the City to breach any of the terms, conditions, or covenants, or fail to comply with any terms, conditions or covenants to which the City is subject.

**7.3. Assistance.** Motivate agrees to provide the City with such assistance as the City may reasonably request in order to facilitate the City's compliance with the Contract Documents. Such assistance shall include, without limitation, provision of personnel, documentation, data, and creation of reports as well as responding to requests by the City for information. Motivate will provide, at no additional cost to the City, all readily-available material to the City upon request. Any additional information will be charged on an hourly basis for the time to develop and send to the City, at the rates set forth in Table 4 of Exhibit C (Pricing Sheet).

**7.4. Remediation.** In the event, despite the best efforts of the Parties, there is a failure to comply with any term, condition, or covenant of any of the Contract Documents, the Parties shall negotiate in good faith to develop a plan by which such failure can be remediated with the least material impact on either Party.

**7.5. Irreparable Harm.** Motivate agrees that any material breach of this Article VII will cause irreparable harm to the City and the City shall have the right to seek any judicial remedy it deems appropriate as a remedy for said breach.

## **8. EMPLOYEE AND EMPLOYMENT MATTERS**

**8.1. Project Officers.** Each Party shall appoint a project officer to act, except as otherwise specified in this Agreement, as the primary contact person for purposes of the Contract Documents. The performance by Motivate of the Work is subject at reasonable times and upon reasonable written notice to inspection and review by the City Project Officer. Where specifically stated in this Agreement, Motivate shall obtain from the City Project Officer prior written approval of specified Work. However, it shall be the responsibility of Motivate to manage the details of the execution and performance of the Work under this Agreement. Motivate will notify the City at least ten (10) Days before hiring any replacement General Manager after the Effective Date. The City may interview such candidate for General Manager during such 10-Day period and provide feedback to Motivate. Motivate will consider the City's feedback in determining whether to make an offer of employment to such candidate. Motivate will designate an individual at its corporate headquarters whom the City may contact with feedback or complaints regarding the performance of Motivate's General Manager.

**8.2. City Employees.** No employee of the City shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom which is not available to the general public.

**8.3. Employment Discrimination by Motivate Prohibited.** During the performance of this Agreement, Motivate agrees as follows:

8.3.1. Motivate shall not discriminate against any employee or applicant for employment because of race, color, sex, gender identity or expression, sexual preference, disability, marital status, family status, military status, age, religion, national origin, or source of income or any other basis prohibited by state or local law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Motivate. Motivate agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

8.3.2. Motivate, in all solicitations or advertisements for employees placed by or on behalf of Motivate, will state that Motivate is an Equal Opportunity Employer.

8.3.3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

8.3.4. Motivate's employment activities under this Agreement will comply with the provisions of the Americans with Disabilities Act of 1990.

8.3.5. Motivate will endeavor to include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.

8.3.6. As required by 49 U.S.C. 5332, Motivate shall not discriminate against any customer, prospective customer, employee or prospective employee because of race, color, sex, age, religion, or country of origin.

**8.4. Drug-Free Workplace to Be Maintained by Motivate.** During the performance of this Agreement, Motivate agrees to: (i) provide a drug-free workplace for Motivate's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Motivate's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Motivate that Motivate maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**8.5. Supervision by Motivate.** The supervision and control of (i) Motivate's staff and (ii) employees of any subcontractors shall be solely the responsibility of Motivate. Motivate shall at all times require strict discipline and good order among Motivate's employees and all subcontractors performing any portion of the Work. Motivate shall not permit, and shall require all subcontractors not to permit, any employee or other person to perform any Work, unless the employee or other person has demonstrated proficiency in the type of work which such employee or other person is assigned to perform.

**8.6. Non-Discrimination.** Motivate agrees that in its operations/implementation of the System it will not discriminate against any employee or applicant for employment on the basis of race, color, sex, gender identity or expression, sexual preference, disability, marital status, family status, military status, age, religion, national origin, or source of income. Motivate shall take affirmative action to ensure that employees are treated during the term of employment without regard to their race, color, sex, gender identity or expression, sexual preference, disability, marital status, family status, military status, age, religion, national origin, or source of income.

8.7. **Subcontractors.** Motivate shall only enter into subcontracts with subcontractors that have clearly demonstrated proficiency in the tasks that are the subject of such subcontracts. Motivate shall notify the City before entering into any subcontract of over \$50,000 per year for on-street operations or customer service portions of the Work. The City may reasonably reject any subcontract described in the previous sentence by notifying Motivate in writing within five (5) Days of receiving notice of the subcontract. If the City does not reject any such subcontract within five (5) Days, the subcontract will be deemed approved. Motivate and all subcontractors will be required to comply with the City of Boston's Living Wage ordinance to the extent applicable.

## **9. CONFIDENTIALITY, DATA OWNERSHIP, AND PROPRIETARY RIGHTS**

9.1. **Data Ownership.** "System Data" means any information or data collected or created in connection with System and transactions related thereto, whether collected or created by the City, another PM, Motivate, or a third party, other than credit card or other financial information of Subscribers.

The PMs possess and retain all right, title, and interest in and to System Data. The City hereby grants to Motivate a royalty-free, worldwide, perpetual and irrevocable license to possess and use the Data for its internal bike share business purposes or to provide services for other customers and their users, unless otherwise agreed between the Parties, and provided that Motivate will not use personally identifiable information of Subscribers after expiration or termination of this Agreement. Unless it receives City's or a PM's prior written consent, Motivate will not access or use System Data other than: (i) as necessary to facilitate the Work; or (ii) for Motivate's internal bike share business purposes. Notwithstanding the foregoing, Motivate may disclose System Data as required by applicable law or by proper legal or governmental authority. Motivate will give the PMs, including the City, prompt notice of any such legal or governmental demand and will reasonably cooperate with the City and the PMs in any effort to seek a protective order or otherwise to contest such required disclosure.

When this Agreement expires or is terminated, Motivate shall provide to the PMs a file or files of all System Data in Motivate's possession or control in a mutually agreed accessible format within ten (10) days of such termination or expiration. Motivate will not destroy or erase information relating to contract performance and compliance as provided in Article 14 of the City's Standard Contract General Conditions.

Motivate will comply with all federal, Massachusetts, and other applicable state laws and regulations governing the handling of System Data. In addition to obligations imposed by law, Motivate will observe reasonable technical and physical security measures to ensure the confidentiality and integrity of System Data and Motivate will promptly notify City of any actual or likely exposure or misappropriation of System Data. Motivate will not allow any of its employees, agents, or contractors to access System Data, except to the extent needed in order to facilitate the Work.

9.2. **Confidentiality.** Subject to the terms and conditions herein and all laws, including, without limitation, the Massachusetts public records law, each Party (a "Receiving Party") agrees that it shall not, directly or indirectly, use, make available, sell, disclose, disseminate, or otherwise communicate to any person other than (a) the Metropolitan Area Planning Council or a similar regional planning body for the purpose of planning and conducting a future request for proposals for bike share operations and (b) the PMs, in whole or in part, other than in the course of such Party's performance of its obligations hereunder, either during the Term or any time thereafter, any Confidential Information. The foregoing shall not apply to any information that: (i) was known to the public prior to its disclosure by the Receiving Party; or (ii) the Receiving Party is required to disclose by law, regulation or legal process. As used herein, "Confidential Information" means any and all information that in any way relates to the System (including any personally identifiable information about Subscribers) and with respect to each

Party, the finances, agreements, business operations, trade secrets, plans, proceedings, market strategies, media and promotional activities or other non-public information of the Party disclosing such information (the "**Disclosing Party**"), whether disclosed orally, in writing, or through another medium, by the Disclosing Party's officers, employees, agents or other persons. Motivate acknowledges that, as a municipality, the City is subject to the Massachusetts public records law, G.L. c. 66, § 10. Nothing contained herein shall be deemed to prohibit or otherwise restrict the City's ability to comply with laws applicable to the City regarding disclosure of information to the public; provided, however, that if the City receives a request under the Massachusetts public records law for disclosure of any records containing any Confidential Information of Motivate, the City shall Promptly notify Motivate of the fact and nature of such request.

**9.3. Title to Personal Property.** The City shall be the owner of, and hold title to, all Capital Equipment free and clear of all liens, encumbrances, financing statements, and rights of third persons or entities. All owner rights, warranties, and the like shall be in the name of and inure to the benefit of the City. At the expiration or termination of this Agreement, Motivate shall prepare and submit to the City an inventory list of Capital Equipment and all related documentation, such as maintenance and service manuals and warranty information. The City shall have the right to perform a physical inventory of Capital Equipment at reasonable times and upon reasonable notice.

**9.4. Rights, Authorizations, Licenses, Permits, and Other Permissions.** Except as otherwise provided herein, Motivate shall, at its sole cost and expense, obtain all rights, authorizations, licenses, permits and other permissions from all federal, state, and local governments or other entities or persons necessary for Motivate to perform the Work. The City's execution of this Agreement shall neither constitute nor be deemed a governmental approval of, or consent to, any rights, authorizations, licenses, permits, and permissions required or needed to be obtained by Motivate.

## **10. REPRESENTATIONS AND WARRANTIES**

**10.1. The City's Representations and Warranties.** The City hereby warrants and represents to Motivate as of the Effective Date:

10.1.1. The City has the legal power, right, and authority to enter into this Agreement, and the persons executing this Agreement on the City's behalf have the legal power, right, and authority to bind the City to the terms and conditions of this Agreement.

10.1.2. This Agreement will not cause a breach of any other agreement to which the City is a party.

10.1.3. The representations and warranties furnished by the City in this Agreement are accurate, correct, and complete in all respects and do not contain any untrue statement of fact, or when considered in the context in which presented, omit to state a fact necessary to make the statements and information contained herein not misleading.

10.1.4. The City shall perform its obligations hereunder in a good and workmanlike manner, in conformance with this Agreement, and in accordance with customary professional and/or industry standards.

10.1.5. The City is self-insured for all of its liability and employee injury losses, and is significantly self-insured for all of its property losses. The City has sufficient financial reserves to cover its self-insured costs, including its obligations and liabilities in connection with this Agreement and with the System.

10.1.6. The use of City Marks and of any materials created by or on behalf of the City and provided to Motivate to use in connection with the System or the promotion thereof shall not infringe upon the intellectual rights of any third party when used by Motivate or any sublicensees in the Territory.

10.1.7. The use of System Marks and/or the Title Sponsor Marks (to the extent these are used pursuant to a license or sublicense from the City hereunder) in connection with the System or the promotion thereof shall not infringe upon the intellectual rights of any third party when used by Motivate.

10.1.8. The City is in material compliance with all local, state and federal laws, rules and regulations applicable to it in connection with the System and this Agreement.

**10.2. Motivate's Representations and Warranties.** Motivate hereby warrants and represents to the City as of the Effective Date:

10.2.1. Motivate has the legal power, right, and authority to enter into this Agreement and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Motivate in connection with entering into this Agreement and no further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.

10.2.2. The persons executing this Agreement on Motivate's behalf have the legal power, right, and corporate authority to bind Motivate to the terms and conditions of this Agreement.

10.2.3. This Agreement is a valid, legally binding obligation of and enforceable against Motivate in accordance with its terms and execution of this Agreement by Motivate will not cause a breach of any other agreement to which Motivate is a party.

10.2.4. The representations and warranties furnished by Motivate in this Agreement are accurate, correct, and complete in all respects and do not contain any untrue statement of fact, or when considered in the context in which presented, omit to state a fact necessary to make the statements and information contained herein not misleading.

10.2.5. Motivate shall perform its obligations hereunder in a good and workmanlike manner, in conformance with this Agreement, and in accordance with customary professional and/or industry standards.

10.2.6. Motivate warrants that each of Motivate's employees assigned to perform the Work have the proper skill, training, and background to be able to perform the Work in a competent, timely, and professional manner and that all Work shall be so performed.

10.2.7. Motivate shall, at all times during the Term, maintain and keep current all licenses and certifications required to perform the Work and be authorized to transact business in the Commonwealth of Massachusetts.

10.2.8. No action, suit or proceeding (and, to Motivate's knowledge, no investigation) is pending against Motivate before any court or administrative agency (a) the outcome of which, by itself or taken together with other such litigation, would be reasonably expected to have a material adverse effect on the business, assets, operations or financial condition of Motivate or the power of Motivate to complete the Work or (b) which purports to affect the legality, enforceability or validity of this Agreement.

10.2.9. Motivate is in compliance with all applicable laws, codes, ordinances and regulations in connection with the System and this Agreement and pertaining to its fulfillment of its obligations and

exercise of its rights under this Agreement.

10.3. The permitted use of Motivate Marks and of any materials created by or on behalf of Motivate and provided to the City to use in connection with the System or the promotion thereof shall not infringe upon the intellectual rights of any third party when used by the City or any sublicensees in the Territory.

## **11. INSURANCE**

11.1. **Insurance Coverage.** Prior to the Effective Date, Motivate shall deliver to the City a Certificate(s) of Insurance, attached hereto as Exhibit F (Certificates of Insurance), indicating that Motivate has in force the insurance coverages described below. Motivate agrees to maintain such insurance coverages until the completion of all of its obligations pursuant to this Agreement. As such, all liability insurance coverages shall be written on an occurrence basis. All required insurance coverages shall be acquired from insurers qualified to do business in the Commonwealth of Massachusetts and acceptable to the City. The minimum insurance coverages shall be:

11.1.1. Worker's Compensation, with Employer's Liability limits of not less than the greater of: (i) one million dollars (\$1,000,000) for each accident; or (ii) the statutory limit for each accident.

11.1.2. Commercial General Liability, including all coverages contained in an unamended I.S.O. Form CG 00 01 or similar coverage form with limits not less than one million dollars (\$1,000,000) for each occurrence and three million dollars (\$3,000,000) in the aggregate for each annual policy period of Combined Single Limit Bodily Injury and Property Damage. Such form includes Contractual Liability, Personal Injury, Advertising Liability, Broad Form Property Damage, Products and Completed Operations coverages.

11.1.3. Comprehensive Automobile Liability Insurance, with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit Bodily Injury and Property Damage, including owned, non-owned and hired auto coverages, as applicable.

11.1.4. Excess Liability Coverage, following the insurance referred to in clauses 11.1.1, 11.1.2, and 11.1.3 above in the amount of three million dollars (\$3,000,000) per occurrence, Combined Single Limit, and three million dollars (\$3,000,000) in the aggregate for each annual policy period.

11.2. **Endorsements.** Commercial General Liability and Comprehensive Automobile Liability Insurance policies shall be endorsed to provide the following:

11.2.1. To name as additional insureds, with respect to the operations of Motivate under this Agreement, the City of Boston, and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions, and those sponsors who own property on which Rental Site(s) that are a part of the System are located; and

11.2.2. To provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims related to this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

11.3. **Notice.** All policies shall be endorsed to provide that there will be thirty (30) days advance written notice to the City of cancellation, non-renewal or reduction in coverage.

11.4. **Assumption of Risk.** Motivate assumes all risks for direct and indirect damage or injury to the property or persons it uses or employs on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any negligent action,

omission, commission or operation under this Agreement, or in connection in any way whatsoever with the contracted Work. Notwithstanding the foregoing, the Parties' respective responsibilities for direct and indirect damage or injury to the Capital Equipment shall be as set forth in Exhibit B (Scope of Work), Article II, Sections 4 and 23.

No acceptance or approval of any insurance by the City shall be construed as relieving or excusing Motivate from any liability or obligation imposed upon Motivate by the provisions of the Agreement.

Motivate shall be responsible for the Work performed under the Agreement and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work.

Motivate shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons employed by the subcontractors as Motivate is for acts and omissions of persons directly employed by Motivate.

## 12. INDEMNIFICATION AND LIMITATION OF LIABILITY

12.1. **Hold Harmless and Indemnification.** Motivate agrees to defend, indemnify and hold harmless the City, its officers, agencies, departments, agents, and employees (each, an "**Indemnified Party**"; and collectively, "**Indemnified Parties**") from and against any and all claims, demands, causes of action, or suits brought by third parties ("**Claims**"), and all losses, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including cost of defense and attorneys' fees) (collectively, with Claims, "**Liabilities**"), resulting from or arising out of Work performed by Motivate, Motivate's officers, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Motivate in performance of this Agreement.

12.2. **Exclusions.** Notwithstanding the foregoing, the following shall be excluded from Motivate's indemnification and defense obligations contained in the preceding paragraph: any Liabilities to the extent resulting from, or arising out of, (i) the negligence or willful misconduct of any Indemnified Party; (ii) Motivate's complying with the written directives or written requirements of a PM or the Council, if Motivate has previously objected to such written directives or requirements in writing on the basis of Motivate's reasonable determination that such directives or requirements posed a safety or liability risk, with respect to (A) the location or configuration of any Station in relation to the street or sidewalk on which such Station is located or to which it adjoins or (B) Station Protective Devices required by a PM; or (iii) the condition of any public property outside of the perimeter of a Rental Site and not otherwise controlled by Motivate. If any Claim against Motivate includes claims that are covered by clauses (ii) or (iii) of the preceding sentence or claims contesting the City's authority to issue a permit for a Station, then each Party shall be responsible for its own defense against such claims.

12.3. **Indemnification Procedure.** The indemnification obligation under this section shall not be limited by the existence of any insurance policy and shall survive the termination of this Agreement. The City agrees to give Motivate written notice of any claim of indemnity under this section. Additionally, Motivate shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the City is required in connection with the settlement. Monies due or to become due to Motivate under this Agreement may be retained by the City as necessary to satisfy any outstanding claim which the City may have against Motivate.

12.4. **Limitation of Liability.** To the maximum extent permitted by any applicable law, in no event will any Party be liable to the other Party in any manner whatsoever for any special, indirect, incidental, exemplary, punitive, aggravated or consequential damages, losses or liabilities (including without

limitation lost profits or savings or goodwill) howsoever caused arising out of the obligations hereunder or otherwise relating to or in connection with this Agreement, whether in contract, tort (including negligence) or any other statutory or common law basis, notwithstanding that such Party has, or its directors, officers, employees, subcontractors, suppliers or agents have, been advised of the possibility of such damages, losses or liabilities.

### 13. LIQUIDATED DAMAGES

13.1. **Liquidated Damages.** If Motivate fails to comply with the key performance indicators set forth in Section 13.1.5 below ("**KPIs**"), and fails to correct such failure within any applicable cure period set forth in Article 5, the Parties agree that the City will be damaged and that the amount of damage to the City and to the public are difficult to determine. Subject to all other terms of this Agreement, Motivate agrees to pay to the City the reasonably forecasted liquidated damages specified in this section as compensation and not as penalty (the "**Liquidated Damages**") for failing to comply with the KPIs (except in the case where a KPI failure is attributable to a Force Majeure Event, Supplier Defect, or a delay or failure to perform by the Supplier under a Supply Agreement ("**Supplier Delay**"). Liquidated Damages may be assessed for the reasons stated herein, but the City reserves its rights to pursue actual damages it may suffer based on other contract breaches not listed in this section. The following terms shall apply to all Liquidated Damages:

13.1.1. If Motivate fails to comply with any KPI, then the City shall present a written notice to Motivate setting forth the City's request for payment of Liquidated Damages and the basis for such request. Unless otherwise specified herein, Motivate shall have thirty (30) days from receipt of such notice to pay such Liquidated Damages to the City or to contest such request in good faith in writing. If requested in writing by Motivate, the City may recover Liquidated Damages by deducting all undisputed amounts due from payments owing to Motivate hereunder, if applicable.

13.1.2. Notwithstanding the foregoing, the following shall be excluded from Motivate's obligations to pay Liquidated Damages: any KPI failure resulting from or arising out of a Force Majeure Event, Supplier Delay, defect in the Software or Capital Equipment including Supplier Defect, provided that any such defect was not caused by Motivate, or delay or failure by the City in the performance of its obligations hereunder. The Parties agree that if Liquidated Damages are not payable pursuant to the preceding sentence, the Parties will work in good faith to mutually agree upon an adjustment to the KPIs.

13.1.3. The maximum aggregate Liquidated Damages payable by Motivate in any Contract Fiscal Year is four and a half percent (4.5%) of the Subscriber Revenues for the prior Contract Fiscal Year.

13.1.4. Liquidated Damages shall not be assessed under more than three (3) different KPIs in any given calendar month.

13.1.5. Subject to the foregoing terms and conditions applicable to Liquidated Damages, the Parties agree to the following Liquidated Damages as amounts that are fair and reasonable to compensate the City for failure by Motivate to comply with the KPIs:

- (a) *Delayed Delivery of Capital Equipment.* If Equipment Acceptance has not occurred within one-hundred eighty days (180) of the placement to a Supplier of the applicable Purchase Order, Motivate will pay as Liquidated Damages an amount equal to 1% of the value of the Equipment unable to be deployed as a result of such delay, per week (inclusive of weekends and holidays) of such delay.
- (b) *Boston System Functional Levels Below Minimum.* If Motivate maintains less than the



minimum percentage of Functional Stations in the Boston System as described in Exhibit B (Scope of Work) and does not return the Boston System to the minimum percentage of Functional Stations within fourteen (14) calendar days, Motivate will pay the City Liquidated Damages in an amount equal to \$200.00 per non-Functional Station per week (inclusive of weekends and holidays).

- (c) *Distribution of Bicycles Below Service Level Agreements.* If Motivate fails to comply with the Bicycle distribution requirements described in Exhibit B (Scope of Work), Article II, Section 7 and does not return bicycle distribution metrics to the agreed service level within fourteen (14) calendar days, Motivate will pay the City Liquidated Damages in an amount equal to the product of \$14,000.00 and the percentage of Days in the current month for which Motivate has failed to comply with the KPI described in this paragraph.
- (d) *Graffiti.* If Motivate fails to comply with its graffiti removal obligations set forth in Exhibit B (Scope of Work), Article II, Section 3.10, Motivate shall pay Liquidated Damages to the City in the amount of \$75 per 24-hour period that graffiti remains visible after the initial 24-hour removal period has elapsed, or, in the case of Racist or Hate Graffiti, \$150 per 24-hour period that Racist or Hate Graffiti remains visible after the original 4-hour removal period has elapsed. Notwithstanding the Liquidated Damages described in this paragraph, graffiti, ink, paint, and/or other soiling on any Capital Equipment shall be removed or repaired within seven (7) days of identification or notification.
- (e) *Snow Removal.* Motivate shall pay Liquidated Damages to the City in the amounts of (x) \$25 per uncleared Station per Day for failure to remove snow from the Boston System as specified in Section 6.2.1(i) of Exhibit B (Scope of Work), Article II and (y) \$100 per uncleared Station per Day for failure to remove snow from the Boston System as specified in Section 6.2.1(ii) of Exhibit B (Scope of Work), Article II.
- (f) *Financial Reports Not Delivered.* If Motivate fails to deliver accurate financial reports as described in Section 2.9 and in Exhibit B (Scope of Work), Article II, Sections 22.1 and 22.2, Motivate will pay the City Liquidated Damages of \$150 for each Day such reports are late.

#### 14. DISPUTE RESOLUTION

14.1. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any controversy, claim or dispute of whatever nature arising between the Parties arising out of or relating to performance or breach of this Agreement, or the economic relationship of the Parties hereto, whether such claim is based on rights, privileges or interests recognized by or based upon statute, contract, tort, common law, or otherwise, promptly by negotiation between Parties.

#### 15. MISCELLANEOUS

15.1. **Governing Law.** This Agreement shall be governed exclusively by the internal laws of the United States and of the Commonwealth of Massachusetts applicable to contracts made, accepted and performed wholly within said Commonwealth, without regard to application of principles of conflict of laws. Any claim, suit or action arising under or relating to this Agreement may be brought only in courts located within said Commonwealth. The Parties hereby agree that such courts shall have exclusive personal and subject matter jurisdiction over any such claim, suit or action. In performing the Work under

this Agreement, Motivate shall comply with applicable federal, state, and local laws, ordinances, and regulations.

**15.2. Survival.** In addition to any payment obligation hereunder, all provisions of this Agreement that by their terms survive the expiration or any termination of this Agreement, together with all other provisions of this Agreement that may be reasonably construed as surviving the expiration or any termination of this Agreement, shall survive the expiration or any termination of this Agreement.

**15.3. Notices.** Except as otherwise provided herein, all notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to:

If to Motivate: Motivate International Inc.  
18 Dorrance Street  
Boston, MA 02129  
Attn: General Manager

With a Copy to: Motivate International Inc.  
220 36<sup>th</sup> Street #2  
Brooklyn, NY 11232  
Attn: General Counsel

If to the City: City of Boston  
Transportation Department  
1 City Hall Plaza, Room 721  
Boston, MA 02201  
Attn: Commissioner

With a Copy to: Eugene L. O'Flaherty  
Corporation Counsel  
City of Boston  
1 City Hall Plaza, Room 615  
Boston, MA 02201

or to such other place and with such other copies as any Party may designate as to itself by written notice to the others.

**15.4. Entire Agreement; Amendments and Waivers.** This Agreement, together with the exhibits hereto and the Contract Documents, constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, subject to the order of priority set forth in Section 7.1. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. Any information set forth herein or in any exhibit hereto shall be considered set forth on each other exhibit for purposes of this Agreement. No waiver of the provisions of this Agreement, or any breach thereof, shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, or shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

**15.5. Counterparts; Severability.** This Agreement may be executed in one or more counterparts, each

of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument and the remaining provisions shall remain in full force and effect. To the extent permitted by applicable law, any such provision will be restricted in applicability or reformed to the minimum extent required for such provision to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

**15.6. Construction; Incorporation.** The headings of the articles, sections, and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof. All sections and article references are to this Agreement, unless otherwise expressly provided. As used in this Agreement, (a) "hercof", "hereunder", "herein" and words of like import shall be deemed to refer to this Agreement in its entirety and not just a particular section of this Agreement, and (b) unless the context otherwise requires, words in the singular number or in the plural number shall each include the singular number or the plural number, words of the masculine gender shall include the feminine and neuter, and, when the sense so indicates, words of the neuter gender shall refer to any gender. The Parties acknowledge and agree that: (i) this Agreement is the result of negotiations between the Parties and shall not be deemed or construed as having been drafted by any one Party, (ii) each Party and its counsel have reviewed and negotiated the terms and provisions of this Agreement (including, without limitation, any exhibits attached hereto) and have contributed to its revision, (iii) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and (iv) the terms and provisions of this Agreement shall be construed fairly as to all Parties and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

**15.7. No Third Party Beneficiary Status.** The Parties do not intend this Agreement to confer any benefit or rights on any third party not a signatory hereto.

**15.8. Relationship of the Parties.** Motivate is an independent contractor and neither Motivate nor its employees shall, under any circumstances, be considered employees, servants, or agents of the City, nor shall the City or its agents or employees be considered employees, servants, or agents of Motivate. At no time during the performance of the Work or otherwise, shall Motivate, its employees, or agents, represent to any person or entity that Motivate and its employees are acting on behalf of, or as agents of, the City or any of its employees. The City will not withhold payments to Motivate for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Motivate. The City will not provide to Motivate any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City for its employees. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between the Parties.

**15.9. Cooperation.** The Parties agree to execute such further instruments and to take such further action as may reasonably be necessary or helpful to carry out the intent of this Agreement and Motivate's License. In furtherance of the City's cooperation obligations and Motivate's License rights the City agrees that it will not license, authorize or issue a permit to, another entity to operate a Bike Share System. The City further covenants to enforce to the fullest extent reasonably practicable all applicable laws so as to protect Motivate's exclusive License rights as described in Section 3.1, provided that nothing in this paragraph shall be construed as an obligation on the part of the City to enact any law.

**15.10. Failure or Delay in Performance; Force Majeure.** Neither Party shall be held responsible for

failure to perform its duties and responsibilities hereunder if such failure is due to a "**Force Majeure Event**," which means a strike, fire, riot, rebellion, or other force or event beyond the control of such Party, that make performance impossible or illegal, unless otherwise specified in this Agreement; provided, however, that such Party (in order to not be held responsible for failure to perform) notifies the other Party of such event within forty-eight (48) hours of its commencement, or in the case of an interruption in availability of the System as a whole to the public, as set forth in Exhibit B (Scope of Work), Article II, Section 32.

**15.11. Ethics in Public Contracting.** This Agreement incorporates all local, state, and federal law, regulations and rules related to ethics, conflicts of interest, or bribery. Motivate certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

**15.12. Remedies.** The remedies available to the Parties in various sections of this Agreement shall be deemed to be in addition to, and not in limitation of, any other remedies either Party has or may have under applicable law or in equity arising out of or relating to this Agreement.

**15.13. Assignment.** Motivate may assign this Agreement to an affiliate of Motivate with the consent of the City, which consent shall not be unreasonably denied. Motivate shall not otherwise assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Agreement, without the prior written consent of the City.

*[Signatures on following page]*

IN WITNESS WHEREOF, Motivate and the City have executed this Agreement as of the Effective Date.

MOTIVATE:

MOTIVATE INTERNATIONAL INC.

By: \_\_\_\_\_  
Name: Jay Walder  
Title: President and CEO

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

CITY:

CITY OF BOSTON

By: \_\_\_\_\_  
Name:  
Title:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name:  
Title:

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

## **EXHIBIT A: DEFINITIONS**

The following words and phrases, when used in this Agreement, have the meanings described below.

**“8D”** means 8D Technologies ULC.

**“8D Equipment”** means Capital Equipment purchased from 8D.

**“Additional Services”** means services outside the Scope of Work.

**“Agreement” or “Contract”** means this Bike Share Agreement together with all exhibits attached hereto and hereby incorporated by reference.

**“Backend Software and Computer Hardware” or “Backend”** means the electronic interface enabling, among other things, Stations, Bicycles, Subscriber customer service, cellular service, Subscriber Keys, Motivate’s System website, and call center to function, and customer payments to be made.

**“Base Plate,”** also referred to as a technical platform or slab, means a base component which rests on the ground and supports the Docks, Kiosk, and Map Frame.

**“Bicycle”** means a bicycle that is part of the Boston System and which meets the specifications for bicycles set forth in Exhibit B (Scope of Work).

**“Bike Share System”** means the System and any other program offering a fleet of ten (10) bicycles or more to users on a self-service basis which involves storage of bicycles on public property including, but not limited to, a roadway, park, plaza, shoulder, sidewalk or parking space.

**“Boston Area Regional Bike Share Governance Council” or “Council”** means the assembly of Participating Municipalities to govern and coordinate the activities of the Regional Bike Share System and make decisions regarding its overall operation.

**“Boston Revenue Share Account”** has the meaning set forth in Section 2.9.3.

**“Boston System”** means the portion of the System located within the City of Boston.

**“Capital Equipment”** means (a) the City’s share, as determined by the Regional MOA, of the Guaranteed Capital Equipment; (b) the Bicycles, Stations, Kiosks, Docks and spare parts purchased on behalf of the City in accordance with Exhibit B (Scope of Work), Article IV; (c) any Bicycle spare parts that have been incorporated into the Bicycles and (d) Bicycles, Stations, Kiosks, Docks, and any and all similar physical components already part of the Boston System prior to the Effective Date.

**“City Documents”** means the Certificate(s) of Insurance attached hereto as Exhibit F (Certificates of Insurance); City of Boston Standard Contract General Conditions (Form CM-10 and CM-11) attached hereto as Exhibit H (City of Boston Standard Contract Terms); and the Boston Jobs and Living Wage Ordinance Forms (Forms LW-2 and LW-8), Contractor Certification (CM-09), Certificate of Authority (CM-06), CORI compliance forms (Forms 15-A and 15-B), and Wage Theft Form (CM 16), attached hereto as Exhibit I (Contractor Certifications).

**“City Marks”** means individually or collectively the City name and together with all trademarks, service marks, copyrights, logos, taglines, slogans, graphics, designs, color schemes, trade dress, trade name and other marks associated with the City and includes those City Marks shown on Exhibit J (City Marks)

attached hereto, as the same may be amended from time to time.

**“Confidential Information”** has the meaning set forth in Section 9.2.

**“Contract Documents”** means all City Documents, the RFP, the Motivate Proposal, the Regional MOA, and this Agreement.

**“Contract Fiscal Year”** means (a) the period commencing on the Effective Date and ending on June 30, 2017, which period shall constitute Contract Fiscal Year 1, (b) each subsequent twelve-month period during the Term, the first of which is Contract Fiscal Year 2 (beginning on July 1, 2017 and running through June 30, 2018), and (c) any period less than 365 days beginning on July 1 and running through and including the last day of the Term.

**“Crash”** means an event involving a Subscriber, Bicycle, and/or Station resulting in serious personal injury to the Subscriber or others, or property damage to the Bicycle, Station, or property of others.

**“Days”** means calendar days.

**“Default”** has the meaning set forth in Article 5.

**“Dock”** means a locking mechanism contained on a Station designed to receive a Bicycle for locked storage.

**“Effective Date”** has the meaning set forth in the preamble to this Agreement.

**“Equipment Acceptance”** means receipt from Supplier of 100% of any Capital Equipment specified on any given purchase order for the System and determination by Motivate that such Capital Equipment is in good working order, with all appropriate decals applied, and ready for installation;

**“Existing Sponsor Agreements”** has the meaning set forth in Section 2.3.

**“Force Majeure Event”** has the meaning set forth in Section 15.10.

**“Functional Dock”** means a Dock meeting the technical specifications for hereunder capable of being used by an ordinary Subscriber to lock and release a Bicycle under normal conditions.

**“Functional Station”** means a Station meeting the technical specifications for Stations hereunder capable of being used by an ordinary Subscriber under normal conditions, and at which at least 85% of Docks are Functional Docks and the Kiosk is in good working order.

**“Group Member”** means corporations or other entities that have agreed to provide discounted subscription fees for its individual employees, residents, students, and/or other related affinity group through either cash or in-kind payments by employer. Group Memberships are not Sponsorships.

**“Group Subscriber”** means the individual employees, residents, students, and/or other related affinity group of a Group Member who has completed the Subscriber Agreement to use the System.

**“Guaranteed Capital Equipment”** means those Bicycles, Stations, Kiosks, Docks, parts thereof, and any and all physical components that are purchased for the City by Motivate in accordance with Exhibit B (Scope of Work), Article IV, Section 2.

**“Initial Term”** has the meaning set forth in Article 5.

**“Intellectual Property”** means (a) trade dress, trademarks, trade names, service marks, copyrights, logos, taglines, patents, slogans, color schemes, designs or other valuable marks, whether common law or registered, state or federal or other jurisdiction, (b) patents, patent rights or applications, trade secrets, all forms of protection applicable to inventions, conceptions, methods, procedures, processes, designs, works of authorship, derivative works, algorithms, and utility models or (c) other forms of intellectual or industrial property under the laws of any jurisdiction.

**“Kiosk,”** also referred to as a terminal, means a structure that provides Bicycle rental instructions, contains payment equipment (e.g., a credit card reader), and includes all other physical means necessary for the rental of Bicycles.

**“KPIs”** has the meaning set forth in Article 13.

**“License”** has the meaning set forth in Section 3.1.

**“Liquidated Damages”** has the meaning set forth in Article 13.

**“Map Frame”** means a two-sided metal informational display unit, including a translucent covering and lock.

**“Marks”** means the City Marks, Motivate Marks, Sponsor Marks and/or System Marks, as the context may require.

**“Motivate Equipment”** has the meaning set forth in Article 3.

**“New Station Installation”** means the conveyance to, placement at, and checking of a Station and all required components at a Rental Site that has not previously been placed at a Rental Site and shall include the printing and placement of all informational decals and maps.

**“Participating Municipalities” or “PMs”** means the municipalities participating in the System in accordance with the Regional MOA.

**“Party”** means each respective party hereto and “Parties” shall mean each Party together.

**“Project Officer”** means the City staff/employee or the person or persons designated by the City, as set forth in Article 8.

**“Prompt or Promptly”** means as soon as practicable but in no event longer than three (3) business days.

**“Public Funds”** has the meaning set forth in Article 2.

**“Purchase Order”** means a purchase order issued by Motivate for the Capital Equipment listed on Exhibit C (Pricing Sheet).

**“PSAs”** has the meaning set forth in Exhibit B (Scope of Work), Article I, Section 4.

**“Racist or Hate Graffiti”** means drawings or inscriptions against an individual or group of individuals because of their actual or perceived race, color, religion, ancestry, national origin, sexual orientation, gender, gender identity, or disability.

**“Reconfiguration”** means removing or adding Station parts within a Rental Site or otherwise altering the Station’s layout.



**“Regional MOA”** means that certain Memorandum of Agreement to be entered into by and between the City of Boston, the City of Cambridge, the City of Somerville, the Town of Brookline, and Motivate, as in effect on its effective date, and as may be amended, renewed, continued, superseded, and/or replaced by the parties thereto, from time to time.

**“Relocation”** means either removing a Station, or parts thereof, from a Rental Site, or re-installing a Station, or parts thereof, in another Rental Site, each such removal or re-installation a separate Relocation; provided that a same-day removal and re-installation that does not require interim storage of such Station is a single Relocation.

**“Renewal Term”** has the meaning set forth in Article 5.

**“Rental Site”** means a designated area on publicly or privately owned real property, which area contains one or more of both Bicycles and Docks, and may also contain a Kiosk, Base Plates, Map Frame, Station Protective Devices and a Valet Station.

**“Replacement Operator”** means a City-approved successor operator of the System, which may be the City itself.

**“Revenue Share”** has the meaning set forth in Section 2.9.1.

**“Secondary Sponsorship”** means recognition of a Sponsor, other than (i) the Title Sponsor and (ii) any Station Sponsor secured by the City, as set forth in the applicable Sponsorship Agreement. Funds awarded from or awarded by government organizations to the System are not Secondary Sponsorships.

**“Secondary Sponsorship Funds”** means all revenues to the extent actually collected by Motivate as determined on a GAAP basis as a result of Secondary Sponsorships.

**“Site Plan”** means an illustration that shows the proposed location of a Rental Site.

**“Sponsor”** means a third party who pays a fee to Motivate or the City in exchange for recognition on one or more digital or physical components of the System.

**“Sponsor Marks”** means individually or collectively a Sponsor’s names, trademarks, service marks, copyrights, logos, taglines, slogans, graphics, designs, color schemes, trade dress, trade name and other marks.

**“Sponsorship Administration Fee”** means a brokerage or other administrative fee paid to Motivate or a third-party broker out of the gross proceeds of a Sponsorship.

**“Sponsorship Agreements”** mean all sponsorship agreements entered by and between Motivate and any Sponsor.

**“Sponsorship Policy”** has the meaning set forth in Section 2.5.

**“Station”** means the Capital Equipment at a Rental Site.

**“Station Protective Devices”** means all pavement markings, paint, islands, delineators, wheel stops, and protective bollards, at or adjacent to Station locations to demarcate or protect Subscribers and the Station from intrusion into the Rental Site.

**“Station Sponsorship”** has the meaning set forth in Exhibit B (Scope of Work), Article I, Section 2.4.

**“Subscriber”** means a party that agrees to the Subscriber Agreement to use the System.

**“Subscriber Agreement”** means an agreement as described in Exhibit B (Scope of Work) that is agreed to online or in writing by all persons authorized to use the System.

**“Subscriber Key”** means a fare card for rental of Bicycles, as further described in Exhibit B (Scope of Work). The Subscriber Key may be available in multiple formats as technology permits, and may be modified from time to time.

**“Subscriber Revenues”** means all revenues to the extent actually collected by Motivate as determined on a GAAP basis from Subscribers for use of the System, net of all: sales taxes or other taxes imposed by law that Motivate is obligated to collect; merchant services fees including interchange, processing, and gateway fees; bank fees; and chargebacks. Subscriber Revenues may include fees for different types of subscriptions (e.g., annual, monthly, etc.), usage fees for rides extending beyond the initial free ride time, and overdue Bicycle fees.

**“Supplier”** means any vendor(s) contracted by Motivate to supply the Capital Equipment and Back End.

**“Supplier Defect”** means any defect of malfunction in the Capital Equipment or any component thereof that prevents or materially limits or interferes with the operation of the System as contemplated by the Parties hereunder and that is not discoverable upon reasonable inspection, including Equipment Acceptance, or which develops over time.

**“Supplier Delay”** has the meaning set forth in Section 13.1.

**“Supply Agreement”** means any agreement or set of binding Purchase Order terms between Motivate and a Supplier.

**“System”** means the municipality-owned, metro-Boston bike share system, inclusive of Capital Equipment, Program Marks, System website, and Backend.

**“System Data”** has the meaning set forth in Section 9.1.

**“System Marks”** means the System name and logos together with all trademarks, service marks, copyrights, logos, taglines, slogans, graphics, designs, color schemes, trade dress, and other marks associated with the System. For the avoidance of doubt, System Marks may be a combination of the Intellectual Property of the City, other Participating Municipalities, Motivate, and/or Sponsors, as their interests may appear.

**“System Revenues”** means the Subscriber Revenues, Secondary Sponsorship Funds, and Title Sponsorship Funds. System Revenues do not include Public Funds.

**“Term”** has the meaning set forth in Article 5.

**“Termination Date”** shall mean the date upon which any termination, whether for convenience or cause, shall become effective.

**“Title Sponsor”** means the Sponsor to whom the naming rights to the System are granted and includes any replacement Title Sponsor of the System.

**“Title Sponsorship”** means the Sponsorship granted to the Title Sponsor and includes any replacement Title Sponsorship of the System.

**“Title Sponsorship Agreement”** means the agreement between Motivate and the Title Sponsor governing the Title Sponsorship.

**“Title Sponsorship Funds”** means all revenues to the extent actually collected by Motivate as determined on a GAAP basis as a result of the Title Sponsorship, net of any Sponsorship Administrative Fee.

**“Usage Data”** means the complete System information on trip origin and destination and Subscriber information including non-personally identifiable demographic data.

**“Valet Station”** means either a temporary Station or temporary location staffed by Motivate where the public can check out and return Bicycles.

**“Work”** has the meaning set forth in Article 1.

**“Work Product”** has the meaning set forth in Article 4.

## EXHIBIT B: SCOPE OF WORK

### I. FUNDRAISING

#### 1. Title Sponsor.

1.1. Solicit Title Sponsor. The City grants Motivate the exclusive right throughout the Term, subject to the terms of this Agreement and the Regional MOA and to the extent consistent with local law and applicable advertising restrictions under existing contracts to which the City is bound, to sell and place Title Sponsorship acknowledgements on Bicycles, Stations, vehicles, uniforms, website, mobile applications, Subscriber mailings and communications, marketing materials, marketing merchandise, and such other components of the System as are mutually agreed upon by the Parties, and to grant the Title Sponsor System-wide category exclusivity. The Title Sponsor has the right to name the System and/or jointly create System Marks that include Sponsors Marks, subject to the prior approval of the Council as described in the Regional MOA. The City may request a copy of the Title Sponsorship Agreement and evidence of wire confirmation for any payments made to Motivate under the Title Sponsorship Agreement.

1.2. Manage Relationship. Motivate shall be solely responsible for managing the relationship with the Title Sponsor.

1.3. Title Sponsor Branding Template. Motivate shall propose to the Council for comment and approval a plan for branding the System that describes, in detail, the placement of all Title Sponsorship recognition and branding across digital and physical assets of the System. Upon the Council's approval, as described in the MOA, Motivate need only seek additional approval of substantial changes from the Council-approved template.

#### 2. Secondary Sponsors.

2.1. Solicit Secondary Sponsors. Subject to (i) the City's right to solicit and sell individual Station Sponsorships, (ii) the specifications, terms, reservations, and restrictions of this Agreement and the Regional MOA, (iii) requirements of local law and applicable advertising restrictions, (iv) the terms of the Outfront Agreement as in effect as of the Effective Date, and (v) the City's rejection rights set forth in Section 2.6 below, the City grants Motivate the exclusive right throughout the Term to sell and place Secondary Sponsorship acknowledgements on some or all of the following System components: Bicycles, Stations, vehicles, uniforms, website, mobile applications, Subscriber mailings and communications, and other components as mutually agreed upon by the Parties. The City may request copies of any Secondary Sponsorship and evidence of wire confirmation for any payments made to Motivate under a Sponsorship Agreement. Motivate shall notify the City of any Secondary Sponsorship at least five (5) Days before commencement of such Secondary Sponsorship.

2.2. Manage Relationships. Motivate shall be solely responsible for managing the relationships with the Secondary Sponsors according to the Secondary Sponsorship Agreements.

2.3. Types of Secondary Sponsors. Motivate shall have the flexibility to create Secondary Sponsor packages at Motivate's reasonable discretion. Motivate shall create Secondary Sponsor Branding Templates for each type of Secondary Sponsorship.

2.4. Station Sponsor. Motivate shall create a "Station Sponsorship" package that provides recognition to Sponsors on one or more Map Frame headers and may also provide non-physical benefits

or recognition to such Sponsors. The City hereby grants Motivate the semi-exclusive right to secure Station Sponsorships. Any Station Sponsorship secured by Motivate shall be deemed to be a Secondary Sponsorship. The City may also secure Station Sponsorships, provided that no such Station Sponsorship conflicts with the rights granted under any Sponsorship Agreement. The proceeds of any Station Sponsorship secured by the City shall be Public Funds. The City shall grant no third party the right to secure Station Sponsorships. By way of example, Station Sponsors may include, but are not limited to, government and public agencies; philanthropic organizations; civic and cultural institutions; institutions of higher learning; non-profit organizations; corporations; housing development firms; and hospitals and health centers. Motivate shall propose Branding Templates for such Station Sponsorships.

2.5. Secondary Sponsor Branding Templates. Motivate shall propose to the Council for comment and approval any templates for Secondary Sponsorships. Any such templates will describe, in detail, the placement of any Secondary Sponsorship recognition across various digital and physical assets of the System. Upon the Council's approval, as described in the Regional MOA, Motivate need only seek additional approval of substantial changes from Council-approved templates. Notwithstanding the foregoing, any Secondary Sponsorship confined to the Boston System with a term of longer than one (1) year is subject to City approval, which shall not be unreasonably withheld or delayed. Motivate will not attempt to circumvent the City's approval right contained in the preceding sentence by structuring a multi-year Secondary Sponsorship as multiple Secondary Sponsorships with terms of less than one (1) year each.

2.6. Right of Rejection. The City may, in its sole discretion, reject any Secondary Sponsorship that would otherwise comply with the requirements of this Section 2 by (a) notifying Motivate of such rejection Promptly after receiving notice from Motivate of such Secondary Sponsorship and (b) providing a credit to Motivate against Motivate's obligation to pay the Revenue Share in an amount equal to 90% of the value of consideration being offered by a Secondary Sponsor for the portion of such Secondary Sponsorship attributable to the Boston System, which portion shall be calculated in the case of a System-wide Secondary Sponsorship as the reduction in value, of such Sponsor's bona fide offer, resulting from the rejection; provided, however, that (x) the credit described in this Section 2.6 will be capped at \$25,000 per Secondary Sponsorship and (y) in no event will the credit described in this Section 2.6 obligate the City to make any payments to Motivate.

3. **Municipally Raised Funding.** The City reserves the right to raise and use Public Funds to purchase Capital Equipment for expansion of the Boston System subject to the Rental Site density requirement of Article II, Section 12.1 of this exhibit; Capital Equipment to replace all or part of existing Capital Equipment; and Additional Services. Among other sources, such funds may be secured from government and public agency sources; grants provided by philanthropic organizations; donations from institutions, companies, or other entities; advertising contracts; Station Sponsorships; and/or mitigation from development activities.

4. **Map Frames.** The Outfront Agreement governs Outfront's right to sell advertising in Map Frames throughout the Boston System through December 30, 2020. The City shall collect all revenue due to the City related thereto. Motivate shall not be responsible for producing advertising panels to be placed in the Map Frame. The Parties acknowledge and agree that installation and removal of the advertisements placed in the Map Frame shall be performed and controlled by that Tri-Party Installation Agreement between and among the Parties hereto and Outfront originally dated effective June 2011 and renewed and extended by the Parties hereto and Outfront. For the avoidance of doubt, funds from Outfront received by the City are considered Public Funds and are not subject to revenue sharing.

Upon the earlier of December 30, 2020 or the termination or expiration of the Outfront Agreement, the City may request that Motivate sell advertising in the Map Frames, collect revenues from advertisers, and pay the City a share of revenues, subject to mutual agreement by the Parties on the terms of such services.

Such advertising may be sold to Sponsors of the Boston System. The City reserves the right to enter into an advertising agreement for sale of advertising in the Map Frames with an entity other than Motivate. Revenues paid to the City under such an agreement or as agreed between the Parties are considered Public Funds.

The City reserves the right to place public information and/or public service messages ("PSAs") on unsold Map Frames. Through December 30, 2020, the City may request that Motivate install and remove PSAs in the Map Frame no more than once per calendar quarter. The City may request that Motivate produce PSAs or perform installations or removals more frequently than once per quarter as Additional Services at the prices set forth in Table 4 of Exhibit C (Pricing Sheet). The City may also request that Motivate store PSAs, provided, however, that Motivate will have no obligation to maintain PSAs in good or usable condition.

## **II. SYSTEM OPERATIONS**

1. **System Oversight.** Motivate shall oversee and perform the daily functions of the Boston System and develop and maintain an organizational structure to perform the Work, including, without limitation, the following:

- 1.1. Securing and maintaining necessary local real estate and equipment;
- 1.2. Hiring and managing local employees and contractors;
- 1.3. Training staff;
- 1.4. Day-to-day coordination with the City on mission- and system-critical issues;
- 1.5. Overseeing the Backend, including by way of example, making all Backend changes and improvements;
- 1.6. Overseeing payment gateway and finance system, including bank account, revenue collection, reporting, and revenue distribution;
- 1.7. Implementing ongoing technical improvements, particularly related to software;
- 1.8. Informing the City when, in Motivate's judgment, the City should purchase any new Capital Equipment; and
- 1.9. Providing to the City Project Officer and designees a universal Customer Key for system access, at no cost to the City, not subject to usage fees, and without requiring a credit card.

2. **Continuous Operations and Management.** Subject to (i) System interruptions as described in Section 32 of this Article II and (ii) removal of Stations or closure of the Boston System at the City's instruction, Motivate shall operate the Boston System and the toll-free telephone service center such that it will be available for use twenty-four (24) hours per day, three hundred sixty-five (365) days per year throughout the Term. Motivate shall operate and manage the on-site aspects of the System including repairs, Bicycle service and maintenance, and relocating of Bicycles from one Station to another, three hundred sixty-five (365) days per year from 6:00 AM to 10:00 PM unless otherwise provided herein or mutually agreed upon by the Parties.

3. **Inspection and Maintenance.**

- 3.1. Maintenance Standards. Motivate shall, at all times, follow and strictly comply with the

manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of all Capital Equipment.

3.2. Maintenance Records. Motivate shall install and maintain the Bicycles and Rental Sites consistent with all manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of such Capital Equipment. Motivate shall maintain records of all Work performed on all Capital Equipment, including Bicycles, Docks, and Stations. These records include routine maintenance, contractually required maintenance, and incidental repairs, including the length of time to perform maintenance and/or repairs. Records shall include serial numbers or other unique identifying number for each piece of Capital Equipment so that ownership and date of purchase can be identified. These records shall be delivered to the City annually and upon termination or expiration of this Agreement.

3.3. Monthly Bicycle Maintenance. At least once monthly, Motivate shall clean and inspect, and repair or replace as needed, the following components for every Bicycle placed in service, unless the manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of all Capital Equipment require, recommend, or call for, a different frequency, in which case Motivate shall comply with such requirement or recommendation:

- 3.3.1. drive chain for proper functioning and lubrication;
- 3.3.2. handlebar for proper centering and tightness;
- 3.3.3. wheels (front and rear) for trueness, broken or bent spokes, and hub or axle tightness;
- 3.3.4. tires for proper inflation, defects, and wear;
- 3.3.5. brakes for excessive wear and ensure proper working order;
- 3.3.6. saddle for proper tightness, excessive wear, and deterioration;
- 3.3.7. shifters for proper functioning;
- 3.3.8. front and rear lights for proper functioning;
- 3.3.9. fenders and chain guard for proper functioning, defects, and wear;
- 3.3.10. the front rack for tightness and damage and bungee cord for wear;
- 3.3.11. the grips for wear;
- 3.3.12. kickstand for proper functioning;
- 3.3.13. pedals and cranks for proper tightness;
- 3.3.14. reflectors on wheels, saddle, and rack;
- 3.3.15. all other Bicycle components including, without limitation, the bell and sponsor attribution for proper attachment and functioning; and

3.4. Annual Bicycle Maintenance. Motivate shall perform, for every Bicycle at any time placed in service the following tasks at least annually and on an as-needed basis, unless the

manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of Bicycles require, recommend, or for a different frequency, in which case Motivate shall comply with such requirement or recommendation:

- 3.4.1. inspect, and if necessary remove, and clean entire drive train;
- 3.4.2. inspect and adjust tension, and true wheels;
- 3.4.3. inspect tires for excessive wear, defects, and replace inner tubes; and
- 3.4.4. inspect hubs for proper functioning.

3.5. Bicycle Removal from System. Motivate shall, upon its discovery of or receipt of a report of a damaged or malfunctioning Bicycle, remove such Bicycle from service. Motivate shall notify the City Project Officer when a Bicycle beyond repair is permanently removed from the System. In addition, the Project Officer may direct Motivate to remove a Bicycle from service for any reason.

3.6. Dock Repair. Motivate shall repair all damaged or malfunctioning Docks to make them Functional Docks within seventy-two (72) hours of Motivate's receipt of notice thereof from the City, call center, or Motivate staff. Motivate shall Promptly notify Project Officer if repair is expected to take longer. Should any Docks or any component thereof be beyond repair, Motivate will Promptly inform the Project Officer and make all warranty and insurance claims, as applicable, and diligently pursue replacement thereof.

3.7. Station Repair. Motivate shall endeavor to repair all damaged or malfunctioning Stations to make them Functional Stations within twenty-four (24) hours of discovery or receipt by Motivate of a report thereof. Motivate will Promptly notify Project Officer if repair is expected to take longer. Should any Stations or any component thereof be beyond repair, Motivate will Promptly inform the Project Officer and make all warranty and insurance claims, as applicable, and diligently pursue replacement thereof.

3.8. Regular Station Maintenance and Cleaning. Motivate shall use its best efforts to clean all visible dirt, ink, paint, litter, or any other substance on the Capital Equipment each month. Regular Station Maintenance and Cleaning shall include, but is not limited to, the following tasks:

- 3.8.1. Check Kiosk functionality, including transactions and communications;
- 3.8.2. Check all communications systems including, but not limited to, the Kiosk-Dock and the Kiosk-Backend;
- 3.8.3. Check each of the Docks' functionality including, but not limited to, locking mechanism, cassette, and keypad;
- 3.8.4. Re-supply printer rolls and Subscriber Key dispensers, as needed;
- 3.8.5. Clean Station and all interfaces (screens, keypads, Map Frame);
- 3.8.6. Check Base Plates for isolated incidents of rust or corrosion, attempt to treat with a corrosion removal solution, and, as necessary, repaint or rescal; and
- 3.8.7. Check physical Station components.

3.9. Annual Station Maintenance. Motivate shall perform, for every Station at any time placed



in service the following tasks at least (i.e., at a minimum) annually and on an as-needed basis, unless the manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of Stations require, recommend, or for a different frequency, in which case Motivate shall comply with such requirement or recommendation:

3.9.1. Power wash all Docks, Base Plates, Map Frames, and Kiosks to adequately remove dirt, salt, debris, and all other corrosive or damaging materials.

3.9.2. Inspect Kiosk and Dock functionality, including screens, keypads, motors, cassettes, and make repairs as needed.

3.10. Graffiti. Motivate shall remove all graffiti, including Racist or Hate Graffiti, from all Capital Equipment no later than twenty-four (24) hours after discovery of graffiti, or receipt by Motivate of a report of graffiti (such removal period to be no later than four (4) hours in the case of Racist or Hate Graffiti, or if such report is made after 10 p.m., then by 10 a.m. the following morning). In the event that graffiti, ink, paint, and/or other soiling cannot be removed with commercially available cleaners without damaging the Capital Equipment, such graffiti, ink, paint, and/or other soiling may be painted over with a color similar to the existing color of such Capital Equipment.

3.11. Capital Equipment Asset Management Reports. Before the first anniversary of the Effective date, Motivate shall inventory and report to the City on all major components of Capital Equipment and, for each major component, provide a rating on the scale of 5 (excellent), 4 (good), 3 (adequate), 2 (marginal) through 1 (poor) based on the component's type, age, rehabilitation history, and other factors. Annually thereafter, Motivate shall assess a sample of major components of the Capital Equipment and, based on extrapolation from such assessment, provide a report on the state of the Boston System's Capital Equipment and a forecast of the Boston System's replacement and rehabilitation needs for the coming year, which forecasts shall be used for informational purposes only and will not be binding on, or create any additional obligations on the part of, Motivate.

#### **4. Replacement and Spare Parts.**

4.1. Replacement Under Warranty. Motivate will diligently pursue any claims it may have under manufacturers' warranties for repair or replacement of the Capital Equipment.

4.2. Spare Parts. Subject to the Parties' obligations to replace Lost Bicycles pursuant to Article II, Section 23.1 of this exhibit, Motivate shall supply all parts, components, supplies, tools, and related components necessary for Motivate to accomplish the Work that are *not* included in Tables 1-4 of Exhibit C (Pricing Sheet). For the avoidance of doubt, this Section 4.2 shall not be construed to affect Motivate's obligations to provide the Guaranteed Capital Equipment.

4.3. Replacement to Achieve State of Good Repair. Subject to the Parties' obligations to replace Lost Bicycles pursuant to Section 23.1, and further subject to the exclusions in this Section 4.3, the City shall be responsible for its share, as determined by the Regional MOA, of the cost of repairing or replacing all components of Capital Equipment set forth in Table 2 of Exhibit C (Pricing Sheet). Notwithstanding the foregoing, the following shall be excluded from the City's repair and replacement obligations contained in the preceding sentence: (i) repairs or replacements necessitated by a Supplier Defect, a Specific Damage Incident, or Motivate's negligent act or omission; (ii) repairs or replacements covered by a manufacturer's warranty; and (iii) the initial purchase of Guaranteed Capital Equipment, but not ongoing repair or replacement thereof.

5. **Clean Rental Sites**. Motivate shall clean each Rental Site area from debris, dirt, leaves, trash, or other objects (i) consistent with the City's street sweeping schedule if the Rental Site is on-street, (ii)

twice per month if the Rental Site is off-street (e.g. located on a sidewalk or pedestrian plaza), and (iii) as reasonably requested by the City. Motivate shall use environmentally friendly cleaning solutions and chemicals available for these purposes.

**6. Operations in Winter Weather.**

6.1. Bicycle Removal. In coordination with the City, Motivate may remove Bicycles in anticipation of a Major Snow Event. Motivate will remove Bicycles at the reasonable request of the City, but in no case will Motivate be obligated to remove more than 25% of Bicycles. A "Major Snow Event" means any event that is the subject of a winter storm warning issued by the National Weather Service.

6.2. Snow and Ice Removal. Motivate will clear each Rental Site of snow and ice as follows:

6.2.1. Snow Removal. Following any snow event, Motivate shall: (i) within twelve (12) hours after snow ceases to fall, clear a path at least 48 inches wide parallel to any Rental Site located on a sidewalk or pedestrian plaza for which no adjacent property owner has snow removal obligations under City ordinance, to provide an accessible path of travel; and (ii) within forty-eight (48) hours after snow ceases to fall (or if service to the Boston System was interrupted, then before the reactivation deadlines set forth in Section 6.3 below) clear snow from the Rental Sites and Capital Equipment located thereon, and clear a path of pedestrian travel at least 48 inches wide from each Rental Site to the street or a cleared sidewalk. The requirements of this section do not apply to sides of Rental Sites that abut buildings, curb edges, or other conditions that make that side of a Rental Site inaccessible regardless of snow conditions). The provisions of this section shall apply to snow that falls from buildings as well as to that which falls from the clouds.

6.2.2. Ice Removal. Motivate shall within six (6) hours of detection or notification of ice around Rental Sites, or if such detection or notification occurs between 10:00 p.m. and 6:00 a.m., by 12:00 p.m. thereafter, provide an accessible path of travel at least 48 inches wide around and to each Rental Site by removing the ice therefrom or by keeping the same covered with sand, snow melt, or some other suitable substance.

6.2.3. If Motivate is unable to meet its obligations set forth above due to heavy snow, mixed precipitation, hazardous driving conditions, or ice, Motivate will contact the City Project Officer and propose a specific timeline for snow and ice removal. Upon approval by the City Project Officer, such proposal will replace Motivate's snow removal obligations set forth above.

6.2.4. Motivate will use non-corrosive ice and snow melt for ice and snow control.

6.3. System Interruption and Reactivation. If Motivate has intentionally interrupted service to the Boston System in anticipation of a snow event, Motivate shall reactivate at least half of the Active Stations in the Boston System within:

6.3.1. thirty-six (36) hours after snow ceases to fall if total accumulations from such snow event are less than six (6) inches;

6.3.2. forty-eight (48) hours after snow ceases to fall if total accumulations from such snow event are between six (6) and twelve (12) inches; and

6.3.3. seventy-two (72) hours after snow ceases to fall if total accumulations from such snow event exceed twelve (12) inches;

provided that Motivate shall reactivate all Active Stations in the Boston System within twenty-

four (24) hours of the deadlines set forth in Sections 6.3.1 through 6.3.3 above.

For each day during a period of service interruption due to a snow event for which the high temperature is below ten (10) degrees Fahrenheit, the time periods set forth above for reactivation of the Boston System may be extended by one (1) day. The time periods set forth above may also be extended by Motivate if conditions for bicycling are unsafe due to ice and snow conditions on the street, subject to approval of any such extension by the City, which approval may not be unreasonably withheld.

6.4. **Damage.** Should any damage occur to any Capital Equipment as the result of snow clearance operations, Motivate will endeavor to identify the responsible party and endeavor to require that party to pay for the cost of repairs.

6.5. **Additional Bicycle and Station Maintenance.** Any Bicycles in operation and Stations shall be cleaned of road salt and grime within two weeks of any accumulation of more than one inch of snow. For the avoidance of doubt, all other maintenance as described in Section 3 of this Article II is required for all Bicycles and Stations in use during the winter system.

7. **Distribution of Bicycles.**

7.1. **Rideable.** A Station is "**Rideable**" if that Station or any of its Neighbors (as defined below) is between 10% and 85% full as calculated by dividing the number of Bicycles at the Station by the number of Functional Docks at the Station.

7.2. **Station Neighbors.** A Station's "**Neighbor**" is (i) any Station within 400 meters of such Station; or (ii) the closest Station to such Station; provided that if there are no Stations within 600 meters of a given Station, such Station will be deemed to have no Neighbor.

7.3. **Station Rideability.** "**Station Rideability**" means the quotient, expressed as a percentage, of the number of minutes between the hours of 6:00 a.m. and 10:00 p.m. for which a Station is Rideable and the number of minutes between the hours of 6:00 a.m. and 10:00 p.m. during which such Station is open for use.

7.4. **Rideable Boston System.** Motivate shall distribute Bicycles such that the average Station Rideability for all Stations in the Boston System is at least 93% in each calendar month.

7.5. **Priority Stations.** The City may designate certain stations ("**Priority Stations**"), for which Motivate shall distribute Bicycles such that the average Station Rideability for Priority Stations is at least 97% in each calendar month. The City Project Officer shall designate any Priority Stations, in a number not greater than 5% of all Stations within the Boston System rounded up to the nearest whole number, within thirty (30) days of the Effective Date, which designation shall be effective as of sixty (60) days after the Effective Date. The City may revise its designation of Priority Stations annually by notifying Motivate in writing by February 1, which revision shall be effective as of April 1.

7.6. **Rideable Neighborhoods.** At the start of the Term and periodically throughout the Term, as requested by the City Project Officer, the City Project Officer and Motivate shall agree upon a map of Boston neighborhoods and all Rental Sites located within each neighborhood. Motivate shall then provide statistics regarding Rideable Stations within each neighborhood.

7.7. **Remedial Plans.** Quarterly, Motivate will identify the fifteen (15) Stations in the Boston System with the lowest Station Rideability over the previous quarter. At the City's request, the Parties will meet after Motivate has made such identification, during which meeting the Parties agree to work in good faith to mutually agree on a remedial action plan with the goal of improving Station Rideability at the identified Stations.

7.8. **Annual Review of Rideability Metric.** By February 1 of each year, Motivate shall provide to the City and the Council a report including: (i) Station-, neighborhood-, City-, and System-level Rideability statistics; (ii) suggested alternate methods, if any, and their accompanying benefits for measuring the availability of Functional Docks and Bicycles; and (iii) any other relevant information and analysis reasonably requested by the City in advance of such date. Motivate and the Council shall work in good faith to review and agree upon any revisions to Motivate's Rideability obligations for the next Contract Fiscal Year. If, by thirty (30) days before the commencement of the next Contract Fiscal Year, the Parties have not agreed upon any revisions, the Rideability obligations then in effect will continue for the next Contract Fiscal Year. For the avoidance of doubt, any revised Rideability obligations will continue to be subject to the Liquidated Damages described in Article 13 of this Agreement.

8. **Required Level of Functional Boston System.** Motivate shall ensure that at least 95% of all Active Stations within the Boston System are Functional Stations on average each calendar month. "Active Station" means any Station that has been installed in the Boston System and (i) has not been shut down or removed at the City's request, including for winter storage or temporary Relocation, and (ii) has not been damaged by any act or omission of the City. If at any time Motivate knows or expects that the required percentage will not be met, then Motivate shall promptly deliver to the City Project Officer its plans to meet the required percentage of Functional Stations.

9. **Seasonal Removal and Installation.**

9.1. **Annual Schedule.** The City and Motivate shall develop annually the schedules for seasonal installation and removal of Stations and Bicycles, including specific Stations to be installed or removed, approximate schedule for such installation or removal by Motivate, and storage facilities. The City Project Officer shall notify Motivate's General Manager regarding the number of Stations to be subject to seasonal removal by September 1. The City's Project Officer and Motivate's General Manager shall agree to the removal schedule at least fifteen (15) business days before removal begins and to the installation schedule at least fifteen (15) business days before installation begins. It is understood that such dates may be changed based on weather conditions and advance forecasts. Motivate will advise the Project Officer of its operating plans and their implementation via a regularly updated shared spreadsheet or document during seasonal removal and the seasonal installation.

9.2. **Seasonal Removal and Installation.** Subject to the schedule determined under Section 9.1 of this Article II, Motivate shall (i) remove Stations and related Bicycles; (ii) clean each Rental Site area from debris, dirt, leaves, trash, or other objects; and (iii) reinstall Stations and related Bicycles, in each case at the City's expense according to the fees set forth in Exhibit C (Pricing Sheet). The Parties may mutually agree to relocate Stations to avoid seasonal storage and Motivate may, in its discretion, waive any associated Relocation costs.

10. **Ongoing Reconfiguration, Relocation, and Reallocation of Stations.**

10.1. **Reconfiguration.** Subject to the fees set forth in Table 4 of Exhibit C (Pricing Sheet), the City may require that parts of a Station be Reconfigured by providing at least 72 hours' advance notice to Motivate.

10.2. **Relocation.** Subject to the annual allowance described in this Section 10 below and the

fees set forth in Table 4 of Exhibit C (Pricing Sheet), the City may require that a Station or parts thereof be Relocated by providing at least 72 hours' advance notice to Motivate.

10.3. Third-Party Relocation. The City may require Motivate to Reconfigure or Relocate a Station or parts thereof to accommodate unexpected construction or permitted occupancy of the Rental Site by third parties; provided, however, that Motivate will be required to perform such Reconfiguration or Relocation only upon receipt of payment for such Reconfiguration or Relocation and any associated Station siting fees from the City or relevant third party, as applicable. Motivate shall be responsible for invoicing and collecting fees for Reconfiguring or Relocating such Stations from these third parties and shall make every effort to do so.

10.4. Emergency Relocations. From time to time, Stations may need to be Relocated as a result of an emergency situation, such as a broken water main or emergency repair to a gas line. Motivate shall make every effort to act as quickly as possible upon notification of such an emergency.

10.5. Annual Allowance of Relocations. Motivate shall Reconfigure or Relocate, in accordance with this Section 10, up to 10% per calendar year of all Stations owned by the City at no additional fee. These Relocations may include seasonal removal and installation, in which case the City will be responsible only for the cost of seasonal storage at the price set forth in Table 4 of Exhibit C (Pricing Sheet), and emergency Relocation but will not include Third-Party Relocations.

10.6. Clean Rental Site. Motivate shall clean each Rental Site area from debris, dirt, leaves, trash, or other objects upon Relocation or Reconfiguration of Stations, except in the case of emergency Relocations.

## **11. Installation and Removal of Stations.**

11.1. Permit Fees. Motivate is not responsible for City permit fees under this Section 11. The City shall be responsible for City permit fees. Motivate shall be responsible for fees for any police detail required for installation, Relocation, Reconfiguration, reallocation or removal of stations.

11.2. Work Permits. Prior to performing Work on any proposed Rental Site, Motivate shall obtain from the property owner(s) of public and private property, and from all applicable government entities, all rights and permissions to install, maintain, repair, replace, remove, and use all Rental Sites, and provide services thereon. Such rights and permissions further shall provide access by the public at large to Rental Site(s) and Stations located thereon.

11.3. Installation. After the required work permits have been obtained for any Rental Site, Motivate shall install the Rental Site components required by the City. Motivate may not remove or relocate a Rental Site without the City's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

11.4. Rental Site Cleaning. Motivate shall clean each Rental Site area from debris, dirt, leaves, trash, or other objects upon removal of Stations.

## **12. Station Siting and Permitting.**

12.1. Rental Site Location. The City shall determine the location for each Rental Site. The draft "Boston Bike Share Long-Range Plan" (attached as Exhibit G (Boston Bike Share Long-Range Plan)) will provide general guidance to the location of new stations. Each new Rental Site must be within one half (1/2) of a mile of an existing Rental Site, provided that the Parties may mutually agree to waive this requirement. Motivate will not be required to install a Station at any Rental Site for which a Site Plan has

not been approved and signed by a qualified City employee.

12.2. Station Siting. The City may request that Motivate perform the following station siting and permitting services at the City's expense, according to the fees for station siting and permitting set forth in Exhibit C (Pricing Sheet):

12.2.1. Identifying 3 to 5 viable Rental Site options.

12.2.2. Developing a plan of proposed Rental Site options that includes a local aerial map, Rental Site photographs with diagrams indicating proposed Station dimensions, dimensions of adjacent sidewalks(s), distance from any utility or emergency service access points, distance to curbs and any street furniture, plantings or other fixed objects within 20 feet of the proposed station, distance from sidewalk ramps, driveways, or doorways. For on-street Stations, diagrams will also include distance to curbs and, when applicable, center line and crosswalk(s).

12.2.3. When required by the City, attending public meetings to present proposed Rental Site options and solicit public feedback.

12.2.4. Delivering to the City a permit packet for 2 to 3 Rental Site options, unless otherwise directed by the City to provide fewer options. The City will be responsible for gathering approval and signatures from City permitting officials.

12.2.5. Posting flyers on houses and businesses within 300 feet of preferred Rental Site option(s), if requested by the City.

12.2.6. Notifying utilities of preferred Rental Site option(s) if relevant.

12.2.7. Recording in writing all feedback received from abutters and utilities, and providing this feedback to the City to finalize Rental Site selection.

12.2.8. Creating and providing Site Plans for the City, which will include (i) distances and dimensions from at least two fixed objects or points; (ii) locations of all above and below ground structures, utilities, infrastructure, and appurtenances in the immediate vicinity; (iii) dimensions of the pedestrian clear zone on any adjacent sidewalk, and, if located within a parking lane, the dimensions of adjacent travel lane and/or distance to centerline if there is one; and (iv) the length of the Rental Site, and any adjacent parking signs. Site Plans will be available in digital formats, such as PDF and CAD drawing file formats, to facilitate site planning by the City and third parties.

12.3. Special Layouts. The City intends to use special layouts of Rental Sites, as described below, when feasible to increase Rental Site options and help achieve Station densities to improve performance and reliability of the Boston System for Subscribers. Fees for such special layouts shall be no more than the fees detailed in Exhibit C (Pricing Sheet). Special layouts include but are not limited to:

12.3.1. *Bridging design*. The City may request that Motivate complete technical designs for and install bridging to connect two or more Station segments across an obstruction such as a tree or light pole that otherwise would prevent Station placement, subject to Motivate's reasonable discretion that such designs and installation are feasible and safe.

12.3.2. *Solar panel extension*. The City may request that Motivate complete technical designs to enable locating a solar panel at some distance from a Kiosk and Station to enable improved power to the Station, subject to Motivate's reasonable discretion that such designs and installation are feasible and safe.

12.3.3. Hard-wired Stations. The City may request that Motivate complete technical designs to enable a Station be hard-wired to existing City power source, subject to Motivate's reasonable discretion that such designs and installation are feasible and safe; provided, however, that in addition to the special layout cost, the City shall pay the cost of any such hard-wiring.

12.4. License Agreements. For each final Rental Site location on private property or on state or federal property (including but not limited to property owned by DCR, MassDOT, MBTA, MassPort and any agency of the U.S. Government), Motivate shall apply for and obtain, in writing and in recordable form, all necessary documents granting all rights to install, maintain, repair, replace, remove and use all Rental Sites and Capital Equipment on such third-party property and to provide service thereon. Such rights further shall provide access by the public at large to the Rental Site and Capital Equipment thereon. Such documents and underlying rights not in the City's name shall be assignable by Motivate to the City or its designee at no cost. Before executing each document granting such rights, Motivate shall deliver to the City Project Officer a copy of the proposed document for approval by the appropriate City staff. Such document shall not contain any provisions that, if applicable to the City or its designee as an assignee, are legally impermissible or unacceptable to the City. Upon termination or expiration of this Agreement, Motivate shall, at the City's request, promptly execute all documents, acceptable to the City, necessary to assign to the City or its designee all right, title, interest, and/or permissions obtained by Motivate to place Rental Sites on third-party property, subject to the fee set forth in Table 4 of Exhibit C (Pricing Sheet) for making any such assignment.

### 13. **Informational Decals.**

13.1. Templates. Motivate shall maintain, produce, and replace, as needed, information stickers on Bicycles, Kiosks and Docks. Such informational decals, including content and placement, shall be proposed to the Council for approval, as described in the Regional MOA. With the exception of decals proposed and approved as part of Sponsor templates and those required by Existing Sponsor Agreements, Motivate shall not affix anything else to the Bicycles, Kiosks or Docks, except as mutually agreed by the Parties.

13.2. Other Decals. From time to time, Motivate may propose to the Council a change in the above templates or a proposal for alternate and/or additional informational decals. The Council may approve such decals according to processes described in the Regional MOA.

### 14. **Maps and Information Panels for Map Frames.**

14.1. System Maps. Motivate shall design, print, and install maps at every Rental Site within each Station's Map Frame. Maps will include other Rental Site locations, nearby bicycling routes, and information about the System. Maps shall be developed in consultation with the Council.

14.2. Annual Update. Motivate shall update these maps on an annual basis, except in cases where there have not been significant changes to the nearby environs or other information on the map. Three or more new or changed Rental Site locations, a change to the Station name or location, and a change to a Sponsor recognition on the map are each significant changes for the purposes of the preceding sentence.

14.3. Maintenance. Motivate shall be responsible for maintaining maps in readable form and good condition and replacing maps as needed due to wear, weather, or other causes. For the avoidance of doubt, the City is not responsible for the costs of maintaining and replacing maps.

### 15. **Subscriber Surveys.**

15.1. Annual Survey. Motivate shall develop, administer, and analyze one or more Subscriber survey(s). The survey(s) will be developed and issued in coordination with the Council and cover topics such as transportation choices, physical activity, customer service and satisfaction, and Subscriber demographics. Motivate shall ensure that substantially all annual and monthly Subscribers receive at least one survey in a given year. Motivate shall then create a user-friendly publishable report based on the survey analysis, which shall be made available on the System website, upon review from the Council.

15.2. Occasional Surveys. Motivate may, from time to time, issue surveys to a segment of Subscribers for feedback on various operations and customer service topics. A plan for such surveys should be included in the annual marketing plan presented to the Council for approval.

15.3. Third-Party Surveys. Motivate shall not make Subscriber contact information available to third parties for the purposes of marketing surveys.

**16. Data.**

16.1. Ownership. As stated in Section 9.1 of the Agreement, the PMs possess and retain all right, title, and interest in and to System Data, and Motivate's use, possession, and creation thereof is solely as an agent of the PMs. Unless it receives City's or a PM's prior written consent, Motivate will not access or use System Data other than as necessary to facilitate the Work. The Parties acknowledge that Motivate is or will be the owner of all data other than System Data that may exist or be created through Motivate's performance of the Work. For the avoidance of doubt, the City may, in its discretion, license System Data to third-party researchers.

16.2. Publicly-Available Data. Each month, Motivate shall make Usage Data available to the general public on the project website. Usage Data means complete System information on trip origin and destination and Subscriber information including non-personally identifiable demographic data. Operational data, proprietary technical information and personally identifiable information of Subscribers is not included in Usage Data.

16.3. Third Party Access to Personally Identifiable Data. Motivate shall not sell, lease, or transfer personally identifiable information to any third party without explicit consent from the users and the City. Motivate may use personally identifiable information data for promotional and marketing activity but must abide by the Sponsorship Policy in Section 2.5 and must provide a conspicuous and simple process for customers to opt out of receiving promotional information from Motivate.

16.4. GBFS. Non-personally identifiable System Data will be made accessible via an open and simple web service API provided by Motivate, including real-time system data in General Bikeshare Feed Specification (GBFS). This includes real-time data on system regions, system information, station information, and station status. This data will be provided in JSON and XML format.

**17. System Call Center.**

17.1. Standard Hours of Operation. Motivate shall provide to the City, all Subscribers, and the public at large, a toll-free telephone number for the call center. The call center will provide a twenty-four (24) hours, seven (7) days a week, three hundred sixty five (365) days a year.

17.2. Rapid Response Times. The average time to transfer the call to a knowledgeable customer service representative (including hold time) shall not exceed sixty (60) seconds. The standard shall be met by Motivate eighty percent (80%) of the time during each calendar month.

17.3. Multi-Media Options. The call center shall provide support via phone and email with



experienced customer service professionals who specialize in the bike sharing industry.

17.4. **Multi-Lingual Options.** Motivate shall ensure that there are call center operators available via both phone and email who are fluent in English and Spanish. The City may, in accordance with the approval process and cost-sharing arrangements set forth in the Regional MOA, request Motivate to provide call center support in additional languages.

17.5. **Knowledgeable Staff.** The operators at the call center shall be fully competent and knowledgeable to answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, Crashes, comments, complaints, malfunction problems, and location of the Stations. The call center manager shall be knowledgeable about the metro-Boston region.

17.6. **Accountability.** The call center shall keep accurate and complete written records of each such call as hereinafter required, including the primary reason for each call, date, time, and caller's name if provided.

18. **Subscription Fulfillment.** Motivate shall create, produce, and distribute any physical or digital materials it uses to fulfill subscriptions, including, if applicable, registration packets, letterhead, and other collateral. If applicable to a given subscription, Motivate shall ship Subscriber Keys within two (2) business days of subscription purchase or of replacement request.

19. **Helmets.**

19.1. **Compliance with State Law.** Motivate is responsible for complying with Massachusetts General Laws requirements for retail businesses. In accordance with Massachusetts law, Motivate shall display in an area conspicuous to customers of the business at each Station a sign containing the following statement: "Massachusetts law requires that a bicycle helmet be worn by a person 16 years of age or under who is riding as an operator or passenger on a bicycle, in line skates, a scooter, or a skate board." In addition, information about where Subscribers may purchase helmets, including retail locations must be available on the System Maps and the System website.

19.2. **Helmets.** Motivate shall provide all actual and potential Subscribers the opportunity to purchase helmets at a discounted rate on the System website. Motivate shall work directly with third-party vendors to facilitate the purchase and shipment of such helmets. All helmets must be compliant with the U.S. Consumer Product Safety Council's Safety Standard for Bicycle Helmets and should feature a rear stabilizer with an adjustment dial mechanism. Multiple sizes of helmets shall be available. The City may, subject to the terms of the Regional MOA, sell sponsorships with Sponsor designations on helmets. The proceeds of helmet sponsorships will not be subject to revenue sharing.

19.3. **Helmet Cost.** The cost of each helmet sold through the System website shall not exceed \$45, plus taxes and shipping, provided, however, that Motivate will make commercially reasonable efforts to offer helmets at a lower cost. Motivate may increase the cost at the beginning of each new Contract Fiscal Year by up to the past year's regional Boston-Brockton-Nashua CPI-U + 1%.

20. **Backend; Data Security.**

20.1. **Backend.** The Backend shall provide Motivate with a complete suite of tools for real-time management of the System in order to facilitate the Work. Motivate shall constantly monitor the Backend to ensure proper functioning and shall upgrade it as required to perform the Work.

20.2. **Backend Access.** Motivate shall provide the City, at no cost, client-level access to the Backend, including the ability to create and download reports.

20.3. Backend Sublicense. Upon the termination or expiration of this Agreement, Motivate will, at the City's request, negotiate in good faith to sell or license to the City a right to use the Backend.

20.4. Data Security. Motivate agrees to maintain the security and confidentiality of all City data for which Motivate becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under G.L. c. 93H and c. 66A. Motivate is required to comply with G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. Motivate shall immediately notify the City in the event of any security breach of personal data or information including the unauthorized access, disbursement, use or disposal, and in the event of such a security breach, Motivate shall cooperate fully with the City and provide access to any information necessary for the City to respond to the security breach. Motivate shall be fully responsible for any damages associated with Motivate's breach including but not limited to G.L. c. 214, s. 3B.

**21. Motivate Staffing.**

21.1. Motivate Staffing Levels. Motivate shall, at all times, provide sufficient and adequately trained staff to efficiently and promptly perform the Work.

21.2. General Manager. Motivate shall designate, in writing to the City Project Officer, a General Manager. Such General Manager shall be fully knowledgeable of the contents of this Agreement, and the Work. The General Manager shall be the primary point of contact between the City Project Officer and Motivate. The General Manager, or his/her designee, shall be available to Motivate's employees, staff, and subcontractors and to the City Project Officer at all times, twenty-four (24) hours a day, seven (7) days a week, and three hundred sixty-five (365) days per year by telephone or email. The General Manager shall have the authority of Motivate to make prompt operational decisions concerning the Work. Motivate shall designate an additional person(s) who is authorized to make operational decisions on behalf of Motivate in the absence of the General Manager, provided however that the designation of such additional person(s) shall neither replace, supplant, nor relieve the General Manager as the primary point of contact between the City Project Officer and Motivate.

21.3. Personnel and Staffing Diversity. The City encourages Motivate to cultivate a diverse and inclusive workplace that reflects the demographics of the PMs by recruiting and hiring Boston residents, women, people of color, veterans, immigrants and refugees, disabled individuals, formerly incarcerated people, people who identify as LGBTQ, and low-income residents. The City additionally encourages Motivate to develop programs or participate in activities such as local mentorship and training programs that serve the same such people. To detail Motivate's efforts, Motivate shall submit annual reports with data on workforce diversity, programmatic activities, and other issues related to this goal.

**22. Reporting.**

22.1. Monthly Financial Reporting. Motivate shall deliver a monthly report, by the 30th day of each month, to the Project Officer with the following data:

22.1.1. Total Subscriber Revenues, by subscription type for the preceding month and for the year-to-date;

22.1.2. Total Secondary Sponsorship Funds and Title Sponsorship Funds for the preceding month and for the year-to-date;

22.1.3. Any payments of the Revenue Share or any similar payments to the City and each of the PMs;

22.1.4. Any bank fees on the Boston Revenue Share Account;

22.1.5. Any payments made to Motivate out of the Boston Revenue Share Account; and

22.1.6. Balance of the Boston Revenue Share Account.

22.2. Annual Financial Report and Presentation. Motivate shall provide an annual financial presentation covering the previous Contract Fiscal Year to the Council within forty-five (45) days of the end of such Contract Fiscal Year. The presentation should accompany an annual financial report of annual Secondary Sponsorship Funds; annual Title Sponsorship Funds; annual Subscriber Revenues; annual payments of the Revenue Share and any similar payments to the City and each of the PMs; total bank fees on, payments made to Motivate out of, and the balance of, the Boston Revenue Account; and projected System Revenues for the following Contract Fiscal Year.

22.3. Data Access. Motivate will share with the City Project Officer and designees the following data through DOMO, or another similar business intelligence or data visualization platform. Such platform must be fully usable by personnel who do not have programming or database expertise and must allow for the extraction or download of static data into Microsoft Excel. If requested by the City, Motivate will provide the following data in a static report, but no more frequently than once per Contract Fiscal Year quarter:

22.3.1. *Subscriptions.*

- (a) Monthly and year-to-date count of active subscriptions by type (such as, but not limited to, annual, monthly, low-income annual, low-income monthly) and by home zip code at the end of each month
- (b) Monthly and year-to-date count of active subscriptions by age, gender, and ethnicity (as reported by Subscribers)
- (c) Number of new subscribers by type and by home zip code during the previous month and for the year-to-date
- (d) Number of cancellations and/or expirations of annual and monthly Subscribers that were not followed by a renewal by home zip code during the previous month and for the year-to-date
- (e) Number of renewing Subscribers by type and by home zip code during the previous month and for the year-to-date
- (f) Number of subscriptions purchased at Rental Sites, by type and by Rental Site
- (g) Number of subscriptions by type purchased by web or mobile application
- (h) Percentage of Subscriber Keys mailed within two (2) days of purchase or replacement request
- (i) Number of Annual Subscribers picking up Subscriber Keys at Rental Sites, by Rental Site

22.3.2. *Trips.*

- (a) Total trips per Day for the previous month by Subscriber type
- (b) Total trips per month and year-to-date by Subscriber type
- (c) Trip starts and ends by Rental Site
- (d) Average duration of trips by Subscriber type
- (e) Total of trips greater than thirty (30) minutes by starting Rental Site
- (f) Total overtime minutes by starting Rental Site

22.3.3. *Operations.*

- (a) Percentage of time Stations are Rideable, at the System, Boston System, Boston neighborhood, and Station levels
- (b) Number of Bicycles in service
- (c) Number of Docks repaired each month
- (d) Number of Functional Stations by Day
- (e) Number of Station, Dock, and/or Kiosk malfunctions by Day and by type
- (f) Instances of additional time granted to Subscribers by Rental Location
- (g) Count of Bicycles checked per Day
- (h) Count of Bicycles repaired per Day
- (i) List of repairs by type (e.g., minor, major, annual) and reason (e.g., normal wear, crash, warranty failure, vandalism)
- (j) Approximate Bicycle miles traveled

22.3.4. *Incidents.*

- (a) List of all incidents (crashes, vandalism, loss, and theft) with dates and summary of outcomes
- (b) List of all stolen/missing Bicycles and status, by PM

22.3.5. *Customer Service.*

- (a) Average time to answer calls for month and year-to-date
- (b) Number of calls/emails received, by general topic area including but not limited to billing inquiries, hardware/software issues, docking/undocking problem, and refund requests
- (c) Number of helmets purchased through the System website
- (d) Website and social media analytics

- (e) Any instances of the website or mobile application being not operational or malfunctioning for more than ten (10) minutes

22.4. Inventory. Motivate shall create an accurate inventory list of all Capital Equipment, including but not limited to the number and type of: Bicycles, Kiosks, Docks, Base Plates, Map Frames. All Capital Equipment will be tracked by serial number or other unique identifying number, if available. With the exception of Bicycles, the location of each piece of Capital Equipment will be maintained in the inventory. Motivate shall be responsible for keeping an accurate and up-to-date inventory list. Motivate shall provide the City with access to the inventory list.

**23. Loss, Damage, Theft, and Vandalism.**

23.1. Bicycle Loss, Theft, and Vandalism. Motivate shall advise the Subscriber involved with any incident of theft to immediately file a Police Report with the Police Department in the jurisdiction where the theft, damage, or vandalism occurred.

Motivate is solely responsible for the cost of replacing Bicycles that are lost, stolen, or damaged beyond repair (each, a “**Lost Bicycle**”), up to fifteen (15) Bicycles per Contract Fiscal Year starting in the first full Contract Fiscal Year, plus three (3) additional Bicycles per Contract Fiscal Year thereafter, provided that if Motivate successfully recovers a replacement Bicycle fee from a responsible Subscriber for a Lost Bicycle, such Lost Bicycle will not count towards Motivate’s replacement obligation in this sentence. The City is solely responsible for the cost of replacing Lost Bicycles above such amounts in a given Contract Fiscal Year; provided, however, that Motivate will in any case diligently attempt to recover replacement Bicycle fees from responsible Subscribers and will pass on to the City any fees recovered for Lost Bicycles which are the responsibility of the City.

23.2. Station Loss, Damage, Theft, Vandalism. If any of the Capital Equipment or component thereof, other than the Bicycles, is damaged by vandalism, theft, or another distinct event other than a Supplier Defect or Motivate’s negligence (“**Specific Damage Incident**”), the Parties’ will allocate responsibility for the resultant costs of repair or replacement of such Capital Equipment or component thereof in accordance with the following:

23.2.1. Motivate shall be responsible for the first \$1,000 of repair or replacement costs for each Specific Damage Incident;

23.2.2. The City shall be responsible for its share, as determined by the Regional MOA, of the costs of repair or replacement above \$1,000 and less than \$5,000 for each Specific Damage Incident; and

23.2.3. Motivate shall be responsible for all repair or replacement costs above \$5,000 for each Specific Damage Incident.

23.3. Reporting Requirements. Motivate shall report in writing each incident of theft or vandalism of every Bicycle and Station to the City Project Officer when Motivate determines that a Bicycle or Station has been damaged, vandalized, lost, or stolen. It shall be the obligation of Motivate to notify its insurance carrier(s) of all such incidents of theft or vandalism if necessary. Immediately upon notice of each incident of theft or vandalism, Motivate also shall: report such incident to the Police Department; investigate the incident; and accurately determine and record the information described in subparagraphs one (i) through (iii) below:

23.3.1. The Subscriber’s name, Subscriber number, phone, date of birth, and address, to the extent such information is known and applicable;

23.3.2. Details about the theft or vandalism including: date, time, city, state, address/location of incident; description of incident; police report number, officer name and badge number, and police precinct/department; and

23.3.3. The names, addresses, and telephone numbers of all witnesses and other persons with knowledge of the theft/vandalism.

## 24. Maximum Subscriber Fees.

24.1. **Initial Maximum Fees.** At the start of the Term, the maximum allowable Subscriber fees (not including usage fees, lost bike fees, or other incidental fees) are set forth in the table below. For existing Group Members and Subscribers, such fees shall be updated upon renewal of the Group Membership.

Subscriber Type	Maximum Fee	Installment Option
Standard Subscriptions		
Annual subscription	\$99	\$10 per month, with 12-month commitment (total of \$120)
Monthly subscription	\$20	None
24-hour subscription	\$8	None
Group Subscriptions		
Champion	\$70 (\$0 by group member; \$70 by Subscriber)	None
Gold	\$70 (\$70 by group member; \$0 by Subscriber)	None
Silver	\$70 (\$35 by group member; \$35 by Subscriber)	None
Bronze	\$70 (\$17.50 by group member; \$52.50 by Subscriber)	None
Municipal	\$60 (\$0 by group member; \$60 by Subscriber)	None
Low Income Subscribers		
Annual low-income subscription	\$50	None
Monthly low-income subscription	\$5	None

24.2. **Maximum Subscriber Fees After Increase.** Upon Equipment Acceptance of the first twenty (20) Stations and Bicycles from the Guaranteed Capital Equipment, Motivate may increase the maximum allowable Subscriber fees (not including usage fees, lost bike fees, or other incidental fees) as follows:

Subscriber Type	Maximum Fee	Installment Option
Standard Subscriptions		
Annual subscription	\$125	\$12.50 per month, with 12-month commitment (total of \$150)
Monthly subscription	\$25	None
24-hour subscription	\$9.99	None
Group Subscriptions		
Champion	\$70 (\$0 by group member; \$70 by Subscriber)	None
Gold	\$90 (\$90 by group member; \$0 by Subscriber)	None
Silver	\$100 (\$50 by group member; \$50 by Subscriber)	None
Bronze	\$100 (\$25 by group member; \$75 by Subscriber)	None
Municipal	No increase in maximum	
Low Income Subscribers		
Annual low-income subscription	No increase in maximum	
Monthly low-income subscription	No increase in maximum	

Upon any increase of Subscriber Fees for subscription types with automatic renewal options, Motivate shall notify all existing Subscribers of such subscription types at least thirty (30) days in advance of such increase. Motivate shall publicize any increase of Subscriber Fees for any other subscription types at least seven (7) days in advance of such increase.



24.3. Other Changes to Subscriber Fees. Motivate may increase the fees associated with annual and monthly subscriptions on an annual basis by up to the past year's regional Boston-Brockton-Nashua CPI-U + 1%. Increases beyond this amount must be presented to the Council for approval, as described in the Regional MOA.

Motivate may offer discounts on Subscriber Fees. Motivate may propose additional Subscriber types or groups to the Council for approval, as described in the Regional MOA. Such products may be available via the web, a mobile application, a Subscriber Key, a Kiosk, or some combination thereof.

**25. Low-Income Subscriptions.**

25.1. Low-Income Subscription. Motivate will offer an annual and monthly subscription option to eligible low-income individuals according to the eligibility requirements agreed to between Motivate and the Council. The number of annual and monthly low-income subscriptions will not be limited.

25.2. Eligibility. Motivate will work with the Council to determine specific eligibility requirements, such as receipt of public assistance (e.g. through SNAP or Mass Health), or income guidelines (e.g. 250% of federal poverty line), and develop a system for verification that minimizes the burden on individuals and on the program administrators while providing sufficient eligibility screening. In no event will Motivate be obligated to collect income information or other personal data from individuals applying for the low-income subscription.

25.3. Administration. Motivate, the City, and the Council will work together to coordinate with other municipal or state departments to implement systems that will enable simple eligibility verification via the System website. Motivate will work with the City, the Council, other municipal agencies, and community organizations to develop procedures for in-person eligibility and sign-up in partnership with existing social service centers and similar institutions. The City and Motivate will explore providing a cash-only fare product to provide access to under- and un-banked subscribers. The Parties will also work together to explore the feasibility of collecting small donations from non-low-income Subscribers during the enrollment process to further subsidize low-income subscriptions.

25.4. Transition Year Boston Bikes Program. To allow current Subscribers in the discounted Boston Bikes program a smooth transition to the above described Low-Income Subscription and fees, the City will continue to operate its existing annual subscription programs for the duration of calendar year 2017. Boston residents earning no more than 250% of the federal poverty line, relative to household size, will remain eligible for a \$5 annual subscription. Boston residents earning between 251% and 400% of the federal poverty line, relative to household size, will remain eligible for a \$50 annual subscription. The City will inform all Boston residents enrolled in the Boston Bikes Program of the upcoming changes to subscription products and fees.

25.5. Subsidized Programs for Low-Income Subscriber. During the Term, the City reserves the right to further discount the fees for Low-Income Subscribers; provided, however, that the City shall be responsible for paying to Motivate the amount of any such discount. The City shall also be responsible for administering the subsidized program, including, without limitation, marketing subsidized subscriptions, determining eligibility, and enrolling subsidized Subscribers. In the case that the City chooses to exercise this option, Motivate shall facilitate the program by setting up Group Membership(s) for the City's use.

26. **Single Trip Fare.** Motivate may develop and make available a Single Trip Fare, which allows Subscribers access to a Bicycle for one trip. The Single Trip Fare shall be priced at no more than 175% of the Local Bus Cash Fare option available from the Massachusetts Bay Transportation Authority. Within this upper limit, Motivate may adjust the Single Trip Fare as needed to achieve goals such as attracting Subscribers, incentivizing Subscribers to use alternate Stations, or otherwise encourage a healthy System.

The Single Trip Fare may be purchased from the web, a mobile application, a Subscriber Key, a Kiosk, and/or some combination thereof. With approval from the Council, Motivate may discontinue the 24-hour Subscription option with the introduction of a Single Trip Fare.

## 27. Municipal Employee Subscriptions.

27.1. Municipal Employee Subscription. Motivate will offer an annual subscription option to employees of the City of Boston, including those who work for Emergency Medical Services, the Fire Department, the Police Department, the Public Health Commission, the Public Library, Public Schools, the Planning and Development Agency, and the Water and Sewer Commission. The number of annual municipal employee subscriptions will not be limited.

27.2. Administration. Motivate shall facilitate the program by setting up Group Membership(s) for the City's use.

27.3. Subsidized Municipal Employees Subscriptions. During the Term, the City reserves the right to further discount the fees Municipal Employee Subscribers; provided, however, that the City shall be responsible for paying to Motivate the amount of any such subsidy.

## 28. Usage Fees.

28.1. Initial Usage Fees. Payment of each subscription fee shall entitle the Subscriber to an initial free ride period for each trip. The initial free ride time for low-income Subscribers shall be sixty (60) minutes, and the initial free ride time for all other Subscribers shall be at least thirty (30) minutes. A usage fee will be charged to the Subscriber for any trip exceeding the applicable initial free ride time.

Maximum usage fees at the beginning of the Term for annual Subscribers, low-income Subscribers, and 24-hour Subscribers are as follows, subject to increase on an annual basis by up to the past year's regional Boston-Brockton-Nashua CPI-U + 1%:

Trip Time (min.)	Usage Fee for Annual Subscribers	Usage Fee for Low-Income Subscribers	Usage Fee for 24-Hour Subscribers
0:00 – 30:00	\$0.00	\$0.00	\$0.00
30:01 – 60:00	\$1.50	\$0.00	\$3.00
60:01 – 90:00	+ \$3.00	\$1.50	+ \$3.00
90:01 – 120:00	+ \$6.00	+ \$3.00	+ \$3.00
121:00+	+ \$6.00 per each additional 30 minutes	+ \$6.00 per each additional 30 minutes	+ \$3.00 per each additional 30 minutes

Initial maximum usage fees per ride for all Subscribers will be capped at \$75 per ride, subject to increase on an annual basis by up to the past year's regional Boston-Brockton-Nashua CPI-U + 1%.

28.2. **Usage Fees After Increase.** Upon Equipment Acceptance of the first twenty (20) Stations and Bicycles from the Guaranteed Capital Equipment, Motivate may increase the maximum allowable usage fees as follows, subject to increase on an annual basis by up to the past year's regional Boston-Brockton-Nashua CPI-U + 1%:

Trip Time (min.)	Usage Fee for Annual Subscribers	Usage Fee for Low-Income Subscribers	Usage Fee for 24-Hour Subscribers
0:00 – 30:00	\$0.00	\$0.00	\$0.00
30:01 – 60:00	\$2.50	\$0.00	\$5.00
60:01 – 90:00	\$4.00	\$2.50	+ \$5.00
90:01+	+ \$4.00 per each additional 30 minutes	+ \$4.00 per each additional 30 minutes	+ \$5.00 per each additional 30 minutes

After such increases, maximum usage fees per ride for all Subscribers will be capped at \$115 per ride, subject to increase on an annual basis by up to the past year's regional Boston-Brockton-Nashua CPI-U + 1%. Upon any increase of usage fees for subscription types with automatic renewal options, Motivate shall notify all existing Subscribers of such subscription types at least thirty (30) days in advance of such increase. Motivate shall publicize any increase of usage fees for any other subscription types at least seven (7) days in advance of such increase.

28.3. **Changes to Usage Fees.** From time to time, Motivate may choose to apply lower usage fees than described above or apply them in different increments of time that total no more than the maximum allowed usage fee for the total amount of time as described above. Increases beyond these amounts must be presented to the Council for approval, as described in the Regional MOA. If such changes necessitate an update of informational decals on Kiosks, Map Frames, and/or Bicycles and/or an update on the System website or mobile application, Motivate will be responsible for covering the costs of such changes.

29. **Bicycle Fees.** Overdue and lost Bicycle fees will be charged in accordance with the following, unless otherwise set forth in a standard operating procedure mutually agreed between the Parties:

29.1. **Overdue.** If a Bicycle has not been returned within twenty-four (24) hours of the start of a trip, and provided that Motivate has attempted to contact the Subscriber, Motivate may charge the Subscriber an overdue Bicycle fee of \$125.

29.2. **Loss or Theft.** If a Bicycle has not been returned within forty-eight (48) hours of the start of a trip, Motivate may charge the Subscriber the Bicycle replacement fee of \$1200. If the affected Subscriber files a police report regarding the theft of the Bicycle and submits a copy of that report to Motivate or to the City, the City may elect to waive the Bicycle replacement fee in favor of a twenty (\$20) dollar service charge for processing the loss rather than the full Bicycle replacement fee or the overdue Bicycle fee, provided, however, that if the City makes such an election, Motivate will not be obligated to pay for a replacement Bicycle under Section 23.1 in such case.

30. **Subscriber Agreement.** The Subscriber Agreement shall include, at a minimum, the following elements, and the City shall have the right to review any substantial changes to the Subscriber Agreement:

30.1. A description of Subscriber Fees and Usage Fees, and deposits (if any).

30.2. Confidentiality of personal and financial data and information; how Motivate and the PMs will use information collected.

30.3. Subscriber's obligation to return the bicycle in the same condition as it was rented.

30.4. Subscriber's acknowledgement and acceptance of responsibility to provide notes to police and call center of Crash, damage, loss, and/or personal injury, theft, and vandalism.

30.5. Subscriber's acknowledgement and acceptance of responsibility and liability for any misuse, consequences, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorneys' fees, judgements, suits, or disbursements of any kind or nature whatsoever related to a stolen or lost Bicycle or Subscriber Key.

30.6. Penalty amount for stolen or lost Bicycle, Subscriber Key, etc.

30.7. Prohibited uses, including, without limitation, no more than one person on a Bicycle at one time.

30.8. Prohibition of operation of any Bicycle rented from Motivate by anyone other than Subscriber. Subscriber Keys may not be transferred to anyone in any manner whatsoever.

30.9. A representation by each subscriber that s/he is: physically able to ride a Bicycle without risk to one's health; knowledgeable about the operation of a Bicycle; and knowledgeable about the laws pertaining to Bicycles operated within the jurisdictions where the Bicycles are used.

30.10. Requirement that Subscribers must be 16 years of age or older.

30.11. Requirement for Subscribers aged 16 or 17 that a helmet must be worn while operating Bicycles.

30.12. Recommendation of helmet use by Bicycle riders.

30.13. Prohibition on use of Bicycle while under the influence of alcohol, marijuana, drugs, any controlled substance, or any medication that would impair the subscriber's ability to operate the Bicycle in a manner consistent with local laws and regulations.

30.14. Improper use of Bicycle rack as to type of contents, weight, or visual obstruction.

30.15. Prohibition on using Bicycles for any illegal purpose.

30.16. To be included in the agreement in capital letters and bold font:

30.17. Subscriber's acknowledgement of and acceptance of responsibility and risk.

30.18. Subscriber's acceptance to indemnify and hold harmless the City, its elected and appointed officers, officials, employees, and agents, including release of all claims other than gross negligence, including injuries and death.

### **31. Providing Accessible Service.**

31.1. Tricycles. As described in the Regional MOA, Motivate shall purchase tricycles and provide them to a bicycle rental store or other third-party organization that will make them available for Subscribers with disabilities who cannot use the Bicycles.

31.2. Alternatives to Audio Communications. Motivate shall promote the use of MassRelay, closed-captioning, or text-based communication services for individuals who are deaf or hard of hearing

or who have speech impairments.

31.3. Title VI Compliance. On the System website, Motivate shall prominently link to information about the System's compliance with Federal Title VI law, in multiple languages, and include instruction for filing a complaint.

**32. Interruption of Service.**

32.1. Intentional Interruption of Service. If, at any time, Motivate, determines, intends, or is required, to temporarily interrupt all or a portion of the System, for any reason, including, without limitation, weather, or other event or circumstance where continued service would be unavailable, impractical, or impossible, then Motivate shall comply with a mutually agreed upon System Closure Policy, which may include intentionally interrupting service in advance of such weather or circumstance in order to adequately prepare for interruption.

32.2. Unintentional Interruption of Service. If, at any time, a System malfunction or an event or circumstance occurs that causes or will cause a temporary interruption of service, then Motivate shall immediately contact the Project Officer by telephone and by email and specifically describe the reason, estimated duration, Motivate's proposed actions to correct the cause of the interruption (if possible), and minimize the interruption, and Motivate's plans to resume service.

32.3. Restarting Service. In the case of both intentional and unintentional interruptions of service, Motivate shall be obligated to perform all necessary and appropriate acts to restart the service as soon as possible.

33. **Coordination with Third Parties.** Motivate shall be responsive to and cooperate with other PMs, other municipalities, state agencies, MAPC, Subscribers, other members of the community, community groups, and, with permission from the Council, the media regarding requests for information. Motivate shall not allow City information to be made available to any other individual or organization without the prior written consent of the City.

**34. Crashes.**

34.1. Notification of Crash. Upon Motivate receiving notice or becoming aware of a Crash involving serious personal injury, Motivate shall notify the City Project Officer or designee by phone and/or electronic mail within one (1) hour and provide as much detail regarding the Crash as is then available to Motivate. Motivate shall advise the Subscriber involved with a Crash to immediately a Police Report with the Police Department in the jurisdiction where the Crash occurred. Motivate shall determine if a Police Report has been filed for the Crash and provide such report to the Project Officer when available.

34.2. Reporting Requirements. Motivate shall report in writing each such Crash involving serious personal injury to the Project Officer with the information described in Sections 34.2.1 through 34.2.6 below:

34.2.1. The Subscriber's name, subscriber number, phone, date of birth, and address;

34.2.2. Any injuries suffered by the Subscriber;

34.2.3. Any damage to the Bicycle and whether that Bicycle was returned to a Rental Site or to Motivate;

34.2.4. Details about the Crash including: date, time, city, state, address/location of incident; description of Crash, including type of crash (vehicle-bike, pedestrian-bike, bike-bike, non-contact); description of Crash outcomes, including injury, severity of injury, traffic violation of the Subscriber and other party(ies), and any property damage; police report number, officer name and badge number, and police precinct/department;

34.2.5. The names, addresses, and telephone numbers of all witnesses and other persons with knowledge of the theft/vandalism; and

34.2.6. Any additional information, including but not limited to information about other party(ies), including without limitation, names, phone numbers, driver's license numbers, licenses states, dates of birth, and addresses; vehicle information, including without limitation vehicle type, make, model, license plate number, license plate registration, number of occupants.

It shall be the obligation of Motivate to notify its insurance carrier(s) of all such incidents of theft or vandalism if necessary.

35. **Standard Operating Procedures.** Motivate will provide to the City standard operating procedures for (i) intentional interruptions of service including for Major Snow Events, (ii) if any, pursuing overdue and lost Bicycle fees, and (iii) installation and removal of Stations.

### III. MARKETING

#### 1. General Goals and Services.

1.1. General Marketing Goals. Motivate shall endeavor to generate enthusiasm for the System and increase the total number of trips taken by recruiting a diversity of new Subscribers, engaging and retaining high numbers of Subscribers, and encouraging causal use by visitors to the metro-Boston region.

1.2. Services. Motivate is responsible for executing the above general goals with a focus on Subscriber acquisition, Subscriber engagement, user experience, product strategy, creative services, business intelligence, and corporate sales. Services include, but are not limited to: graphic design (including digital and physical assets), web development, user experience, partnership management, group sales, referral marketing, surveys, retention and win-back initiatives, media buying, digital advertising, analytics, conversion tracking, and in-person engagement activities.

1.3. Marketing by the City. The City retains the right to create its own marketing for the bike share system in addition to that performed by Motivate. This does not relieve Motivate of any of its marketing responsibilities.

2. **System Branding.** Until such time that a Title Sponsor, and the resulting changes in the System brand, is approved, the System shall continue with the branding guidelines established as Hubway.

#### 3. System Website and Social Media.

3.1. Website and Social Media Accounts. In consultation with the Council, Motivate shall maintain a project website, a Facebook account, and a Twitter account. The Parties may decide to create other project social media accounts. If so, these accounts will be registered to Motivate.

3.2. Content. Motivate shall, with input from and collaboration with the City, create and maintain the content for the initial Project website, and shall create and maintain Facebook and Twitter accounts and any other Project social media accounts. The City Project Officer or Council may

request removal of content from website or social media accounts. Motivate shall act judiciously and in a timely manner to remedy the content of the website and social media accounts to reflect the best interests of the City and the System. Use of the City Marks and any major changes to the Project website must have the prior approval of the City Project Officer. The City Project Officer may request to provide input on the voice and messaging of any newsletter prior to its distribution.

3.3. Website. Motivate shall, at all times, keep the website information updated, current, and accurate. The website shall help enhance users' experiences and bike share systems as a whole by including the following:

- 3.3.1. Eligibility requirements;
- 3.3.2. Subscription information including rates with an emphasis on 24-hour, monthly, and annual subscription options and easily found links to Group Subscription and Low-Income Subscription products;
- 3.3.3. Payment information and subscription processing;
- 3.3.4. Method for Subscribers to update required information;
- 3.3.5. Personalized Subscriber pages with information such as miles traveled and details about trips taken;
- 3.3.6. Subscriber Agreement;
- 3.3.7. A map with the entire network of Stations (including those with Subscriber Key dispensers and Valet Stations) and real-time availability of Bicycles at each Station displayed both graphically and in text, both for a standard computer screen and mobile devices;
- 3.3.8. Frequently Asked Questions;
- 3.3.9. Safety requirements and information (including notification in the event of a malfunction, theft/loss, or Crash);
- 3.3.10. Safety and informational video(es) accessible to new, renewing, and potential Subscribers, and, upon Equipment Acceptance of the first twenty (20) Stations and Bicycles from the Guaranteed Capital Equipment, new safety videos depicting Bicycles with new Title Sponsor branding;
- 3.3.11. Information about local routes and destinations to highlight the specific qualities of the metro-Boston region and its small businesses;
- 3.3.12. Special events calendar;
- 3.3.13. News;
- 3.3.14. State and local laws;
- 3.3.15. Rider etiquette and other tips related to safe, enjoyable use of the System;
- 3.3.16. Link to the web site of the City;
- 3.3.17. Title VI related information; and

3.3.18. An API that allows third-party software development, data visualizations, and other tools.

**4. System Expansion.**

4.1. Standard Expansion Marketing. Motivate will develop a standard marketing strategy to gain awareness and create excitement upon expansion of the Boston System. Strategy should include online engagement, including sharing photos to web and social media.

4.2. Major Expansion Marketing. Upon the occasion that the Boston System will expand by more than fifteen (15) Rental Sites, Motivate will develop a specific marketing plan that to engage residents in the planning of the Rental Site locations, encourage new subscriptions, and create general excitement about the expansion effort. The plan should include both online and in-person engagement.

**5. Annual Marketing Plan.**

5.1. Annual Goals. On or about the Effective Date of this Agreements and each anniversary thereof during the Term, Motivate shall develop annual goals related to growth in Subscribers, Group Members, and annual trips. Goals should be established in relationship to past performance and financial projections.

5.2. Annual Plan. Motivate will develop an annual marketing plan that promotes the System consistent with annual goals. The plan should identify proposed key messages for different customer target areas, social media strategies, in-person events, and campaigns for the year. The plan should include methods to reach specific customer markets including traditionally under-represented groups such as women, people of color, people with limited English proficiency, older adults, immigrants and refugees, and low-income users. The annual plan shall be presented and approved by the Council as described in the Regional MOA. Such presentation should include an analysis of the successes, challenges, and lessons learned from the previous year.

6. **Specially-Wrapped Bicycles.** The City reserves the right, at its sole expense, to develop custom Bicycle designs to recognize unique characteristics of the City, including neighborhoods, cultural institutions, notable people, and recognized events. Designs shall include the System name and required Title Sponsor recognition. The City is responsible, at its sole expense, for providing the design of such custom Bicycles. The City shall pay Motivate to produce and place the designs in accordance with Exhibit C (Pricing Sheet). Motivate shall be responsible for the maintenance of the designs of these specially-wrapped Bicycles and participate in any relevant marketing strategies that are aligned with the annual marketing plan.

7. **Crisis Management.** Motivate shall be prepared to identify, manage, and respond (in consultation with the City) to disruptive and unexpected events, such as natural disaster, accidents, system failures, and civil unrest. Motivate shall have general preparedness policies and procedures and work with the City's Project Officer and others to ensure the execution of such policies and procedures.

8. **Diversity in System Images and Messages.** All imagery shall include riders of diverse races, ethnicities, genders, body types, and ages who are operating bicycles safely. Printed collateral developed for the distribution at community events to promote the System shall be available in both English and Spanish. The City may request that Motivate provide translation of other materials or translations in other languages as Additional Services at the prices set forth in Table 4 of Exhibit C (Pricing Sheet).

9. **Group Member and Subscriber Sales.** Motivate shall recruit, maintain, and manage accounts for Group Members. The program shall endeavor to reach new Group Members and Group Subscribers as



well as retain existing Group Members. Group Members may be any companies, institutions, housing developments, community non-profits, faith-based organizations, and other affinity groups.

**10. Underrepresented Populations Subscriber Sales.** Motivate shall set annual goals related to increasing the number of Subscribers from underrepresented populations and the number of trips they take. Underrepresented populations are identified as those who exist in the broader metro-Boston region (based on current demographic statistics) but who are not proportionally represented in Subscriber demographics. These populations traditionally include women, people of color, people with limited English proficiency, older adults, immigrants and refugees, and low-income individuals. Motivate shall evaluate the number of monthly and annual Subscribers and the number of trips they take and dedicate some portion of its annual marketing plan toward achieving these annual goals. Motivate shall use, but not be limited to, the following techniques:

10.1. Advertisements in multiple languages, in addition to English, placed in local neighborhood newspapers and publications;

10.2. Targeted social media advertising;

10.3. Prominent promotion of the Low-Income Subscription options, in multiple languages, at Rental Sites near higher concentrations of low-income residents;

10.4. Participation in community events;

10.5. Partnerships with local organizations to promote bike share and the Low-Income Subscription options;

10.6. Support for up to two (2) City- and community-led bike share classes or events per month, where up to twenty (20) Bicycles are available at a Rental Site at no cost, via no-charge Subscriber Key available to third-party entities; provided that the City must provide Motivate at least two (2) weeks' notice of any such event and further provided that Motivate and the City or third-party entity, as applicable, mutually agree to the terms for having any rider of a Bicycle execute a liability waiver; and

10.7. Provision of at least four group riding classes within the City per year to introduce audiences to using bike share to reach local destinations such as libraries, community centers, public transit, and/or farmers markets.

11. **Goals, Analytics, and Reporting.** For the following metrics related to its marketing efforts, Motivate shall establish a baseline from the 2016 operating season (April 2016 – March 2017), set annual growth goals, and make annual progress reports. Motivate may propose additional or alternate metrics to the Council for approval, according to the approval process set forth in the Regional MOA.

Metric	Performance Indicator
Subscribers – New	Total monthly Subscriber Revenue from new Subscribers
Subscribers – Renewal	Total monthly Subscriber Revenue from renewing Subscribers
Subscribers – Win-Backs	Total monthly Subscriber Revenue from win-back sales
Subscribers – Group Sales	Total monthly Subscriber Revenue from Group Subscribers
	Total number of Group Members
	Total number of Group Subscribers
Subscribers – Casual	Total monthly Subscriber Revenue from casual fare products
Subscribers	Total monthly trips by Subscriber type
System Activation	Number of events, annually
	Customer satisfaction, as indicated by surveys
Diversity	Percentage of Subscribers who identify as non-white, who identify as low-income, who identify as non-native English speakers, and who identify as non-male.
	Total monthly sales of Low-Income Subscriptions
	Number of sales made at community events
Tourist vs Local Inclusion	Number of subscribers by home zip code during the previous month and for the year-to-date
Adoption Rate	Percentage of total population within a census tract or zip code that are Subscribers

#### IV. EQUIPMENT PURCHASE

1. **Facilitate Vendor Relations.** Motivate shall facilitate ongoing relations with Capital Equipment and software providers, including, without limitation, Capital Equipment and spare parts purchasing, warranty repairs and replacement purchases, Equipment and software upgrades, and software licensing. Motivate shall contract directly with all third-party vendors as set forth in Exhibit B (Scope of Work), Article II.
2. **Guaranteed Capital Equipment.** Motivate agrees to purchase and install, at its sole expense, Guaranteed Capital Equipment for the City in quantities and according to the processes described in the Regional MOA.
3. **Additional Capital Equipment.** Upon direction by the City, Motivate shall place a Purchase Order for Capital Equipment, including but not limited to Bicycles, Stations, and parts thereof.

4. **Ordering Timeline.** The Parties agree to the following approximate deadlines for purchase and acceptance of any Capital Equipment (including the Guaranteed Capital Equipment):

Day 1	City requests in writing to Motivate that Motivate place an order for Capital Equipment or Guaranteed Capital Equipment
Day 11	Motivate provides draft Purchase Order to the City
Day 16	City approves Purchase Order
Day 135	Motivate receives Capital Equipment or Guaranteed Capital Equipment in Boston area warehouse
Day 150	Motivate completes Equipment Acceptance

5. **Inspection, Receiving, and Assembly.** All Capital Equipment shall be delivered directly to Motivate's Boston area warehouse. Motivate shall be responsible for receiving and assembling all of the Capital Equipment. Upon receipt of all Capital Equipment, Motivate shall perform detailed visual inspections to ensure that the Capital Equipment is free of any observable defects. To the extent practicable, Motivate shall assemble and test Capital Equipment prior to acceptance. Motivate shall initially prepare and at all times maintain a detailed inspection report for all Capital Equipment. The initial inspection report, together with all warranties, specifications, and other materials provided by the manufacturer, shall be delivered to the City, upon request, regarding each shipment of Capital Equipment received. Motivate shall retain copies of these materials as needed. Motivate shall update the City inventory with all new Capital Equipment, including serial numbers or other unique identification numbers where available.

6. **Equipment Warranty.** For all Capital Equipment purchased or otherwise acquired to perform the Work, Motivate shall complete, submit to the seller and/or manufacturer, and retain copies of all documents required to maintain all seller's and manufacturer's warranties. Promptly upon the discovery or receipt by Motivate of any Supplier Defects in the Capital Equipment, Motivate shall submit to the appropriate persons or entities and diligently pursue a claim therefor. Motivate shall retain copies of such claims and all documents related thereto. Motivate shall comply with all recalls of Capital Equipment as soon as practicable, including all existing Capital Equipment owned by the City, Guaranteed Capital Equipment, and any future additional Capital Equipment. Motivate is not responsible for any warranties that have expired due to the business condition of the Supplier unless Motivate, directly or indirectly, is a successor in interest to such Supplier.

Subject to the terms and conditions of the preceding paragraph, Motivate shall, with respect to any 8D Equipment, provide the warranty set forth in Exhibit K (8D Warranty).