

Contract Assignment and Modification

Puget Sound Bike Share Program Funding and Delivery Agreement

THIS CONTRACT ASSIGNMENT AND MODIFICATION is made effective January ____, 2016 (the "Effective Date"), and entered into by and among the City of Seattle ("Seattle" or "City"), a Washington municipal corporation; Puget Sound Bike Share ("PSBS"), a nonprofit corporation of the State of Washington; and Motivate International Inc. ("Contractor" or "Motivate"), a corporation of the State of Delaware, and authorized to do business in the State of Washington.

Whereas, Motivate was selected by PSBS through a competitive process to procure equipment and operate a bike share system in Seattle; and

Whereas, PSBS and Motivate's predecessor, Alta Bicycle Share, Inc., entered into that certain agreement entitled Puget Sound Bike Share Program Funding and Delivery Agreement, effective as of April 8, 2014 (referred to herein as this "Contract") for the provision of bike share services in Seattle;

Whereas, PSBS will be discontinuing operations in the near future; and

Whereas, the City does not want bike share services to be discontinued or interrupted, and is negotiating to acquire the existing system assets from PSBS; and

Whereas, the City and Motivate are willing to work together for an interim period of time under this Agreement pending negotiation of a revised long-term agreement; and

Whereas, the purpose of this Contract Assignment and Modification is to modify this Contract as between the City and Motivate and for PSBS to assign all of its right, title and interest in and to this Contract to the City; and

Whereas, funds for this purpose are authorized through the City of Seattle's annual budget, subject to appropriation.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the scope of work contained herein, as attached and made a part hereof, Seattle and Contractor mutually agree as follows:

- 1. Entire Agreement.** This Contract including all attachments, consisting of but not limited to existing and future exhibits, statements of work, project schedules, and future Contract amendments comprises the entire agreement between the City of Seattle (Seattle) and the Contractor. The Contract is defined to explicitly include this document and Attachment A, the Bike Share System Services description. Where there are conflicts between these documents, the controlling document will be this document.
- 2. Term.**
The term of this Contract ("Term") shall be through December 31, 2016, and may be extended by mutual agreement of both parties with written confirmation.
- 3. Scope of Work.**
Contractor shall provide the bike share system services as specified in Attachment A. These services shall be termed "work" herein.
- 4. Limits of Sales to Authorized Products and Services.**
Contractor has responsibility to limit sales to those products or services authorized within the contract, whether authorized by changes and amendments or stated within the original contract scope. The Contractor is responsible for refusing orders that are not properly authorized by the

contract or through other proper Purchase Orders issued by authorized persons from the City. If the Contractor has consistent sales of unauthorized products or services, the City reserves the right to use any of the following: terminate the contract in accordance with termination provisions, place the Contractor payments on "hold" for all incoming invoices while the City determines which are authorized items eligible for payment, and/or refuse certain invoices that contain non-authorized items.

5. Payment/Payment Procedures.

Seattle agrees to compensate as specified herein or attached, in consideration of acceptable Contractor performance.

6. Late Invoice Payment.

If the City pays an invoice after the 30 day allowance, the Contractor may charge the City no more than 1% interest calculated per month upon the total invoice amount. The Contractor is not entitled to any late fees or penalties for late payments. (Per RCW Chapter 39.76.011)

7. Invoices.

Invoices must show line item or service detail and price for each. Invoices must provide the name of the City employee that placed the order, and the City Contract Number. If the pricing structure is based upon a discount below list, or a mark-up above cost, then the Vendor must provide a method for tracking the cost of the item to the City, with the City discount calculation displayed so that pricing discounts can be easily tracked and verified by the City.

8. Taxes, Fees and Licenses.

A. Fees and Licenses: Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

B. Taxes: Where required by state statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, Seattle agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and Seattle agrees to furnish Contractor with an exemption certificate where appropriate.

C. Withholding payment for taxes/business license fees due the City of Seattle: If specified by Seattle Municipal Code the Director of the Department of Finance and Administrative Services may withhold payment due a City contractor pending satisfactory resolution of unpaid taxes and fees due the City.

9. Pricing.

Pricing shall be subject to the following terms. These are in addition to annual Prevailing Wage adjustments instructions when required that are specified elsewhere within this solicitation. The Buyer may exempt these requirements for extraordinary conditions that could not have been known by either party at the time of bid or other circumstances beyond the control of both parties, as determined in the opinion of the Buyer. Changes (whether increases or decreases) may only be issued by the City Purchasing Buyer (Department of Finance and Administrative Services). No other individual or City Department is authorized to approve such modifications. Changes shall be issued

in writing by the City Purchasing Buyer. Absent a written contract document, such changes shall not be considered effective. The Change Order shall not require joint signature, and implies concurrence unless the vendor rejects in writing immediately upon receipt of such a Change Order.

Requests for Price Decreases: Vendors can offer volume discounts or improved pricing that is more favorable to the City at any time, when a specific order is placed or when a long-term change in costs allows the vendor to offer a permanent change to the contract prices. Requests that reduce pricing charged to the City may be delivered to the City Purchasing Buyer at any time during the contract period. Such price reductions should use the same pricing structure as the original contract (i.e. discounts below list, mark-up above, fixed price, or hourly rates). The City may likewise initiate a request to the vendor for price reductions, subject to mutual agreement of the vendor.

Requests for Price Increases must be delivered to the City Purchasing Buyer in accordance to the rules below. No other employee may accept a rate increase request on behalf of the City. Any invoice that is sent to the City with pricing above that specified by the City in writing within this Contract or specified within an official written change issued by City Purchasing to this contract, shall be invalid. Payment of an erroneous invoice does not constitute acceptance of the erroneous pricing, and the City would seek reimbursement of the overpayment or would withhold such overpayment from future invoices.

1. **Discount from Manufacturer List Pricing:** The City will not accept requests to change discount rates below Manufacturer List prices or mark-up above wholesale, except for those that are more favorable to the City than the original contract. As manufacturer list prices change, the net price to the City will automatically change in the same percentage as the discount rate to the City.
2. **Hourly Rates or Service Pricing:** For multi-year contracts that provide services. The vendor may submit a price reduction that implements a lower and more favorable cost to the City at anytime during the contract. Vendor requests for rate increases must be no sooner than two years after contract signature, are at the discretion of the Buyer; and must be:
 - a. The direct result of increases to wage rates and do not exceed the U.S. Dept. of Labor Consumer Price Index (CPI) for All Urban Consumers Seattle-Tacoma-Bremerton or other appropriate service rate index agreed upon between the Buyer and the Contractor. A link to the CPI Data is available at <http://data.bls.gov/PDQ/outside.jsp?survey=wp>
 - b. Calculated over the previous 12-month period.
 - c. Not produce a higher profit margin than that on the original contract.
 - d. Clearly identify the service titles and the hours of service performed if specified within the contract and the before and after wage rates for such titles.
 - e. Be filed with Buyer a minimum of 90 calendar days before the effective date of proposed increase.
 - f. Be accompanied by detailed documentation acceptable to the Buyer sufficient to warrant the increase.
 - g. The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.
 - h. Should not deviate from the original contract pricing scheme/methodology

Seattle will not be bound by prices contained in an invoice that are higher than those in the contract. Unless the higher price has been accepted by the City and the contract amended, the invoice may be rejected and returned to the Vendor for corrections.

10. Cancellation of Orders.

The City may cancel an order before delivery without penalty or charge, providing that the Vendor has not incurred any special production costs such as custom fabrication in fulfilling the order. If the City cancels the order after production has begun for a non-standard or custom order, then the Vendor may charge the customer reasonable expenses incurred up until the date of the cancellation, that cannot be reasonably avoided or offset by the Vendor, not in any event to exceed 100% of the total value of the order.

11. Returns and Restocking. Unless specified otherwise in the solicitation, the following shall apply:

Vendor Error: No restocking charge for items ordered due to Vendor error. Vendor pays all shipping costs.

Stock items: No restocking fee applies if new, unused, in original packaging and shipped back within 30 days of receipt by the City. Customer pays the shipping cost.

Non-Stocked items: Item(s) may be returned if new, unused, in original packaging and shipped back within 30 days of receipt. If the City cancels the order after production has begun for a non-standard or custom order, then the Vendor may charge the customer reasonable expenses incurred up until the date of the cancellation, that cannot be reasonably avoided or offset by the Vendor, not in any event to exceed 10% of the total value of the order.

Non-Standard Items: Items that are custom engineered and fabricated to design specifications may be returned under the terms negotiated between the parties upon request of the City.

Failure to perform: If Vendor has presented a particular product as suitable and fit for the purpose described by the City herein or upon order by the City, and the product fails to perform as advised and/or specified, that shall be defined as a Vendor error. No restocking charge shall be charged to the City. Further, if such fitness could not have been determined until the product had been in use, the City may return the product opened and used within 30 days of receipt without penalty or charges due to the City.

12. Delivery – Idling Prohibited.

Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City for more than five minutes. The City requires vendors to utilize practices that reduce fuel consumption and emission discharge, including turning off trucks and vehicles during delivery of products to the City. Exceptions to this requirement include when a vehicle is making deliveries and associated power is necessary; when the engine is used to provide power in another device, and if required for proper warm-up and cool-down of the engine. Specific examples include “bucket” trucks that allow a worker to reach wires on telephone poles or tree branches for trimming; and vehicles with a lift on the back of a truck to move products in and out of the truck. The City of Seattle has a commitment to reduction of unnecessary fuel emissions. The City intends to improve air quality by reducing unnecessary air pollution from idling vehicles. Limiting car and truck idling supports cleaner air, healthier work environments, the efficient use of city resources, the public’s enjoyment of City properties and programs, conservation of natural resources, and good stewardship practices.

13. Travel and Other Direct Charges.

Travel and other travel related charges will not be reimbursed, unless travel is specifically requested by City and terms for reimbursement are agreed upon in writing in advance.

14. Delivery.

Except when instructed otherwise, delivery must be made during normal work hours and within timeframes proposed by Contractor herein and as accepted by Seattle. Failure to comply may subject Contractor to non-delivery assessment charges and/or damages as appropriate. Seattle reserves the right to refuse shipment when delivered before or after normal working hours. Contractor shall verify specific working hours of offices and so instruct carrier(s) to deliver accordingly. The acceptance by Seattle of late performance without objection or reservation shall not waive the right of Seattle to claim damages for such breach, nor preclude Seattle from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor. All deliveries are to be made to the applicable delivery location in accordance with Interstate Commerce Commission rules or as indicated in Purchase Order. When applicable, Contractor shall take necessary actions to safeguard items during inclement weather.

15. Identification.

All invoices, packing slips, packages, instruction manuals, correspondence, shipping notices,

shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

16. Charges for handling.

No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.

17. Contract Notices, Deliverable Materials and Invoices Delivery

The City of Seattle agent for Contract changes shall be the City of Seattle Buyer named below, hereinafter referred to as "Buyer." Contract notices such as change requests, shall be delivered to the Buyer at the following addresses (or such other address as either party may designate in writing):

If delivered by the U.S. Postal Service, it must be addressed to:

Jason Edens
City of Seattle Purchasing and Contracting Services
PO Box 94687
Seattle, WA 98124-4687

If delivered by other than the U.S. Postal Service, it must be addressed to:

Jason Edens
City of Seattle Purchasing and Contracting Services
Seattle Municipal Tower
700 5th Ave., #4112
Seattle, WA 98104-5042

Phone: 206-733-9583
Fax: 206-233-5155
E-Mail: Jason.Edens@Seattle.Gov

Project work, invoices and communications shall be delivered to the City Project Manager:

City of Seattle, Department of Transportation
Attention: Nicole Freedman
Address 700 5th Ave., 38th floor, 98104
Phone 206-552-4085

18. Representations.

Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

19. Independent Contractor.

It is the intention and understanding of the Parties that Contractor shall be an independent contractor and that Seattle shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Contractor shall not be deemed to convert this Contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that Seattle is not the exclusive user of the services that Contractor provides.

20. Inspection.

The Work shall be subject, at all times, to inspection by and with approval of Seattle, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding Seattle's knowledge of

defective or noncomplying performance, its substantiality or the ease of its discovery. Contractor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

21. Title, Risk of Loss, Freight, Overages or Underages.

Title of goods received under this contract shall remain with the Contractor until they are delivered to the address specified, at which time title passes to Seattle. Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligations under. Prices include freight prepaid. Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.

22. Performance.

Acceptance by Seattle of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

23. Affirmative Efforts for Utilization of Women and Minority Subcontracting and Employment, Non discrimination in providing services

- Employment Actions: Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.
- In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when there are commercially useful purposes for fulfilling the scope of work.
- If a WMBE Inclusion Plan is requested by and submitted to the City, the WMBE Inclusion Plan is material to the contract. The requirements and conditions stated in the WMBE Inclusion Plan shall be enforced as a contract requirement.
- If upon investigation, the Director of Purchasing and Contracting Services finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall be notified in writing. The Director shall give Contractor an opportunity to be heard with ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.
- Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal

Code Section 20.70 (Debarment).

24. **Assignment:** Contractor shall not assign any of its obligations under this Contract without Seattle's written consent, which may be granted or withheld in Seattle's sole discretion.
25. **Subcontracting:** Contractor shall not enter into a subcontract after the Effective Date for any of its obligations with an expected value above \$10,000 annually without notifying the City by email. The City has 24 hours to withhold approval, but will not unreasonably withhold approval. Approval will be deemed granted in the absence of a response. Contractor shall ensure that all subcontractors comply with the obligations, requirements and terms and conditions of the subcontract, except for Equal Benefit provisions. Seattle's consent to subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent to subcontract.
26. **Key Persons and Subcontractors.** Contractor shall not transfer, reassign or replace any individual or subcontractor that is determined to be essential or that has been agreed upon in the Contractor's Subcontracting (Inclusion) Plan, without express written consent of Seattle. If during the term of this Contract, any such individual leaves the Contractor's employment or any named subcontract is terminated for any reason, Contractor shall notify Seattle and seek approval for reassignment or replacement with an alternative individual or subcontractor. Upon Seattle's request, the Contractor shall present to Seattle, one or more subcontractors or individual(s) with greater or equal qualifications as a replacement. Continued achievement of the Subcontracting (Inclusion) Plan that was incorporated into this Contract by reference, if any, and the associated subcontract awards, aspirational goals and efforts, will be one of the considerations in approval of such changes. Seattle's approval or disapproval shall not be construed to release the Contractor from its obligations under this Contract.
27. **Equal Employment Opportunity.**
All Contractors must comply with federal Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.:
28. **Civil Rights Act Title VI.**
The Contractor must comply with the provisions of the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to, discrimination under any program or activity receiving federal financial assistance.
29. **Equal Benefits.**
Compliance with SMC Ch. 20.45: The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At Seattle's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules, go to review information at <http://cityofseattle.net/contract/equalbenefits/>.)
- Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which the City may:
- A. Require Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
 - B. Terminate the Contract; or

- C. Disqualify Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
- D. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

30. Publicity.

No news release, advertisement, promotional material, tour, or demonstration related to Seattle's purchase or use of the Contractor's product or services performed pursuant to this Contract shall be produced, distributed, or take place, without the prior, specific written approval of the City's Project Manager or his/her designee.

31. Proprietary and Confidential Information

The State of Washington's Public Records Act (Release/Disclosure of Public Records) Under Washington State Law (reference RCW Chapter 42.56, the Public Records Act) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.

The State of Washington's Public Records Act requires that public records must be promptly disclosed by the City upon request unless that RCW or another Washington State statute specifically exempts records from disclosure. Exemptions are narrow and explicit and are listed in Washington State Law (Reference RCW 42.56 and RCW 19.108).

As mentioned above, all City of Seattle offices ("the City") are required to promptly make public records available upon request. However, under Washington State Law some records or portions of records may be considered legally *exempt from disclosure*. A list and description of records identified as exempt by the Public Records Act can be found in RCW 42.56 and RCW 19.108.

If the City receives a public disclosure request for any records or parts of records that Contractor has properly and specifically listed on the City Non-Disclosure Request Form (Form) submitted with Contractor's bid/proposal, or records that have been specifically identified in this contract, the City will notify Contractor in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow Contractor up to ten business days to obtain and serve the City with a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a Court order and serve the City within the ten days, the City may release the documents.

The City will not assert an exemption from disclosure on Contractor's behalf. If Contractor believes that its records are exempt from disclosure, Contractor is obligated to seek an injunction under RCW 42.56.540. Contractor acknowledges that the City will have no obligation or liability to Contractor if the records are disclosed.

32. General Legal Requirements.

- A. General Requirement: Contractor, at no expense to Seattle, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Contractor shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: Contractor, at no expense to Seattle, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Taxes: The Contractor shall pay, before delinquency, all taxes, import duties, levies, and

assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

33. American with Disabilities Act.

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs or activities to Seattle employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities, to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

34. OSHA/WISHA.

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

35. Contract Work Hours and Safety Standards.

For all contracts that employ mechanics or laborers, the Contractor and all subs shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provide that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

36. Indemnification.

- a. Motivate will defend, indemnify and hold City and its Personnel harmless, to the fullest extent permitted by law, from any and all claims or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which City and its Personnel may be subjected arising out of or in connection with any breach of this Contract, any violation of Laws and Regulations, any work performed or goods provided under this Contract, or the negligence or intentional misconduct by Motivate or its Personnel. Insofar as the facts or law relating to any claim would preclude City from being completely indemnified by Motivate, City will be partially indemnified by Motivate to the fullest extent permitted by law.
- b. Notwithstanding the foregoing, the following shall be excluded from Operator's indemnification and defense obligations contained in the preceding paragraph: any liabilities to the extent (i) caused by the City or its employees, officers, agents, contractors, subcontractors, licensees or invitees, (ii) resulting from, or arising out of the negligence of the City or its employees, officers, agents, contractors, subcontractors, licensees or invitees, (iii) resulting from, or arising out of compliance by Motivate or its Personnel with the written directives or written requirements of the City or its Personnel, 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) City's street treatment requirements, or (iv) the condition of any public property outside of the perimeter of a Station and immediately adjacent access areas and not otherwise controlled by Motivate.

- c. Motivate will defend, indemnify and hold City harmless from any and all claims (even if the allegations of the claim are without merit) or judgments for damages and from costs and expenses to which City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by Motivate of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by Motivate or its Personnel in the performance of this Contract. Motivate will defend, indemnify, and hold City harmless regardless of whether or not the alleged infringement arises out of compliance with the Contract's scope of services/scope of work. Insofar as the facts or law relating to any claim would preclude City from being completely indemnified by Motivate, City will be partially indemnified by Motivate to the fullest extent permitted by law. However, upon termination or expiration of this Contract, City shall be responsible for the payment of software licensing and maintenance fees to licensor by the replacement operator.
- d. The indemnification provisions set forth in this Section will not be limited in any way by Motivate's obligations to obtain and maintain insurance as provided in this Contract.
- e. Motivate will report to the Program Manager in writing as soon as practicable, but in no event later than 10 Business Days after becoming aware of the initiation by or against Motivate of any claim, legal action or proceeding in connection with or relating to this Contract.
- f. The provisions of this Contract will not be deemed to create any right of action in favor of third parties against Motivate or City or their respective Personnel.
- g. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

37. Background Checks and Immigrant Status

The City has strict policies regarding the use of Background checks, criminal checks and immigrant status for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/business/WithSeattle.htm> To the extent allowable by law, operator shall abide by these policies upon request by Seattle Department of Transportation.

38. Insurance.

A. INSURANCE REQUIREMENTS:

- 1. Motivate will, as of the Effective Date, have all insurance required by this Section in effect and Motivate will provide continuous insurance coverage in the manner, form, and limits required by this Section throughout the Term.
- 2. **COMMERCIAL GENERAL LIABILITY (CGL) OR EQUIVALENT INCLUDING:**
 PREMISES, PRODUCTS-COMPLETED OPERATIONS, CONTRACTUAL LIABILITY,
 STOP GAP/EMPLOYER'S LIABILITY, PRODUCTS/COMPLETED OPNS.
MINIMUM LIMITS OF LIABILITY SHALL BE:
\$1,000,000EACH OCCURRENCE COMBINED SINGLE LIMIT BODILY INJURY AND
 PROPERTY DAMAGE
\$2,000,000PRODUCTS/COMPLETED OPERATIONS AGGREGATE
\$2,000,000GENERAL AGGREGATE
- 3. **BUSINESS AUTOMOBILE LIABILITY** INSURANCE FOR OWNED, NON-OWNED, LEASED AND HIRED VEHICLES AS APPROPRIATE written on a form CA 00 01 or equivalent WITH **MINIMUM LIMITS OF LIABILITY OF \$1,000,000** CSL.
- 4. **WORKER'S COMPENSATION** INSURANCE FOR WASHINGTON STATE AS REQUIRED BY TITLE 51 RCW.
- 5. **UMBRELLA/EXCESS/BUMBERSHOOT LIABILITY** INSURANCE OVER **CGL** LIABILITY
 MINIMUM LIMIT OF LIABILITY SHALL BE **\$5,500,000** per occurrence and in the aggregate (**\$6,500,000** **MINIMUM TOTAL LIMITS REQUIREMENT**), and over **Business Automobile**

Liability insurance minimum limit of liability shall be **\$5,000,000** total limits.

- 6. CRIME FIDELITY, THEFT, DISAPPEARANCE & DESTRUCTION LIABILITY (TO INCLUDE EMPLOYEE THEFT, WIRE TRANSFER, FORGERY & MAIL COVERAGE, AND CLIENT COVERAGE):** WITH MINIMUM LIMIT \$250,000 PER OCCURRENCE AND IN THE AGGREGATE. The policy shall cover “client’s property,” not just when legally liable and shall have a Joint Loss Payee Endorsement in favor of the City of Seattle.

B. TERMS AND CONDITIONS:

- 1. City of Seattle as Additional Insured:** The CGL insurance shall include “the City of Seattle” and “King County” as an additional insured and provide for Motivate’s insurance to apply on a primary and non-contributory basis to the extent of liabilities assumed by Motivate hereunder.
- 2. No Limitation of Liability:** Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only; they shall not be construed to limit the liability of Motivate or any insurer for any claim that is required to be covered hereunder to less than the applicable limits of liability stated in the declarations. Moreover, the City and King County shall be additional insureds, where additional insured status is required, for the full available limits of liability maintained by Motivate, whether those limits are primary, excess, contingent or otherwise.
- 3. Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited:** Motivate’s general and excess liability insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer’s liability. Motivate’s general and excess liability insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle or King County from coverage or asserting a claim under the Motivate’s insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Motivate’s CGL policy shall NOT include any of the following Endorsements (or their *equivalent endorsement or exclusions*): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), (b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer’s Liability exclusion, (e) and any “Insured vs. Insured” or “cross-liability” exclusion. Motivate’s failure to comply with any of the requisite insurance provisions shall be a material breach of the Contract with the City of Seattle for which Motivate shall have seven (7) days from the notice of any such failure to cure; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage up to the minimum coverage required by this Contract with any related costs of premiums to be repaid by Motivate or reduced and/or offset against the Contract.
- 4. Claims Made Form:** If any policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this contract. Claims made coverage shall be maintained by the Motivate for a minimum of three (3) years following the expiration or earlier termination of this contract, and the Motivate shall provide the City with evidence of insurance for each annual renewal. If renewal of the claims made form of coverage becomes unavailable or economically prohibitive, the Motivate shall purchase an extended reporting period (“tail”) or execute another form of guarantee acceptable to the City to assure financial responsibility for liability assumed under the contract.
- 5. Deductibles and Self-Insured Retentions:** Motivate shall be responsible for payment of any deductible or retention on Motivate’s policies without right of contribution from City. Without limiting the foregoing, deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

6. **Notice of Cancellation:** Under RCW 48.18.290 (“Cancellation by insurer”) applicable to insurers licensed to do business in the State of Washington, the City, as a certificate holder for the insurance requirements specified herein and an additional insured, has an interest in any loss which may occur; written notice of cancellation must therefore be actually delivered or mailed to the City not less than 45 days prior to cancellation (10 days as respects non-payment of premium). As respects surplus lines placements, written notice of cancellation shall be delivered not less than 30 days prior to cancellation (10 days as respects non-payment of premium).
7. **Qualification of Insurers:** Insurers shall maintain A.M. Best’s ratings of A-VII unless procured as a surplus lines placement under RCW chapter 48.15, or as may otherwise be approved by the City.
8. **Changes in Insurance Requirements:** The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to the Motivate. Should Motivate, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.
9. **Evidence of Insurance:** Motivate must provide the following evidence of insurance:
 - a. A certificate of liability insurance in a form satisfactory to the City evidencing coverages, limits of liability and other terms and conditions as specified herein;
 - b. A City of Seattle designated additional insured endorsement or blanket additional insured wording to the CGL.

At any time upon the City’s request, Motivate shall also cause to be timely furnished a copy of declarations pages and schedules of forms and endorsements. In the event that the City or King County tenders a claim or lawsuit for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, Motivate shall also cause a complete and certified copy of the requested policy to be timely furnished to the City.

Send evidence of insurance to the City notice contact listed in Schedule G.4.
For questions or issues about insurance, contact the City of Seattle Risk Management at (206) 615-1507 or by email at Sheila.Barker@seattle.gov

NOTE: CERTIFICATES WITHOUT ATTACHED ADDITIONAL INSURED ENDORSEMENT OR BLANKET ADDITIONAL INSURED COVERAGE FOR THE CITY OF SEATTLE WILL NOT BE APPROVED!

39. **Audit.**

Upon request, Contractor shall permit Seattle, and any other governmental agency involved in the funding of the Work (“Agency”), to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by Seattle or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in King County, Washington or other such reasonable location as Seattle or Agency selects. The Contractor shall supply Seattle with, or shall permit Seattle to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of Seattle and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

40. **Contractual Relationship**

The relationship of Contractor to Seattle by reason of this Contract shall be that of an independent

contractor. This Contract does not authorize Contractor to act as the agent or legal representative of Seattle for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Seattle or to bind Seattle in any manner or thing whatsoever.

41. Federal Debarment for Primes and all Subcontractors.

Contractor shall immediately notify the City of any suspension or debarment or other action that excludes the Contractor and any subcontractor from participation in Federal contracting. Contractor shall verify all subcontractors that are intended and/or used by the Contractor for performance of City work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at <https://www.sam.gov/portal/public/SAM/#1>. The Contractor shall keep proof of such verification within the Contractor records.

42. Supervision and Coordination.

Contractor shall:

- Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein.
- Designate in its bid or proposal to Seattle, a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.
- Promote and offer to Purchasers only those materials, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.

43. Involvement of Current and Former City Employees

If a Contractor has any current or former City employees, official or volunteer, working or assisting on solicitation of City business or on completion of an awarded contract, you **must** provide written notice to City Purchasing of the current or former City official, employee or volunteer's name. The Vendor Questionnaire within your bid documents prompts you to answer that question. You must continue to update that information to City Purchasing during the full course of the contract. The Contractor is to be aware and familiar with the Ethics Code, and educate vendor workers accordingly.

44. Anti-Trust Overcharges.

Seattle maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore the Contractor hereby assigns to Seattle any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to Seattle under an escalation clause.

45. No Conflict of Interest.

Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

46. No Gifts or Gratuities.

Contractor shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official, that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Vendor. Promotional items worth less than \$25 may be distributed by the vendor to City employees if the Vendor uses the items as routine and standard promotions for business. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

47. Contract Workers with 1,000 Hours

Throughout the life of the Contract, Contractor shall provide written notice to City Purchasing and the City Project Manager of any contract worker that shall perform more than 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those that the contract worker performs for the Contract, and any other hours that the worker performs for the City under any other contract. Such workers are subject to the requirements of the City Ethics Code, Seattle Municipal Code 4.16. The Contractor shall advise their Contract workers as applicable.

48. Errors & Omissions: Correction.

Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Contractor under this Contract. The Contractor, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other Contractor services immediately upon notification by Seattle. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract and shall be in addition to all other obligations and liabilities of the Contractor.

49. Intellectual Property Rights.

Patents. Contractor hereby grants Seattle an irrevocable, non-exclusive, fully paid, royalty-free right and/or license to use, solely in connection with the operation of the Program, any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed by Motivate solely for, and paid by the City, in connection with the performance of Contract or any subcontract hereunder. The Contractor does not convey to Seattle, nor does Seattle obtain, any right to any property, document or material utilized by Contractor that was created or produced separate from this Contract, was preexisting material (not already owned by Seattle), or was created or produced by Contractor for application in multiple systems operated by Contractor ("System-wide applications") (collectively, and together with the copyrighted materials and documents referred to in the first sentence of the following paragraph, "Motivate Property"). To the extent that preexisting materials are incorporated into the Work, the Contractor grants Seattle an irrevocable, non-exclusive, fully paid, royalty-free right and/or license to use such preexisting materials solely in connection with the operation of the Program. Contractor shall not be obligated to grant the City any license to use Motivate Property other than preexisting materials, but during any transition period under Section 53, Contractor shall work with the City to implement a replacement for any other Motivate Property.

Copyrights. For materials and documents prepared by Contractor in connection with the Work, Contractor shall retain the copyright (including the right of reuse) whether or not the Work is completed. Seattle may make and retain copies of documents for its information and reference in connection with their use in connection with the Program. The Contractor does not represent or warrant that such documents are suitable for reuse by Seattle, or others, on extensions of the project, or on any other project. Contractor grants to Seattle a non-exclusive, irrevocable, royalty-free license to use, solely in connection with the operation of the Program, every document and all other materials prepared by the Contractor solely for, and paid by the City, under this Contract. If requested by Seattle, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which were developed by Contractor solely for, and paid for by, Seattle in connection with the performance of the Work, shall be promptly delivered to Seattle.

Contractor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

50. Expansion.

Any resultant contract or Purchase Order may be expanded as allowed below. A modification may be considered per the criteria and procedures below, for any ongoing Blanket Contract that has not yet expired. Likewise, a one-time Purchase Order may be modified if the bid reserved the right for additional orders to be placed within a specified period of time, or if the project or body of work associated with a Purchase Order is still active. Such modifications must be mutually agreed. The only person authorized to make such agreements on behalf of the City is the Buyer from the City Purchasing Division (Department of Finance and Administrative Services). No other City employee is authorized to make such written notices. Expansions must be issued in writing from the City Buyer in a formal notice. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or vendors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition; and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer.

Note that certain changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by the City Purchasing Buyer in writing to the Vendor.

51. **Disputes.**

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and Seattle's Project Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes including termination as allowed for within the contract, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract for cause or convenience.

52. **Termination.**

A. For Cause: Seattle may terminate this Contract:

- a. If the Contractor is in material breach of any of the terms of this Contract, and such breach has not been corrected to Seattle's reasonable satisfaction in a timely manner.
- b. If Motivate or any of its officers, directors, partners, managers, owners, principals, or other employees or persons substantially involved in its activities are indicted or convicted after execution of the Attachment under any federal or state law of a criminal offense involving fraud, embezzlement, bribery, forgery, falsification or destruction of records, receiving stolen property or otherwise involving a lack of business integrity, and Motivate fails to terminate their relationship with Motivate within 10 Days of City's request that they do so; or
- c. If any of Motivate 's Program Personnel (with respect to their dealings with members of the public) are convicted of a criminal offense, and Motivate fails to remove them from duties involving any physical presence in public areas within the Program Area within 2 Business Days of City's request that Motivate does so.

B. City may terminate this Contract, in whole or in part, whenever City determines that such

termination is in the best interest of City. 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, with best efforts to provide sixty (60) days notice, specifying the extent to which performance of the Work under this Contract is terminated and the date upon which such termination becomes effective. Motivate will be entitled to receive compensation for all services satisfactorily performed by Motivate under this Contract prior to such termination. After receipt of a notice of termination and except as otherwise directed, Motivate shall:

- a. stop all Work on the date of receipt of the notice of termination or other date specified in the notice;
 - b. place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated;
 - c. immediately transfer all documentation and paperwork for terminated Work to City; and
 - d. terminate all vendors and subcontracts and settle all outstanding claims and liabilities.
- C. Upon an Event of Default, City may, in any order or combination it chooses, in its sole discretion:
- a. require Motivate to pay City compensation for any losses or costs incurred by City as a result of the default;
 - b. prevent by injunction the continuation of the default;
 - c. require Motivate to continue to perform all or such part of the Services as are required by City;
 - d. remedy the default by such means and in such manner, as City may deem advisable, and recover City's costs of same from Motivate;
 - e. pursue any other remedy permitted by law or in equity or under this Contract; or
 - f. terminate this Contract.
- D. Nonappropriation of Funds: Seattle may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.
- E. Acts of Insolvency: Seattle may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.
- F. Termination for Gratuities: Seattle may terminate this Contract by written notice to Contractor if Seattle finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent therefor to any City official, officer or employee.
- G. Actions Upon Termination: In no event shall such compensation exceed the maximum compensation to be paid under the Contract. Contractor agrees that this payment shall fully and adequately compensate Contractor and all subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract.

- H. Upon termination or expiration of this Attachment, or any part of this Contract, Motivate will within 45 Days of expiry:
- a. if requested by the Program Manager, remove all Equipment, restore all City property and right-of-way to the condition it was in as at the date of Equipment installation,
 - b. deliver to the Program Manager reasonable copies of all books, records, documents and materials specifically relating to this Contract, or the part of this Contract, so terminated, that the Program Manager has requested be turned over;
 - c. deliver to the Program Manager a final financial statement and report relating to this Attachment or the part of this Contract, so terminated, prepared by and certified correct by a Professional Accountant, which statement may include up to \$150,000.00 in Demobilization Costs even though incurred following the termination or expiry date; and
 - d. where requested by the Program Manager, and where permitted under the terms of those licenses, assign the licenses for any non-City Sites to City or to a replacement operator designated by City.

53. Transition Following Termination. Upon termination or expiration, except where termination or expiration is due to a default or breach by Motivate, of this Contract, or any part of this Contract, upon written request of the Program Manager, Motivate and City shall mutually work together to assure the orderly transition of all services provided by Motivate under this Contract or the part of the Attachment so terminated to an alternate provider designated by City to ensure to the greatest extent possible that the operation of the System is maintained without interruption, provided that City shall pay Motivate a reasonable hourly fee for any transition services it requires outside the scope of Work. In furtherance of this Section 53, the parties agree that (i) ownership of equipment purchased by Motivate for operation of the System will be transferred to City including, but not limited to, vehicles, uniforms and tools and (ii) all contracts executed by Motivate and any entity, vendor, contractor, subcontractor, corporation, partnership, or individual for the provision of any good provided or service rendered in connection with the System, including, but not limited to, contracts with any subcontractor, and contracts to purchase, use, lease, license or rent real or intellectual property shall be transferable to City, or its designee, in the sole discretion of City. In no event shall Motivate be obligated to assign any Motivate Property.

54. Force Majeure – Suspension and Termination.

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under Section #2 (Emergencies or Disasters), Section #2 below shall instead be in force.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty

provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

55. Major Emergencies or Disasters.

The City may undergo an emergency or disaster that may require the Contractor to either increase or decrease quantities from normal deliveries, or that may disrupt the Contractor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, and transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

- (a) The City shall notify the Contractor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Contractor.
- (b) The City may request that the Contractor provide either increased or decreased quantities from traditional orders, or may request Contractor provide additional products or services.
- (c) Upon such notice by the City, the Contractor shall make reasonable efforts to provide the City the materials in the quantities requested and within the schedule specified by the City, adhering to the conditions in this Section.
- (d) The City of Seattle shall be the customer of first priority for the Contractor, except where preceded by State or Federal government mandates. The Contractor shall provide its best and priority efforts to provide the requested goods and/or services to the City of Seattle in as complete and timely manner as possible. Such efforts by the Contractor are not to be diminished as a result of Contractor providing service to other customers, except as mandated by State or Federal governments.
- (e) If the Contractor is unable to respond in the time and/or quantities requested by the City, the Contractor shall promptly assist the City to the extent practicable, to gain access to alternative materials and/or services. This may include:
 - a. Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
 - b. Offering the City substitutions provided the Contractor obtains prior approval from the City for such substitution.

The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

56. City Debarment.

In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:

- e. Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- f. Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- g. Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- h. Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- i. Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.

- j. Contractor colluded with another contractor to restrain competition.
- k. Contractor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- l. Contractor failed to cooperate in a City debarment investigation.
- m. Contractor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment following the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

57. **Recycle Products Requirements.** To promote and encourage environmentally sustainable practices for companies doing business with the City, the City requires that vendors under City contract use environmentally preferable products in production of City work products.

Green Seal Products: Contractor shall use Green Seal, Eco Logo or other certified cleaning products as approved by the City, in performance of all cleaning and janitorial work to protect the health, safety, wellness and environmentally sustainable practices that the City requires of companies doing business with the City. Cleaning products, floor care products and other products used in the performance of work that carry a Green Seal certification are required. The Bidder shall identify the products that the Bidder intends to use at the City facilities and shall list them on the Offer Form, with a notation to confirm Green Seal product certification. The Green Seal website is: <http://www.greenseal.org/findaproduct/index.cfm>. The City has contracts with various vendors who will supply the winning Bidder with Green Seal certified products for use in performance of City contract work, at City contract pricing. For the list of vendors, contact the City Buyer.

Paper and Paper Product Requirements: The City desires use of 100% PCF (post consumer recycled content, chlorine-free) paper, to comply with the City Executive Order and to encourage environmentally preferable practices for City business. Such paper is available at City contract prices from Keeney's Office Supplies at 425-285-0541.

The City prohibits vinyl binders. The City prefers 100% recycled stock Binders. "Rebinders" are a product that fit this requirement and are available at City contract prices from Complete Office at 206-628-0059 or Keeney's Office Supplies at 425-285-0541. Please do not use binders or plastic folders, unless essential. Note - Keeney's is a Women Owned Firm and may be noted on your Outreach Plan.

Contractors shall duplex materials prepared for Seattle under this Contract, whether materials are printed or copied, except when impracticable due to the nature of the product. This is executed under the Mayor's Executive Order, issued February 13, 2005.

58. **Workers Right to Know.**

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

59. Miscellaneous Provisions.

- A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of the City and Motivate.
- B. Conflict: In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford Seattle the maximum benefits.
- C. Liens, Claims and Encumbrances: All materials, equipment, or services shall be free of all liens, claims or encumbrances of any kind and if Seattle requests a formal release of same shall be delivered to Seattle.
- D. Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- E. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County, Washington
- F. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- G. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- H. Severability: Any term or provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Contract.
- I. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Seattle of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by Seattle of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Seattle, in writing. The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.
- J. Contract Representations: This Contract as described in Item 1 constitutes the entire Agreement. No verbal agreement or conversation between any officer, agent, associate or employee of Seattle and any officer, agency, employee or associate of the Contractor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- K. Negotiated Contract: The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by respective legal counsel, and that terms and conditions are not construed against any party on the basis of such party's draftsmanship thereof.
- L. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.

60. Assignment

- A. Puget Sound Bike Share hereby assigns all of its rights in this Contract to the City of Seattle.
- B. The City of Seattle hereby accepts this assignment from Puget Sound Bike Share.
- C. Motivate International Inc. hereby consents to this assignment from Puget Sound Bike Share to the City of Seattle.

61. Modification

- A. The City of Seattle hereby agrees to the modifications in this Contract, as between the City and Motivate.
- B. Motivate International Inc. hereby agrees to the modifications in this Contract, as between Motivate and the City.

[Signatures on following page]

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract Assignment and Modification by having their authorized representatives affix their signatures below.

Motivate International Inc.

City of Seattle

By _____
Signature Date

By _____
Signature Date

JAY WALDER
President and CEO

NANCY LOCKE
City Purchasing and Contracting Director

Puget Sound Bike Share

By _____
Signature Date

(Printed Name)

Title

Attachment A

BIKE SHARE PROGRAM SERVICES

This Attachment A is attached to, and is a part of, that certain Contract Assignment and Modification among the City of Seattle, Puget Sound Bike Share and Motivate International Inc. relating to operation of an existing bike share system within the City (the “Agreement”).

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SCHEDULES

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SECTION 1

DEFINED TERMS

In this Attachment, capitalized terms shall have the meaning described below or as specified in the Agreement:

- 1.1. “Advertising” means any printed matter, including, but not limited to, words, pictures, photographs, symbols, graphics or visual images (both still and moving) of any kind or combination, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual images, messages or information, but in no event will it include any information that is required to be posted on any Equipment by any Laws or Regulations or by this Attachment.
- 1.2. “Attachment” means this Attachment A including all Schedules as amended from time to time.
- 1.3. “Bicycle” or “Bike” means a device described as such in Schedule A [*Equipment Specifications*].
- 1.4. “Business Day” means any day that is not a Saturday, Sunday or “holiday” as defined in the list of federal holidays found at usa.gov.
- 1.5. “Business Hours” mean 9:00 a.m. to 5:00 p.m. on any Business Day.
- 1.6. “Call Center” refers to an entity that will answer Program User or general public calls.
- 1.7. “City” means the City of Seattle, a municipal corporation in the State of Washington.
- 1.8. “City Sites” means the Sites located on City streets, public-right of way or other public property owned or controlled by the City within which the System is operated.
- 1.9. “Day” means a calendar day, unless otherwise stated herein.
- 1.10. “Demobilization Costs” means the actual direct costs of removing the Equipment from the Sites, vacating the offices and warehouses, restoring the Sites, offices, and warehouses in accordance with Motivate’s contractual obligations.
- 1.11. “Docks” means the locking mechanisms mounted on the Technical Platform that are designed to receive into and release from locked storage a Bicycle, as further described in Schedule A [*Equipment Specifications*].
- 1.12. “Equipment” means, individually or in any combination, the Technical Platforms, Terminals, Docks, Helmet Distribution and Return Bin, Bicycles, and Helmets all as further described in Schedule A [*Equipment Specifications*]. The initial Equipment for

the Program was acquired by the City from Puget Sound Bike Share d/b/a Pronto Cycle Share, the original owner of the Pronto Cycle Share bike share system.

1.13. "Full Station" means a Station that can be placed in operation, and consists of:

- A kiosk with batteries and a solar panel
- A helmet distribution and return bin with integrated map panel and a helmet return compartment
- At least 12 docks and the requisite number of technical platforms to hold such docks (each dock consists of a bollard, left door, right door, cassette and a dock-to-dock cable)
- A terminal-to-dock cable
- At least 8 bicycles
- The requisite hardware and any other parts required to place a station on the site and be fully operational.

1.14. "Fully Functional" means when a station displays the following characteristics:

- The Full Station is installed at the location shown on the Site Plan
- The kiosk can accept walk-up registrations via credit card and issue accurate PINs for bike release, or equivalent
- Sanitized and inspected helmets are available and can be rented and returned.
- At least 50% of the docks can accept bicycles and lock them, and release bicycles when a valid member key or a valid bike number is introduced.

1.15. "Go Live Date" means October 13, 2014, the date that the Program was made available to the general public.

1.16. "Helmet" means a device described as such in Schedule A [*Equipment Specifications*].

1.17. "Helmet Requirements" has the meaning set out in Schedule A [*Equipment Specifications*].

1.18. "Helmet Distribution and Return Bin" means a device described as such in Schedule A [*Equipment Specifications*].

1.19. "Issues Management Protocol" means a protocol by which issues arising from media inquiries, general public relations management needs, are coordinated and addressed through the Program Manager as required by Section 13.1.

1.20. "Laws and Regulations" means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, ordinances, rules, codes of practice and other lawful requirements of any federal, state, municipal or other governmental authority in force in the State of Washington, including the principles of

common law and equity, and including all applicable guidelines and standards with respect to the above as adopted by any of those governmental authorities from time to time.

1.21. “Material Contract” includes any contract which would reasonably be required for City or another operator assuming the Program to assume and continue, such as for example, the licenses to use the non-City Sites.

1.22. “Motivate” means Motivate International Inc., a for-profit corporation incorporated pursuant to the laws of the State of Delaware, USA.

1.23. “Motivate’s Rep” has the meaning set forth in Schedule H [*Reporting Requirements*], subsection H.4 (a).

1.24. “Notification” means all communications including, but not be limited to, all information provided by City to Motivate about a specific defect or problem concerning the Program, Equipment or operations of the Program. Such Notifications may include any written document, or electronic communications. Notification may also include, but not be limited to, information provided to Motivate by the general public via the Motivate Call Center(s), in writing or by electronic communications.

1.25. “Program” means the Equipment, Sites, website, Software Licenses, Services and all other assets and activities required of Motivate by this Attachment to provide the public bike share system within the Program Area.

1.26. “Program Area” means that portion of the City of Seattle within which Stations have been installed, as such may change from time to time during the Term.

1.27. “Program Fleet” means the total number of Bicycles owned by the City and provided for operation of the Program.

1.28. “Program Operation Plan” means an operation plan describing the operational activities to be conducted by Motivate in the day-to-day operation of the system.

1.29. “Purchase Order” means a written order by Motivate and approved by City consisting of Equipment and/or Services to be provided to City by Motivate. Each Purchase Order must include items, number of units ordered and price per unit. Each Purchase Order must be signed by City and Motivate.

1.30. “Program Manager” means the City’s primary contact person for administration and management of the Services described in this Attachment, as designated by the City from time to time.

1.31. “Pronto” refers to Pronto Cycle Share, the brand name for the Program as of the Effective Date.

1.32. “Services” means the installation, operation and maintenance of the Stations, the acquisition, placement, maintenance and rental to users of the Bicycles and Helmets

and all other necessary activities to operate the Program in accordance with the requirements of this Attachment.

1.33. "Site" means a designated area on publicly or privately owned real property, or public right-of-way, which area contains a Station.

1.34. "Site (Non-City) Agreement" means a written confirmation that allows Motivate to place a Station at a Site other than a City Site.

1.35. "Software Licenses" means the licenses from the Supplier and others approved by City granting Motivate the right to use the software components of the Equipment and Services necessary to operate the Program.

1.36. "Spare Parts Purchase Order" means a Purchase Order for additional parts and equipment that are not Full Stations.

1.37. "Sponsor" means an entity that enters into an agreement with City whereby it is legally obligated to pay City money or in-kind services in consideration for the Sponsorship.

1.38. "Sponsor Property" means trademarks, logos, servicemarks, and other similar intellectual property of a Sponsor identified for use in connection with the Sponsorship agreement.

1.39. "Sponsorship" means an arrangement pursuant to which, in connection with a payment or payments that will be used to help defray the costs of installing or operating the Program, the Sponsor contributing such payment or payments is acknowledged by the Parties for such contribution and is permitted to place Advertising on the Equipment subject to local sign code regulations, and other considerations by City.

1.40. "Station" means each assembly on a Site of a Technical Platform, complete with Terminal, Docks, and Helmet Distribution and Return Bin as further described in Schedule A [*Equipment Specifications*].

1.41. "Supplier" refers to the vendor of Motivate for the Equipment, such as 8D Technologies, Inc. or its successor (whether by way of merger, asset purchase, equity purchase or other corporate transaction or reorganization) or substitution approved by City.

1.42. "System Metrics" means the key metrics as set out in Schedule E [*Service Levels and Liquidated Damages*] by which the Parties will determine how effectively the Program is performing.

1.43. "Technical Platform" means the mounting platform onto which the Terminal and Docks are mounted and secured.

1.44. "Terminal" means the component of the Station that provides Bicycle and Helmet rental instructions, rental terms and conditions, rental payment device (i.e. credit card

device), and includes power and communication necessary to transmit the rental transactions for Bicycles and/or Helmets, as further described in Schedule A [*Equipment Specifications*].

1.45. “Wayfinding Elements” means the information to be printed and installed by Motivate onto the Helmet Distribution and Return Bin at each Station.

SECTION 2

SERVICES

2.1. Motivate will operate the Program using Equipment owned by the City (as acquired from Puget Sound Bike Share d/b/a Pronto Cycle Share) and will provide the Services in accordance with this Attachment.

2.2. Title to any Equipment purchased by Motivate after the Effective Date using City funds (to the exclusion of the underlying intellectual property) will be held by City at all times.

2.3. Motivate has obtained and will maintain the Software Licenses throughout the term of the Agreement.

2.4. Motivate confirms that the Equipment Specifications and Software Licenses,

2.4.1. with respect to the Software Licenses only, are validly licensed or sublicensed to Motivate; to the knowledge of Motivate after reasonable inquiry, do not infringe, dilute, misappropriate, or improperly disclose any intellectual property or proprietary rights of any third party, or otherwise violate any law, rule, or regulation;

2.4.2. will store, process, or transmit customer payment card data in a secure manner and will maintain the confidentiality of such information at all times; and

2.4.3. to the knowledge of Motivate after reasonable inquiry, do not constitute defamation or invasion of the right of privacy.

2.5. Motivate has negotiated and entered into a separate escrow agreement between Motivate and 8D that allows Motivate to obtain (i) the source code of the Software upon the occurrence of one or more Release Conditions (as hereinafter defined), (ii) a limited non-exclusive license to use the Software and its source code strictly for the purpose of operating the Program within the Program Area for the term of the Agreement and (iii) all data belonging to Motivate which is hosted by 8D in relation to the Program. The separate escrow agreement shall provide that the Software’s source code shall be released to Motivate if one or more of the following occurs (each a “**Release Condition**”):

- 2.5.1. 8D ceases its operations in the normal course or ceases to support the Software for a period of thirty (30) consecutive days, other than through a sale or an assignment of asset that includes the Software when the purchaser or the assignee assumes the obligations of 8D under existing Software licenses and maintenance agreements;
 - 2.5.2. 8D is declared bankrupt or insolvent;
 - 2.5.3. 8D files a notice of intention or a proposal pursuant to the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3);
 - 2.5.4. 8D makes a general assignment for the benefit of its creditors; or
 - 2.5.5. A general receiver or trustee in bankruptcy is appointed over 8D's business or property. In relation to sub-sections 2.5.3 to 2.5.5, the Release Conditions described therein will not result in the release of the Software's source code: (a) if 8D has not received due notice of the proceedings described in those sub-sections whenever such proceedings are not instituted by 8D; or (b) if 8D duly challenges those proceedings within the delays set forth by the applicable statutes; or (c) if 8D remains in a position to offer and maintain the Software in order to operate the Program in accordance with the terms of this Attachment.
- 2.6. Motivate agrees to the following undertakings with respect to payment card industry (PCI) compliance requirements.
- 2.6.1. Within 10 days after the Effective Date and on an annual basis thereafter, Motivate will provide a current Attestation of Compliance (AOC) for the payment gateway provider (authorize.net) and station equipment and transaction software provider (8D Technologies), and for any successor to either of these vendors.
 - 2.6.2. Motivate is responsible for the security of any cardholder data that may be exposed while performing regular service in connection with station equipment where functions related to storing, processing, and transmitting of cardholder data occur.
 - 2.6.3. Motivate will provide annual skimmer training approved by SDOT IT and meeting City standards to station technician employees with responsibility for performing periodic skimmer checks.
 - 2.6.4. Station kiosks will be checked for skimming devices by station technicians whenever stations are serviced. In addition, Motivate will place a tamper-resistant seal on the kiosk card readers (subject to City bearing any costs in excess of \$1,000 for materials), and rebalancers will check for evidence of tampering when visiting stations and immediately report any such evidence to Motivate's

Operations Manager for appropriate follow-up. Skimmer inspection frequency shall be directly proportional to station utilization, depending on factors such as seasonality or peak usage. Regular or high-throughput stations (those experiencing more than 20 card transactions per day) will be inspected by rebalancers at least once per week.

- 2.6.5. PCI-DSS Certification. The credit card gateway utilized for the Program shall maintain appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as a Level 1 Service Provider. The gateway provider shall comply with Visa Cardholder Information Security Program (CISP) and Mastercard Data Protection (SDP) programs.
- 2.6.6. Unauthorized Access to Cardholder Data
- (a) In the event of a breach or intrusion or otherwise unauthorized access to cardholder data stored at or for Motivate and relating to the Program, Motivate shall notify the City's CISO within 24 hours to allow the proper PCI DSS compliant breach notification process.
 - (b) Upon request by City, Motivate shall provide copies of records relevant to PCI compliance (e.g., logs for skimmer checks) within a reasonable period of time.
- 2.6.7. In the event Motivate learns that its station equipment/software provider is no longer PCI DSS compliant, Motivate must notify the City's CISO within 5 calendar days.
- (a) Motivate shall ensure all system components and software have the latest vendor-supplied security patches, and relevant security patches are installed within 30 days of release; or as soon as adequately tested.

Motivate shall notify the City in advance of any new device deployments, including inventory information related to the station equipment being deployed.

2.7. Station location, re-location, and removal will be governed by Schedule C [*Stations*] and, additionally, Seattle City Sites will be governed by applicable Seattle Department of Transportation Street Use standards for locations in the public right-of-way, by the Department of Planning and Development (“**DPD**”) for private property locations and by the Seattle Parks and Recreation for Seattle park locations.

2.8. The parties intend that the Equipment used or installed pursuant to this Attachment comply with all applicable Laws and Regulations. In the event that any changes to the Equipment Specifications are required by any changes in Laws and

Regulations from those in effect as at the Effective Date, Motivate will (A) notify City of any such changes in Laws and Regulations, (B) propose a plan, for the City's approval, not to be unreasonably withheld, delayed or conditioned, for changing the Equipment so that it complies with such changes in Laws and Regulations, (C) following the City's approval of such plan and receipt from the City of sufficient funds to implement such plan, commence, and proceed with diligence, to implement such plan. Motivate will note any such changes to the Equipment in its inventory records so that this information is included in the inventory reporting required under Schedule G [*Reporting Requirements*]. In addition, if such changes to the Equipment result in higher costs for Motivate to provide Services and operate the System, then the Operations Fee shall be appropriately adjusted. In addition, Motivate will, at a minimum, replace Equipment and parts pursuant to the manufacturer's warranty or as necessary throughout the Term.

2.9. Before using or installing any Equipment, Motivate will obtain all necessary permits, authorizations, approvals, consents, licenses, and certifications required for the Equipment, including those required by:

- 2.9.1. SDOT Street Use permit for Equipment on Seattle City Sites in the public right-of-way;
- 2.9.2. DPD permits for publicly- or privately-owned real property or right-of-way, if DPD determines that such permits are necessary;
- 2.9.3. Schedule K [*Federal Transit Administration (FTA) Requirements*], if applicable;
- 2.9.4. Schedule L [*WSDOT Statement of Financial Assistance*], if applicable;
- 2.9.5. the Persons owning or occupying a Site which is not a City Site; and
- 2.9.6. all other applicable Laws and Regulations.

Any fees paid by Motivate for permits, authorizations, approvals, consents, licenses or certifications required for the Equipment shall be reimbursed by City.

2.10. Motivate will remain liable for all applicable taxes and fees, including without limitation and by way of example only, property taxes on its office and maintenance facilities, business license fees for Motivate, utility fees for water, sewer, and solid waste for its offices and maintenance facilities. Motivate will collect applicable sales taxes from Program users on the City's behalf and Motivate will remit such collections to the City, but the City shall be solely responsible for remitting applicable sales taxes to the State of Washington. Motivate will be solely responsible for obtaining and maintaining current any applicable licenses or permits, as required for the operations contemplated in this Attachment including, but not limited to, any occupational licenses required by law for the performance of the Services.

2.11. In connection with the installation, operation, maintenance, and removal or re-location of any and all Equipment, Motivate will not damage or injure any other property or right-of-way or Persons including without limitation and by way of example only, designated City landmarks, structures or pavement, including distinctive pavement.

2.12. Except with regard to the purchase of Equipment and other preexisting contracts with the Supplier, Motivate shall ensure that all contracts executed by Motivate and any entity, vendor, contractor, subcontractor, corporation, partnership, or individual for the provision of any good provided or service rendered in connection with the Program, including, but not limited to, contracts with any subcontractor, and contracts to purchase, use, lease, or rent real property are competitively priced.

SECTION 3 PROGRAM

3.1. Motivate will operate the Program as it was operated prior to the Effective Date. Motivate will provide to the Program Manager a copy of the Program Operation Plan in effect as of the Effective Date.

SECTION 4 SERVICE PERFORMANCE LEVELS

4.1. Except where and to the extent prevented or delayed by a Force Majeure Motivate will endeavor to operate the Program from the Effective Date to the end of the Term in accordance with the Meets Expectations minimums described in Schedule E [*Service Levels and Liquidated Damages*].

SECTION 5 CONSTRUCTION AND TECHNICAL REQUIREMENTS

5.1. Motivate will operate, and maintain the Equipment in accordance with the Equipment Specifications, Program Implementation Plan, Program Operation Plan, Schedule E [*Service Levels and Liquidated Damages*], Schedule D [*Station Installation and Relocations*], SDOT Street Use permit, Schedule K [*Federal Transit Administration (FTA) Requirements*] if applicable, Schedule L [*WSDOT Statement of Financial Assistance*] if applicable, all Laws and Regulations and any other applicable permits, and otherwise in accordance with this Attachment.

5.2. The Equipment will meet or exceed the requirements imposed by any and all applicable Laws and Regulations and will be of a standard of quality equal to or exceeding that of any Equipment samples shown to City during the procurement of the Program.

5.3. In connection with the installation, operation, and maintenance of the Equipment, Motivate will use best efforts to minimize the extent to which the use of the

right-of-way or other real property of any City is disrupted, and Motivate will use reasonable efforts not to obstruct the use of such right-of-way or real property of any City, including, but not limited to, pedestrian travel. Sidewalk clearance must be maintained at all times so as to provide a free pedestrian passage in accordance any applicable Laws and Regulations or guidelines unless prior consent has been obtained from the relevant City Engineer(s) or Director(s) in his or her sole discretion.

5.4. Motivate will undertake best efforts, in accordance with all applicable Laws and Regulations to provide for safety and to prevent accidents at its work sites, including, if necessary, the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the curb and suitable and sufficient lighting for all stations located in the public right-of-way.

5.5. Motivate will provide, install and maintain, appropriate traffic markings and devices as may be reasonably requested by any City Engineer(s) or Director(s) for public right-of-way locations for the station removals or relocations as outlined in Schedule D.

5.6. In the event either Motivate or City seeks to have new Equipment or other hardware-based technology, which was not previously included within the Equipment Specifications, or is not otherwise required by applicable Laws and Regulations, integrated into the Program, then such Party will make a request, in writing, to the other Party that outlines the proposed new Equipment or technologies and the proposed advantages that would result from integration of such items into the Program. If both Parties agree, then Motivate will integrate the new Equipment and technology into the Program, pursuant to a schedule that is agreed upon by the Parties; and, either Party may request other amendments to this Attachment that are based on new Equipment or technology, including provisions to cover all related costs.

SECTION 6

CUSTOMER SERVICE

6.1. The following obligations will be documented and included by Motivate in its Program Operation Plan, as updated and revised from time to time, and will be consistent with the Issues Management Protocol.

6.2. Motivate will establish and maintain prompt and efficient procedures for handling complaints received directly from the public and for handling complaints forwarded to Motivate by City, which procedures will be consistent with all applicable Laws and Regulations and the provisions of this Section 6. Such procedures will be set out in the Program Operation Plan and will only be available to City after a Confidentiality Attachment between Motivate and City is signed.

6.3. Motivate will conspicuously post a notice on each Station advising the general public that they may direct their complaints and comments to the Program's Call Center and website.

6.4. Motivate will incorporate Wayfinding Elements on each Station as directed and approved by City. The contents of Wayfinding Elements will be produced and installed by Motivate onto the Helmet Distribution and Return Bin. If City provides Motivate an updated digital base map or non-digital wayfinding elements, Motivate will update the Wayfinding Elements at its Stations using such updated information within 30 Days after its receipt, but is only obligated to do so 1 time per Year.

6.5. Motivate will ensure that the Program's primary Call Center operates from, at a minimum, 7:00 am to 7:00 pm (Pacific Time) 365 days per year. During the hours of 7:00 pm to 7:00 am (Pacific Time), and for overflow call periods between 7:00 am and 7:00 pm, the Program's Call Center may route calls to a third party call center. Calls will be answered in person. In addition to such Call Center service availability for the public, Motivate will have a contact person available to City by phone 24 hours per Day, seven Days per week.

6.6. Motivate will ensure that operators are (i) knowledgeable to answer questions and provide information concerning, among other things, membership process, membership prices, billing, crashes, comments, complaints, malfunction problems, and location of stations, and (ii) fluent in English, Spanish & Mandarin or (iii) knowledgeable in using a third-party over-the-phone interpretive service to manage non-English phone calls.

6.7. Motivate will ensure that the Call Center (i) records, using appropriate software, and accompanied by appropriate notice of such recording to each caller, a random sampling of at least 10% of all complaint calls received by the Call Center, (ii) diligently and promptly investigates each complaint, and (iii) retains all complaint call recordings for no more than 60 days.

6.8. Motivate will ensure maintenance of written, accurate and complete records of all complaints, and those records will be available to City through appropriate software or, at City's reasonable advance request, in written form. All such records will be retained by Motivate throughout the Term and for a period of 6 years afterwards. All reports and documentation required to be maintained and/or provided to City in accordance with this Attachment shall be in the English language.

SECTION 7

SPONSORSHIP AND MARKETING

7.1. At the request of City, under separate agreement, Motivate will assist City in drafting Sponsorship Agreements as well as amendments to such agreements.

7.2. Motivate will annually during the term of the Agreement develop a marketing plan that can be accomplished within the allocated budget, to be reviewed and approved by City. Motivate, within the allocated budget, will implement the City approved marketing plan after approval. Motivate shall not produce any marketing materials concerning the Program without the prior written approval of City Program Manager.

SECTION 8

FINANCIAL TERMS AND CONDITIONS

8.1. In consideration for Motivate providing the Program, City agrees to pay Motivate a fixed Operations Fee in the amount set out in Schedule G [*Fees and Payments*]. The Operations Fee will be pro-rated by the number of Docks in operation, as detailed in Schedule G [*Fees and Payments*]. Special services requested by City beyond those associated with normal day-to-day operation of the program will be paid for by City at Motivate's direct costs plus ten percent (10%), as more fully described in Schedule G.

8.2. Except for the Operations Fee and for fees and expenses relating to ownership of the Program, or as expressly set out in this Attachment, City will not be obligated to pay or bear any of the costs or expenses, or any of the financial, legal and other risks of operating the Program, except as otherwise provided herein.

8.3 All revenue from sale of memberships, short-term passes, usage fees, key purchases, helmet rentals, and other associated products or services related to the Program shall belong to the City, subject to the provisions below regarding offset against fees payable to Motivate. Motivate shall transfer any and all such revenue collected on City's behalf to an account maintained for the City on an ongoing basis ("Revenue Account"). Motivate shall invoice the City monthly in advance for the Operations Fee and any other fees owing and due to Motivate. Such invoice shall indicate the revenue account balance, if any, available to pay the invoice amount. City will review the invoice and associated documentation as soon as reasonably possible after receipt and will promptly notify Motivate of any questions or discrepancies noted. Upon receiving City's written approval of the invoice, which shall be provided within ten (10) business days of the date of the invoice, Motivate shall be authorized to pay the invoice by transferring the Revenue Account balance indicated on the invoice from the Revenue Account to Motivate's general account. City shall remit payment for the remaining balance on the invoice within 30 days of the date the invoice was received. Each monthly invoice for the Operations fee shall include a detailed report showing collected revenue for the applicable period by source, and specifying the amount of state and local sales tax collected.

8.4 The initial Equipment for the program was funded, in part, by grant funds for equipment purchase pursuant to a financial assistance agreement between the City of Seattle and Federal Transit Administration (FTA) and, in part, by state funds pursuant to a grant agreement between King County Metro and WSDOT. Motivate and its subcontractors shall comply with all applicable federal and state Laws and Regulations and in accordance with Schedule K [*Federal Transit Administration (FTA) Requirements*] and Schedule L [*WSDOT Statement of Financial Assistance*] if applicable.

SECTION 9

PROGRAM RATES AND TERMS

9.1 Motivate will from time to time recommend fees charged for use of the Program for City approval.

9.2. Motivate will at all times post on the Pronto website maintained by Motivate a complete and up-to-date fee description that sets forth each and every current membership and usage fee offered for the Program, the methods of purchasing memberships and paying fees, all fees associated with damaged, lost, stolen or otherwise unreturned Bicycles and Helmets, and all other applicable legal terms and conditions. Motivate will furnish written copies of such material to the public upon request.

9.3. All required state and local sales taxes, and any other applicable sales and use taxes with respect to membership and usage fees will be collected by Motivate and deposited into the Revenue Account. City shall be responsible for remitting applicable sales tax, as required by applicable Laws and Regulations.

9.4. City may create, in coordination and collaboration with Motivate, program pricing discount programs, which may be targeted in connection with marketing and outreach efforts, and in connection with Sponsorship programs, to expand or enable Program use among different communities or for other lawful purposes. Program pricing must be sufficient to provide adequate protection of the equipment in the event of theft.

SECTION 10

MERCHANDISING, LICENSING AND INTELLECTUAL PROPERTY

10.1. City now grants to Motivate during the term of the Agreement the right to use the name "Pronto Cycle Share" and variations thereof approved in advance in writing by City (individually and/or collectively "**Pronto Cycle Share**"). Upon expiration or termination of the Agreement, Motivate's limited license in and to Pronto Cycle Share and all goodwill associated therewith will be immediately terminated and all physical, electronic, and other tangible representations of same will be destroyed or returned to City at no additional cost or expense to City. Motivate shall have the limited right to sublicense Pronto Cycle Share during the term of the Agreement in connection with operating, advertising and promoting the Program in any media whether existing now or later invented to third parties as part of their participation in the Program, provided that the sublicense is a form approved by City.

10.2. Any trademark, website or domain name, URL or other intellectual property (other than Motivate Property and Sponsor Property) associated with the Program ("**Program IP**") acquired after the Effective Date will be acquired in the name of City and owned exclusively by City. Any use of Sponsor Property in a URL string will be licensed to City for use as part of a fully qualified domain. City will have exclusive approval rights over any website, domain name or URL used in connection with the Program and such

website, domain name or URL will be capable of hosting a link from City's website. This section does not apply to intellectual property created by the Supplier or otherwise related to the Supplier's goods and services which shall be owned exclusively by the Supplier.

SECTION 11

TRADEMARK OWNERSHIP

11.1. Motivate agrees that by virtue of this Attachment it does not and will not claim any right, title, or interest in the Program Name, the City Property, Program IP, City or any part thereof (except the right to use them in accordance with this Attachment), and that any and all uses thereof by Motivate will inure to the benefit, respectively, of City or any Sponsor whose marks are incorporated into the Program Name, to the extent that such uses incorporate City or Sponsor Property. Motivate acknowledges City's sole right, title, and interest in and to, and ownership of City Property (and in the Program Name to the extent it incorporates City Property) and the validity of the trademarks and service marks that are part of the City Property (or Program Name to the extent that it incorporates City Property) and City's rights therein. Motivate agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Program Name, the City Property, Program IP, or City or to the validity of the City Property (or the Program Name, Program IP, or City to the extent that it incorporates City Property) and City's rights therein, and will not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of City with respect to such City Property or the Program Name, Program IP, or City to the extent that it incorporates City Property. City acknowledges that the Program Name may or may not include City Property and may consist of or incorporate Sponsor Property to the extent such Program Name is approved in advance by City in its sole discretion.

11.2. Motivate agrees to reasonably assist City in protecting City's rights to City Property (and the Program Name to the extent that it incorporates City Property), including but not limited to reporting to City any infringement or imitation of City Property or the Program Name of which Motivate becomes aware. City will have the sole right to determine whether to institute litigation with respect to such infringements of City Property or the Program Name to the extent that it incorporates City Property, as well as the sole right to select counsel. City may commence or prosecute any claims or suits for infringement of City Property in its own name or the name of Motivate or join Motivate as a party thereto. If City brings an action against any infringement of the City Property or the portion of any Program Name that infringes City Property, Motivate will reasonably cooperate with City and will be reimbursed for its reasonable and pre-approved out-of-pocket expenses.

11.3. If claims are made against City, or Motivate with respect to the use of City Property or the Program Name to the extent that it incorporates City Property in connection with any licensed products, then the parties agree to consult with each other on a suitable course of action. In no event will Motivate, without the prior written consent

of City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of City to defend or otherwise contest the claim of such party. City will have the right to participate at its own expense in the defense of any claims or suit instituted against Motivate with respect to the use by Motivate of City Property or any Program Name that incorporates City Property.

11.4. Motivate agrees to make modifications requested by City in Motivate's use of the City Property or any Program Name incorporating City Property, if City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

SECTION 12

COMMUNICATIONS, REPORTING AND MEETINGS

12.1. Media. The prior written approval of the City (either the Program Manager or a representative of SDOT's press office) is required before Motivate or any of its Personnel make any statement to the press or issue any material for publication through any media of communication under in respect to the Program or this Attachment. Motivate agrees to follow the Issues Management Protocol once developed by the Program Manager in cooperation with Motivate. If Motivate publishes a work dealing with any aspect of performance under this Attachment, or of the results and accomplishments attained in such performance, then City will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use the publication, or, in the event that only a portion of the publication deals with an aspect of performance under this Attachment, such portion of the publication.

12.2. Reporting. All data generated by the Program, excluding technical or proprietary data such as technical specifications of the Equipment, that is recorded and maintained by Motivate, will be provided to City in the format and at the times set out in Schedule G [*Reporting Requirements*] or as otherwise reasonably requested by the Program Manager, provided that such information transfer is not otherwise prohibited by Laws or Regulation.

12.3. Confidentiality. All personally identifiable information that is held by Motivate and Supplier and pertains to customers, including all names, addresses, phone numbers, email addresses, and credit and debit card numbers, will be kept confidential by Motivate; provided, however, that (i) if there is any accident where a customer is unable to communicate personal information to the appropriate authorities, then Motivate and Supplier may, in its sole discretion, provide the customer's name, address, phone number, and other important information to such authorities, (ii) if Motivate or Supplier receives a subpoena from any court or other authority, then Motivate or Supplier will provide all requested information in accordance with applicable Laws and Regulations, (iii) Motivate or Supplier may disclose trip data, gender, aggregate and other data about customers in accordance with applicable Laws and

Regulations, including but not limited to zip codes for customer addresses (provided this would not allow any individual's address to be separately identified), and (iv) to the extent allowable by law Motivate or Supplier may disclose contact information for members to third parties for non-commercial, non-marketing purposes, including but not limited to gathering feedback on the Program and Services, provided that any such third parties agree to keep any such information regarding members confidential.

12.4. Contract Management and Meetings. Motivate will meet regularly with City as set out in Schedule H [*Reporting Requirements*] and as otherwise reasonably requested by City.

SECTION 13

WEBSITE

13.1. Motivate will include in the annual marketing plan the details of its Program website and social media plans. The Program's website will include, at a minimum, all of the elements listed in Schedule C. Motivate will keep all information on the Program's website updated. Motivate will use commercially reasonable efforts to incorporate website features or changes requested by City.

SECTION 14

REPRESENTATIONS AND WARRANTIES

14.1. Motivate represents and warrants to City as follows:

- 14.1.1. Motivate International Inc. is a for profit company, validly existing and in good standing under the laws of the State of Delaware, and it is duly authorized to do business in Washington state and the City of Seattle.
- 14.1.2. It has all requisite corporate power and authority to execute and deliver this Attachment and to perform its obligations hereunder. The execution, delivery and performance by Motivate of this Attachment have been duly authorized by all requisite corporate action in respect thereof on the part of Motivate.
- 14.1.3. It has or will obtain all government licenses, permits or other authorizations necessary to perform its obligations as contemplated under this Attachment and that such licenses, permits, and/or authorizations will be valid and sufficient for the performance of the Services by Motivate.
- 14.1.4. It will comply with all applicable laws, regulations, ordinances and codes pertaining to the fulfillment of its obligations under this Attachment.

- 14.1.5. It shall perform the Services using Personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Attachment.

SCHEDULE A

EQUIPMENT SPECIFICATIONS

A1. General

The initial Equipment for the Program was acquired by the City from Puget Sound Bike Share, Inc., the prior system owner, and meets the specifications described below. Future Equipment requested by the City will meet these specifications unless otherwise expressly agreed by the City in writing. Motivate will establish for each Station, Bicycle, and Helmet in use within the Program, a unique identifying number that will be tracked by Motivate and made available to City; the identifying number will be prominently displayed on each Bicycle.

A.2 Bicycles

The “Bicycles” or “Bikes” will meet or exceed the following technical specifications and comply with applicable sections of the Washington State Motor Vehicle Act and other applicable laws and by-laws.

1. Aluminum frame in the Pronto brand color.
2. Protective covering for all components.
3. 7-speed internal gearing.
4. Covered cables.
5. Chain protector integrated into the bicycle structure and designed to:
 - protect the chain.
 - prevent riders from fouling their clothes.
 - protect riders against dirt, grease and debris.
 - increase the structural integrity of the frame.
6. Active lighting and reflectors – white front and red rear lights, powered by a hub dynamo or a lighting system that is equivalent or better.
7. Control module that allows for bicycle lighting system to remain illuminated for at least 90 seconds after the bicycle comes to a stop.
8. Front and rear lighting.
9. Pedals featuring white or yellow reflectors
10. Front and rear internal brakes.
11. Front mounted basket with bungee cord.
12. Adjustable seat that cannot be removed.
13. Seat post marked with a numbered scale to help users remember their optimum setting.
14. Radio-Frequency Identification (RFID) tag or equivalent, which uniquely identifies each bicycle for easier maintenance.
15. Suitable for a wide range of riders.
16. Low center of gravity.
17. Bike and all components to weigh no more than 50 pounds
18. Rims – heavy duty, double-wall, anti-snake-bite design (to avoid pinch flat).
19. Tires designed for harsh urban bicycling: heavy duty puncture-resistant casing,

- security reflector band on each side.
- 20. Front and rear fenders and rear skirt
- 21. A Bell capable of being used as a warning
- 22. Kickstand
- 23. Safety instructions on the basket.
- 24. System brand and/or sponsor two-color graphics on frame, rear wheel fender skirt and basket.

A.3 Station

A “Station” shall be comprised of a Technical Platform on which at least one Terminal and one Dock are mounted. The Station shall be modular allowing for expansion of the system. The Station includes:

- A wireless Terminal where users, subscribers and occasional riders may carry out a wide range of transactions.
- A variable number of Docks where Bicycles are secured when not in use.

All components shall be seamlessly integrated into the Technical Platform and easily interconnected (“Plug and Play”) without the need for excavation or preparatory work.

The Station shall be battery powered and solar charged and use wireless communications.

The battery powered, solar-charged station shall use a minimum of one battery to provide a constant supply of energy for the system. The electricity generated from the photovoltaic panel on the Terminal shall be controlled by an internal power controller board (power hub to ensure continuity of operations).

A.4 Terminal

The “Terminal” is the Station component where all communications shall be linked between the Bicycles, the Docks and the Motivate Call Center. The Terminal includes instructional decals and a seven inch colored TFT LCD display where users, subscribers and occasional riders may:

1. Carry out transactions to use the Bicycles and Helmets.
2. Obtain safety information, information about how Bicycles may be rented and returned (including terms of rental and usage fees) and how Helmets may be rented.
3. Provide information in English, Spanish and traditional Chinese at a minimum.
4. Locate stations in the vicinity that have empty docks or available bikes

The Terminal shall also communicate with the operations management in real-time, indicating when stations are near empty or a Bicycle needing repair is reported. A single Terminal shall be capable of supporting a station with up to 30 docks.

In addition to recognizing Customer Keys, terminal shall also be capable of accepting credit and debit card payments.

The Terminal is made of composite material. The kiosk door integrates a gasket and gutter to manage water incursion and each component on the fascia has its own individual gasket seal. The Terminal is flood resistant to sixteen inches.

The total Terminal weight is approximately 490 lbs, with component breakdown as follows:

1. Kiosk: 380 lbs
2. Battery: 50 lbs
3. Solar assembly: 60 lbs

A.5 Dock

The “Dock” is the module where Bicycles are parked and locked when not in use. It is also the point where subscribers can check in and check out a Bicycle by simply inserting a Customer Key, as more fully set forth below. Dock shall contain the following features:

1. Uniform “Plug and Play” modules to allow them to fit into the Technical Platform.
2. Constructed from aluminum.
3. Easy to remove, replace, and repair.
4. Simple and easy-to-use two-button interface for bike release and reporting defective bikes.
5. Ability to report Breakdowns.
6. ISO 15693 RFID reader compatible with Supplier’s user fob.

Each Dock point consists of the following component pieces:

1. 1 x Cassette Assembly
2. 1 x Bollard
3. 1 x Door(left)
4. 1 x Door(right)
5. 1 x Black cable

A.6 Technical Platform

The Technical Platform is the physical support onto which Terminals and Docks are mounted. As such, it is the base and hub for all electronic communications between a Terminal and the Docks.

The Technical Platform shall be of a “Drop and Go” design, portable and expand to accommodate as many as 30 Bicycles at a single Station. No construction, excavation, or site preparation is needed; no damage is done to the area where pavements are

placed. In turn, this means the Docks are easy to install, maintain, relocate or even remove.

A.8 Customer Key

The Customer Key is an RFID-embedded key which takes the form of a fob. Upon registration, each annual subscriber shall be given a Customer Key which shall allow registered users to bypass the Terminal and go directly to a Dock and use a Bicycle.

To use a Bicycle, a subscriber shall insert the Customer Key into a Dock with a Bicycle, and upon account validation, the Bicycle will be released from the Dock and ready for use.

A.9 Back-end Software and Computer Hardware

The Back-end Software and Computer Hardware provide on-the-ground operators and City with tools for real-time management of the Dock system in order to facilitate maintenance, repair, and redistribution. The System allows monitoring of the following conditions:

1. Accurate number of empty Docks and Bicycles available at any Station.
2. Functional status of Bicycles, wherein users may notify Motivate operations staff of Bicycle malfunctions upon returning a Bicycle to a Dock which in turn triggers a response from the back-end software.
3. Real time status of key Dock components, such as the communications devices, solar panels and electronics.
4. Traffic and usage patterns of Dock and Bicycles.
5. Real time priority redeployment needs of Docks and Bicycles at any Station in the System.
6. City direct access to reporting information.

The Back-end Software and Computer Hardware will also generate all information required to support the reporting requirements set out in Section G.3 of Schedule G [*Reporting Requirements*]:

A.10 Helmet Distribution and Return Bin: Specifications for the helmet distribution and return bins will include, at a minimum:

1. Two compartments; one for clean helmets and one for return of used helmets.
2. Capacity of no less than 24 Helmets for each compartment.
3. Robust construction.
4. A large area to apply a map or poster.
5. Locking mechanism for clean helmet compartment that can be opened with a code.
6. Battery powered keypad for locking mechanism code entry.

A.11 Helmets:

1. Helmets selected by the customer/operator must be validated and approved by Supplier and must meet the CPSC bike helmet standard and ASTM F1492 standard for “multi-impact” helmets.
2. Specs of the RFID tag to be installed on each helmet as an identifier will be confirmed by the Supplier.
3. Helmets must meet the following criteria:
 - a) comply with all applicable Laws and Regulations
 - b) adjustable in size
 - c) easily cleaned for reuse
 - d) easily inspected for damage, wear and safety
 - e) can be disposed of in an environmentally sensitive manner
 - f) be well suited for design and comfort

SCHEDULE B

SITE PLANNING

City agrees that stations will be sited using the following general principles:

General Station Siting and Relocation Principles

1. Program Area and Station Locations/Density

- a) 90% of all Stations are to be spaced no more than 1,400 feet apart.
- b) The minimum station density is 16 stations per square mile.

2. Station Sizes

- a) Absolute minimum station size is 12 docks.
- b) Desirable minimum station size is 18-20 docks.

City will pay for any site planning work authorized by the Program Manager after the Effective Date in connection with station moves or adds at Motivate's direct cost plus ten percent (10%).

SCHEDULE C

SYSTEM OPERATION

Program Operation Plan

Motivate will maintain and provide to the Program Manager its current Program Operation Plan, which will include, but is not limited to:

- Rebalancing protocol
- Bike maintenance protocol
- Station maintenance protocol
- Customer service protocol, including but not limited to
 - Phone response
 - Email response
 - Issue tracking protocol
- Employee reporting protocol on rebalancing, bike maintenance and station maintenance
- Health and safety protocol
- System closure protocol
- Crash response and reporting protocol
- Station deployment and moving protocol
- Media response policies and protocols

Website & Mobile Application

Motivate shall maintain a live station map on the website which accurately reports the location of stations, and bike and dock availability at all stations.

Motivate shall also post on the website a Privacy Policy and Website Terms of Use as approved by City.

Motivate shall integrate the branding of the website with the registration page and the system map.

The Program's website will include, at a minimum, all of the following elements:

- eligibility requirements;
- subscription information and rate schedules;
- payment and subscription processing information;
- method for subscribers to update required information;
- subscriber agreement and acceptance of terms;
- map of network of Stations and real-time availability of at each Station;
- crowd-sourcing Map to allow web-site visitors to articulate desired Station locations and other preferences;
- Frequently Asked Questions;

- safety requirements and information (including malfunctions and crashes);
- news and operational updates;
- special events notices;
- Call Center contact information;
- any elements agreed by Motivate to be included in accordance with any Approved Sponsorship Agreements

Motivate will keep all information on the Program's website updated.

Motivate will also provide a bike share application for smartphone (Android and iPhone platforms) users to identify the location of Stations on a map in real-time, display status of Station (availability of Bikes and Docks), availability of a specific Station and the ability to perform searches.

Rental Agreements

Motivate shall maintain on the website a Terms and Conditions (Rental Agreement) for program membership and casual rider use as approved by City. City has reviewed and approved the current screen flow that casual users follow for a rental at the Terminal (and which registered members may use to rent a bike using the credit card associated with their account). Motivate will work in good faith with City to enhance the screen flow from time to time to improve the user experience, subject to the resources and capabilities of the Supplier. Motivate may from time to time make changes to the website Terms and Conditions and Privacy Policy, and the website and kiosk Rental Agreements, which changes correct unmistakable errors, are consequential to a change in the Program or are otherwise minor substantive changes, without prior approval of the City. Any substantial or material change must be reviewed and approved by the City.

Warehouse and Vehicle Acquisition, Hiring and Training

Motivate shall maintain an operations center in Seattle adequate to perform its obligations in connection with the operation of the Program. Motivate shall hire and train all necessary employees to meet the performance standards specified in this Attachment. Motivate shall use vehicles and equipment provided by the system owner necessary to operate the system, making commercially reasonable efforts to use environmentally friendly vehicles for bicycle redistribution and servicing.

SCHEDULE D

STATION INSTALLATION AND RELOCATION

Station Installation

The Stations were installed by Motivate prior to the Effective Date of the Agreement and will be maintained in their current locations until and unless they are moved at the request of or as approved by the Program Manager, or as mandated by private property owners for privately-owned station sites.

Station Relocation

Motivate shall undertake up to ten (10) station removals or relocations at the request of City in any calendar year at no cost to City. For any station removals or relocations at the request of City in excess of ten (10) in any calendar year, City shall reimburse Motivate for its actual direct costs plus ten percent (10%). All proposed station relocations in the public right-of-way shall require prior review and approval by SDOT for the proposed new location.

Motivate shall undertake an unlimited number of station removals or relocations if such removals or relocations are for public safety reasons or are due to a request from SDOT, the Police or other Emergency Services Department, or may conflict with other City construction/maintenance work in the right-of-way.

If Motivate wishes to remove or relocate a Station, it may do so, provided Motivate consults with City in advance, gives City reasons for removal or relocation and receives approval from City in writing;

If a party other than City or Motivate requests that Motivate remove or relocate a Station, Motivate may do so provided City approves the move and either City or such other party pays for the cost of removal or relocation (direct costs plus 10%).

Special Event Corrals

Motivate shall provide personnel, vehicles and equipment for the first five (5) special event corrals regardless of scale, as requested by City, per calendar year. For a special event corral, Motivate will ensure that bikes are available for those who would like to ride to or from the event and guarantee ample docking spaces throughout the event for more attendees. All bikes not docked at the station will be kept out of the way of other transit systems, pedestrians, traffic, and parked cars.

If Motivate undertakes more than 5 special events in any calendar year pursuant to a City written request, Motivate may invoice City for the Special Services Fee.

Interruption of Service (Incident Response)

- (1) Intentional Interruption of Service. If, at any time, Motivate intends, or is required, to temporarily interrupt all or a portion of the service, for any reason beyond Motivate's reasonable control, including, without limitation, weather, safety, or other event or circumstance where continued service would be unsafe, unavailable, impractical, or impossible, then Motivate shall contact the Program Manager by telephone and by email at least twenty-four (24) hours before the interruption of service and specifically describe the reason, proposed duration, Motivate's proposed actions to correct the cause of the interruption (if possible), minimize the interruption, and Motivate's plans to resume service.

Motivate promptly shall notify the subscribers of the cause and expected duration of the proposed interruption of service by posting notice on the website, via email, and via the smartphone app to the extent possible.

- (2) Unintentional Interruption of Service. If, at any time, a System malfunction or an event or circumstance occurs where continuous operation of the System or a Fully Functional Station within the system would be unsafe or unavailable for reasons beyond Motivate's reasonable control, and this causes or will cause a material interruption of service, then Motivate shall immediately contact the Program Manager 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), minimize the interruption, and Motivate's plans to resume service.

Motivate promptly shall notify the subscribers of the cause and expected duration of the interruption of System service by posting notice on the website and via email.

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.

Inclement Weather (Snow Removal)

Motivate shall timely remove snow from all Stations when/if Stations are operational during a snowstorm in accordance with the shorter of: (i) existing snow removal schedules set out by City By-law or ordinance; or (ii) seventy two (72) hours from the end of the snowstorm. Motivate shall, at all times, ensure that City's Engineering Department has the most up-to-date Station location map. Motivate may close and re-open the System due to weather and other events with prior notification to City.

SCHEDULE E

SERVICE LEVELS AND LIQUIDATED DAMAGES

E.1 General

- (a) The Service Performance Levels described in this Schedule set out the key metrics and the Column in the Table below entitled “Meets Expectations” sets out the minimum levels of those metrics for the Services.
- (b) The System Metrics are intended to measure and track the key public interest and public policy goal-oriented requirements that a first-rate public bike share system would meet or exceed.
- (c) The System Metrics relate to, by way of example only and without limitation: Equipment inspection and maintenance, Bicycle rebalancing, reporting, website & Call Center availability, cleaning, litter & graffiti removal, Station deactivation/removal, and inclement weather response.

E.2 Equipment Maintenance, Repair, and Replacement

- (a) Motivate will follow and strictly comply with the Equipment manufacturer’s requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of all Equipment.
- (b) Motivate will endeavor to maintain all Equipment so that unscheduled repairs or replacements are minimized.

E.3 Damages and Incentives

- (a) The parties have established System Metrics and corresponding minimums (“Meets Expectations”). Performance against these Expectations will be measured and then ranked in three categories: “Fails to Meet Expectations”, “Meets Expectations”, and “Exceeds Expectations”.
- (b) On a monthly basis, Motivate will provide City with a report on its performance against each Expectation. Failure to report on a specific measure will be treated as a “Fails to Meet Expectations.”
- (c) Incentives and/or liquidated damages will be calculated monthly based on the following matrix:

Damages and Incentives	Fails	Exceeds
On-Street Operations		
Redistribution		
Priority 1 Stations	\$3,000	\$3,000
Priority 2 Stations	\$2,000	\$2,000

Priority 3 Stations	\$1,000	\$1,000
Ratio of bikes: docks as measured over a calendar month	\$1,000	\$1,000
Bikes checked each month	\$1,000	\$1,000
Stations cleaned twice a month	\$1,000	\$1,000
Stations serviced once a month	\$1,000	1,000
Graffiti removal	\$1,000	\$1,000
Helmet bin servicing	\$1,000	\$1,000
System Functionality		
Fully Functional Stations	\$3,000	\$3,000
Docks in operation	\$3,000	\$3,000
Customer Service		
Average call answer time of 35 seconds	\$1,000	\$1,000
% of Calls dropped	\$1,000	\$1,000
% of Memberships mailed within 5 business days	\$1,000	\$1,000
% of Emails responded to or forwarded within 24 hours	\$1,000	\$1,000
System Accuracy (quarterly)		
Accuracy of mobile application and online station map	\$1,000	\$1,000
Accuracy of financial information	\$1,000	\$1,000

The net amount of incentives vs. liquidated damages shall be calculated on a monthly basis. Motivate shall not be entitled to receive bonus payments if the net amount is positive; Motivate shall pay any net liquidated damages in excess of \$1,500 for a particular month (for example, if the net calculation for a particular month is (\$3,000), Motivate will pay City \$1,500 – payment will be offset against fees otherwise payable).

(d) Motivate is required to provide the Services so that they continually comply with, at a minimum, the Expectations delineated in the Column of the Table below entitled “Meets Expectations.”

Service Levels

Service Level	Fails to Meet Expectations Standard	Meets Expectations	Exceeds Expectations
On-Street Operations			
Redistribution	<80% of time not in violation or greater than 15 violations by tier	80 to 98% of time not in violation and between 8 and 15 violations by tier	>98% of time not in violation and less than 8 violations by tier
Ratio of bikes: docks as measured over a calendar month	<90% of the time ratio is greater than 45%	90 to 98% of the time ratio is greater than 45%	>98% of the time ratio is greater than 45%
Bikes checked each month	<90%	90 to 99%	>99%
Stations cleaned twice a month	<90%	90 to 99%	>99%
Stations serviced once	<90%	90 to 99%	>99%

a month			
Graffiti removal	<90%	90 to 99%	>99%
Helmet bin servicing	greater than 10 violations	3 to 10 violations	less than 3 violations
System Functionality			
Fully Functional Stations	<95%	95 to 99%	>99%
Docks in operation	<97%	97 to 99%	>99%
Customer Service			
Average call answer time of 35 seconds	<80% of the time	80 to 99% of the time	>99% of the time
% of Calls dropped	>5%	2 to 5%	<2%
% of Memberships fulfilled within 5 business days	<95%	95 to 98%	>98%
% of Emails responded to or forwarded within 24 hours	<95%	95 to 98%	>98%
System Accuracy			
Accuracy of mobile application and station map	<95%	95 to 99%	>99%
Accuracy of financial information	<98%	98 to 99%	>99%
Timelines			
Finish Site Planning Scope of Work	>1 week after 100 days from the Effective Date	Within 1 week of 100 days from Effective Date	NA
Go-Live Date	>1 week after 180 days from the Initial Equipment Purchase Order Date	Within 1 week of 180 days from the Initial Equipment Purchase Order Date	NA
Fully Operational Date	>1 week after 210 days from the Initial Equipment Purchase Order Date	Within 1 week of 210 days from the Initial Equipment Purchase Order Date	NA
Initial Equipment Delivery Date	>1 week after 150 days from the Initial Equipment Purchase Order Date	Within 1 week of 150 days from the Initial Equipment Purchase Order Date	NA
Purchase Order Delivery Date	>1 week after 120 days from a Full Station or a Spare Parts Purchase Order Date	Within 1 week of 120 days from a Full Station or a Spare Parts Purchase Order Date	NA

E.4 Definitions of Each System Metric and Expectation

On-Street Operations

1. *Redistribution*: Percent of instances when a specific station is either full or empty,

using only hours between 6AM and midnight. Time a station is allowed empty or full will correspond with the assigned priority level for each station.

Priority Level 1: >1 hour full or empty
Priority Level 2: >2 hours full or empty
Priority Level 3: >3 hours full or empty

Pronto and Motivate will mutually agree upon priority assignment and identify one-third of stations as level one, one-third level two and one-third level three. Performance will be assessed based on both the number of violations and the total percentage of time Motivate is not in violation state for each of the priority level tiers.

At 12 months from the Go Live Date, Motivate should rely on data driven rebalancing to achieve the described service levels.

2. *Ratio of bikes:docks*: The data for bike:dock ratio shall be recorded daily throughout the month. Motivate will make best efforts to keep the bike:dock ratio greater than 45% throughout the month. This metric is measured by the % of instances when the bike:dock ratio is either below or above this standard. This performance standard is contingent on City providing a number of bikes that is equal to at least 50% of the number of docks on the street.
3. *Bikes checked each month*: The % of bikes in the Program Fleet that have undergone the Monthly Bicycle Maintenance Check:
 - a. Check tire pressure, and add air as may be needed, to recommended Pounds per Square Inch measurement;
 - b. Check tightness of handlebars, headset bearings, and full handlebar range of motion (left to right);
 - c. Check tightness of seat, seat post quick-release, and see that seat post moves freely in full range of motion (up and down);
 - d. Check brake function (front and rear);
 - e. Check grips for wear and brake levers for tightness and damage;
 - f. Check bell for tightness and correct function;
 - g. Check handlebar covers for damage and instruction stickers;
 - h. Check front basket for tightness and damage, and check bungee cord for wear;
 - i. Check for correct gears and shifter function through all 7 gears;
 - j. Check fenders (front and rear) for damage, and clean outside of fenders;
 - k. Check tires (front and rear) for damage or wear;
 - l. Check wheels (front and rear) for trueness, broken or bent spokes and hub or axle tightness;
 - m. Check LED lights (front and rear) for function;
 - n. Check reflectors on wheels, seat and basket, to if they are present, clean and undamaged;

- o. Check pedals and cranks for tightness;
 - p. Lubricate and clean chain and check chain tensioner for correct function;
 - q. Check kickstand for correct function;
 - r. Brief test ride to ensure overall correct function of Bicycle; and
 - s. Clean bicycle
4. *Stations cleaned twice a month*: Percent of Stations that are cleaned every 2 weeks. Clean all visible dirt, ink, paint, litter or any other substance on the Equipment and within 2 feet of the perimeter; wipe down Station and all interfaces (screens, keypads, map panels, helmet bin, etc.) with cleaner; and assure drainage areas adjacent to Station are clear of litter and debris.
5. *Stations serviced once a month*: Percent of Stations that are serviced once a month, to include:
- a) Check Terminal functionality including transactions and communications;
 - b) Check all communications systems including, but not limited to, the Terminal-Dock and the Terminal-Central Computer System;
 - c) Check each of the Dock's functionality including but not limited to locking mechanism, cassette, key reader and buttons
6. *Graffiti removal* - % of instances in which graffiti is removed per the qualifications below, as timed from database-recorded time of reporting to database-recorded time of resolution. Graffiti removal will only occur between 6AM and midnight.

Graffiti that qualifies as hate/racist graffiti, or is located in a high profile location will be considered urgent and will have separate requirements for response time, as described below.

- a. **Hate/Racist Graffiti – Removed, or employing commercially reasonable efforts to remove, by Motivate within 2 hours of notification or discovery**

Graffiti which can reasonably be perceived to be motivated by hate, prejudice or bias against an identifiable group or person based on race, national or ethnic origin, language, color, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor. In cases where Motivate is unsure whether an instance of Graffiti qualifies as Hate/Racist, City will have final determination. Motivate will document all hate and racist graffiti by photo before it is removed.

- b. **High Profile Location – Removed, or employing commercially reasonable efforts to remove, by Motivate within 36 hours of notification or discovery**

As determined by City, in partnership with Motivate and other external agencies (e.g. Police Department). In cases where City has notified Motivate that a particular piece of Graffiti is considered to be in a high profile location after the initial discovery, the service level requirement for Graffiti removal is the lesser of time remaining between (b) and (c). No more than five High Profile Locations to be mutually agreed upon before Go Live Date.

c. Other – Removed, or employing commercially reasonable efforts to remove, within 72 hours or notification or discovery

All other Graffiti that is not considered hate/racist or in a high profile location.

7. *Helmet bin servicing.* Motivate will use best efforts to ensure that clean helmets are always available at each station and helmet return bins can accept used helmets during the service hours of 6:00 am to midnight. Motivate will respond to reports of empty helmet bin compartments or keypad malfunctions within 1 hour and full return compartments within 2 hours. Motivate will count the number of reports of outages and the time required to address each outage on a monthly basis.

E.5 System Functionality

1. *Fully Functional Stations* – % of total time during a month which stations are Fully Functional, calculated by taking the total number of hours that Stations were not Fully Functional, with a part of an hour rounding to an hour divided by the total station-hours in a month (number of stations times number of hours in a month), using only hours between 6AM and midnight. This calculation should subtract out any hours where Stations were not Fully Functional due to theft, vandalism, telecommunications provider issue, or a full system software update that is reported to the Executive Director prior to its implementation.
2. *Operational Docks* (a Dock that can accept bicycles and lock them, and release bicycles when a valid member key or a valid bike number is entered) - % of docking points that are Operational, calculated by counting the number of Docks found not \ Operational based on monthly testing or field reporting, excluding those docks that were repaired and restored to Operational status within 24 hours of a reported failure.
3. *Website* must be fully functional. This includes, but is not limited to, the ability to: process transactions; provide real-time data and map; and provide subscriber account information, such as rental histories.

E.6 Customer Service

1. *% of Calls answered in 35 seconds* - Percent of calls that are answered within 35 seconds, as reported by the Call Center on a monthly basis.

2. *% of Calls dropped* - Percent of calls that are dropped as reported by the Call Center.
3. *% of Memberships mailed within 5 business days* - Percent of Membership packets placed in the mail within 5 business days of online registration payment. This requirement will be waived until 1 week before the Go-Live date.
4. *% of Emails responded to or forwarded within 24 hours* -- Percent of customer emails responded to or forwarded to Motivate within 24 hours, not including auto-replies.

E.7 System Accuracy

1. *Accuracy of real-time data feed* – At a time mutually determined by the Executive Director and Motivate’s Rep (or designated representatives), they shall spot-check the real-time data feed with a live count at the stations for total docks, number of bicycles and number of available docks. The accuracy is measured as a percentage of total bikes and available docks that are reporting correctly.
2. *Accuracy of financial information* - Four times per year, at a time mutually determined by the Executive Director and Motivate’s Rep (or designated representatives), they shall spot-check 50 financial transactions from the past calendar quarter for accuracy. For purposes of the analysis, the reported ride times in the system shall be presumed to be accurate. The accuracy is measured as a percentage of these transactions that reflect accurate charges according to the current pricing structure. If Motivate fails to meet expectations, in addition to the penalties indicated, Motivate shall pay City an amount equal to all income lost by City as a result of inaccurate financial transactions.

E.8 Temporary Relaxation and Adjustment of System Metrics

- (a) Motivate and City will meet periodically to review the relevance and effectiveness of the System Metrics and Expectations and adjust the applicable Incentives and Liquidated Damages as deemed reasonable and appropriate by the parties.

SCHEDULE F

FEES AND PAYMENTS

F.1 General

(a) As part of providing the Program, Motivate will provide all Services necessary to (i) operate, support and maintain the Program in accordance with this Attachment, and (ii) provide subscriber information/relation services. Motivate shall provide all technical expertise, qualified personnel, Equipment, tools, and material to safely and competently accomplish all of the Services. Except for Equipment Fees (for any Equipment requested by the City after the Effective Date), all Fees shall be invoiced monthly (at the beginning of the month) by Motivate and paid by City within 30 days of receipt of invoice. If City requests special services beyond the standard services required day-to-day operation of the Program as described in this Attachment (which include system oversight, rebalancing, station servicing, helmet distribution and cleaning/inspection, bike checking and maintenance, execution of the approved marketing plan, reporting), Motivate will provide such services subject to availability of necessary resources, and City shall reimburse Motivate for its direct costs for such services (not including the time of salaried employees) plus ten percent (10%) (the “Special Services Fee”). Special Services may include such things as bike corrals or station/plate moves beyond the number included in the Operations Fee, special events, educational or safety materials, station siting outreach, or the sourcing/acquisition of additional Equipment. Group tours shall be subject to the availability of equipment and other limits agreed by the parties to avoid disruption of the core service for regular users. Acquisition of new Equipment shall not be subject to any cost recovery beyond the invoice amount (i.e., there is no 10% overhead charge for Equipment acquisition).

(b) Equipment Fees shall be paid 30% at time of Purchase Order, 60% upon complete delivery of the equipment, and 10% after successful completion of Onsite Quality Assurance Testing.

F.2 Fee Schedule

Scope of Work	Fee
Operations	\$117 per dock/per month (\$8.00/dock/month increase for peak season – May-September)
Fees for Special Services	Motivate’s direct costs plus 10%

SCHEDULE G

REPORTING REQUIREMENTS

G.1 Inventory Reporting

City has obtained a list of Equipment obtained from the prior system owner. City may, at its option, request that Motivate provide a current inventory count of Equipment not more than twice per year during the term of the Agreement, including types and numbers (per item) and dates of lease or purchase for capital equipment.

Motivate is also responsible for providing up-to-date records of all equipment purchased through this contract.

Where possible, Equipment will be tracked by serial number, and Motivate will keep a comprehensive inventory.

Motivate will maintain an asset inventory identifying the location of each piece of Equipment, with the exception of Bicycles and Helmets.

G.2 Must Report all Unusual Events/Emergencies/Notices of Default

(a) Motivate shall notify the Program Manager and anyone else designated by the City via email or telephone as soon as possible, but no more than 24 hours from its awareness of any significant number of bicycles stolen or large scale targeted vandalism.

(b) Motivate will immediately report all emergencies and Force Majeure events pursuant to Section 54.

(c) In the event that Motivate receives either a notice of default from the Supplier, or any other party to a Material Contract, Motivate will notify City and supply a copy of the notice within 5 Days of receipt or earlier depending on the applicable response period set out in such notice in order to give City a reasonable period of time to respond to Motivate or such notice.

(d) Motivate shall notify City of any new or ongoing litigation relating to the Program.

G.3 Regularly Scheduled and Required Reports

Motivate will be required to report information on a regular basis, as delineated below. The Program Manager may modify the monthly reporting by deleting elements or reducing their frequency as deemed appropriate (on a temporary or permanent basis), by written notice to Motivate.

(a) Monthly Reports

On a monthly basis within 30 days after the end of month to which the report applies, Motivate shall provide final reports that include the information and detail listed below (some data to be provided quarterly, as noted):

Performance Metrics

- All data related to Performance metrics included in *Schedule F: Service Levels and Liquidated Damages*

Membership

- Current count of active annual members
- Short-term pass sales by day for the reporting month
- Number of new subscriptions by type sold during the reporting month
- Number of cancellations, expirations, and renewals for annual members by type during the reporting month
- Summary of age and gender of members broken down by zip code (quarterly).

Ridership

- Total trips per month and YTD per member type
- Average number of trips per day of week and hour of the day for weekdays and weekends during the reporting month (quarterly)
- Average duration of trips by member type
- Average and total length of trips (Straight line distance) by member type (quarterly)
- Distribution of trip origin and destination by station

Rebalancing Operations

- Bikes in service per day
- Count of full/empty instances and average duration per station for the month
- Breakdown of full/empty instances by duration
- Summary of performance against defined performance standards
- Percentage of time stations are Normal, Full, Empty
- Number of violations of the performance standard for rebalancing, by priority tier

Station Maintenance Operations

- Number of active Stations
- Dates of Station visits by technicians for normal maintenance

- List of all terminal malfunctions (site, start/end date/time, event)
- List of all dock malfunctions (site, start/end date/time, event)
- List of all helmet bin keypad malfunctions (site, start/end date/time, event)
- Percentage of time each Station was available to provide rentals for all membership types by Station
- System wide average for percentage of time Stations were available to provide rentals for all membership types

Bicycle Maintenance Operations

- Count of bikes checked per day/month
- Count of bikes repaired per day/month
- Average time per repair
- Breakdown of repair types (minor, major, periodic maintenance)
- Breakdown of the cause of repair needs (normal wear, crash, warranty failure, vandalism)

Incident Reporting

- List of all incidents (crash, vandalism, theft, police action) with dates, locations, and summary of outcomes
- Stolen/missing bike list and status

Vandalism Reporting

- Type of equipment (e.g., bicycles, station kiosk, sponsorship panel)
- Station location, if applicable

Environmental Impact (quarterly)

- Total and average calories burned by member typeBased on calculation using total and average trip durations
- Carbon offset, based on calculation using total miles traveled (straight line distance)
- Average carbon offset per member by type, based on “total members/total carbon offset”

Customer Service Reporting

- Number of calls/emails received by call/email type and total
- Average time to answer call for the month and YTD
- Number of calls unanswered per day for the month
- Average time of call for the month and YTD
- First call resolution percentage for the month and YTD
- Five top customer service issues during the month and YTD

(c) Annual Report

Motivate will prepare an annual report that provides a summary of all the above information required or requested under Sections F.1 – F. 3 above relevant to the prior year's operations, for delivery within 45 days after each anniversary of the Go Live Date (October 13, 2014).

G.4 Authorized Representatives**(a) Motivate's Rep**

Motivate, with City approval, will designate a full-time employee ("**Motivate's Rep**") to oversee its daily operations, and who will act as Motivate's contract administrator for the Program and serve as Motivate's primary point-person with City. Motivate's Rep will reside in the Puget Sound region. Motivate's Rep will have the requisite amount of experience in operating, managing, and maintaining programs similar to the Program. Motivate's Rep will be accessible to the Program Manager at all reasonable times during Business Hours, to discuss the management, operation and maintenance of the Program, and within a reasonable time frame during non-Business Hours in the event of an emergency.

As of the Effective Date, Motivate's Rep and contact information is as follows:

Name: Demi Allen
Title: General Manager
Address: 2229 Seventh Avenue, Seattle, WA 98121
Telephone: 206-890-1048
E-mail: demiallen@motivateco.com

(b) City's Rep

The Program Manager will act as City's contract administrator for the Program and serve as City's primary point-person with Motivate. The Program Manager will be accessible to Motivate at all reasonable times during Business Hours, to discuss the management, operation and maintenance of the Program, and within a reasonable time frame during non-Business Hours in the event of an emergency.

As of the Effective Date, the Program Manager's name and contact information is as follows:

Name: Nicole Freedman
Title: Chief of Active Transportation & Partnerships
Address: 700 5th Ave, Suite 3800
Telephone: (206) 552-4085
E-mail: nicole.freedman@seattle.gov

(c) Representatives for Designated Notices and Formal Notices of Default, Force Majeure, and Material Notices

For all Notices which are not routine contract administration communications or require the notification of specific Personnel, the following Personnel must be included as appropriate:

For City:
Program Manager
SDOT Director

For Motivate:
CEO
Vice President of Operations
General Counsel

SCHEDULE H

CITY PERMITS AND APPROVALS

Motivate will comply with any and all permits or approvals required by the City of Seattle identifying conditions under which permission may be granted for use of the right-of-way and any other applicable City property for Operation of the Program.

SCHEDULE I

EQUIPMENT WARRANTY

Motivate confirms that the following is a true and complete copy of all warranty documentation for the Equipment.

8D offers a 5-year limited warranty on main components, excluding wear parts.

Arcade offers a lifetime guarantee on the frame and fork and a one-year limited warranty on other components, not including wear parts (expired as of the Effective Date of the Agreement).

Any time there is a recall notice or any other material information concerning the Equipment warranty or requirements Motivate will promptly advise the City of same.

SCHEDULE J**EQUIPMENT ACQUISITION**

It is not anticipated that significant acquisition of station equipment or bicycles will be made during the term of the Agreement, since the Agreement is an interim operating agreement for an existing system. However, Motivate will provide quotes for equipment at City's request, which shall include equipment specifications, quantities, unit costs, and anticipated delivery schedule. Any equipment order will be subject to City's prior approval.

SCHEDULE K

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

The initial Equipment was acquired in part with federal grant funds provided to the original system owner (Puget Sound Bike Share or PSBS) pursuant to a financial assistance agreement between the City of Seattle and the FTA and a subrecipient agreement between PSBS and the City of Seattle. Motivate, and any subcontractors, shall comply with all applicable federal laws, regulations, policies, procedures, and directives, including but not limited to the following, which are attached hereto and incorporated herein.

1. Fly America Requirements

Motivate agrees to comply with 49 U.S.C. 40118 (the “**Fly America**” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Motivate shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Motivate agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. Buy America

Motivate agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Motivate must submit to City, who will then provide the City of Seattle, the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subconsultants.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

3. Energy Conservation Requirements

Motivate shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

4. Clean Water Requirements

- (1) Motivate agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Motivate agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the City of Seattle, FTA and the appropriate EPA Regional Office.
- (2) Motivate also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

5. Lobbying

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

6. Access to Records and Reports

The following access to records requirements apply to this Attachment:

- A. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Attachment for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- B. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- C. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this Attachment for the purposes of making audits, examinations, excerpts and transcriptions.
- D. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- E. Motivate agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- F. Motivate agrees to maintain all books, records, accounts and reports required

under this Attachment for a period of not less than three years after the date of termination or expiration of this Attachment, except in the event of litigation or settlement of claims arising from the performance of this Attachment, in which case Motivate agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

G. FTA does not require the inclusion of these requirements in subcontracts.

7. Federal Changes

Motivate shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Attachment between City of Seattle and FTA, as they may be amended or promulgated from time to time during the term of this contract. Motivate's failure to so comply shall constitute a material breach of this Attachment.

8. Clean Air

(1) Motivate agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401. Motivate agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the City of Seattle, FTA and the appropriate EPA Regional Office.

(2) Motivate also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

9. Recycled Products

Motivate agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

10. No Government Obligation to Third Parties

City and Motivate acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Attachment and shall not be subject to any obligations or liabilities to City, Motivate, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Attachment.

Motivate agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

11. Program Fraud and False or Fraudulent Statements and Related Acts

Motivate acknowledges the provisions of the Program Fraud Civil Remedies Act of 1986 as amended, 31 U.S.C § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, Motivate certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Motivate further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Motivate to the extent the Federal Government deems appropriate.

Motivate also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on Motivate, to the extent the Federal Government deems appropriate.

Motivate agrees to include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

12. Termination

a. Termination for Convenience (General Provision) City may terminate this Attachment, in whole or in part, at any time by written notice to Motivate when it is in City's best interest. Motivate shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Motivate shall promptly submit its termination claim to City to be paid Motivate. If Motivate has any property in its possession belonging to the City, Motivate will account for the same, and dispose of it in the manner the City directs. If Motivate has any property in its possession belonging to the City, Motivate will account for the same, and dispose of it in the manner that City directs.

b. Termination for Default [Breach or Cause] (General Provision) If Motivate

does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, Motivate fails to perform in the manner called for in the contract, or if Motivate fails to comply with any other provisions of the contract, City may terminate this Attachment for default. Termination shall be effected by serving a notice of termination on Motivate setting forth the manner in which Motivate is in default. Motivate will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Attachment.

If it is later determined by City that Motivate had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of Motivate, City, after setting up a new delivery of performance schedule, may allow Motivate to continue work, or treat the termination as a termination for convenience. If Motivate has any property in its possession belonging to the City, Motivate will account for the same, and dispose of it in the manner the City directs.

c. Opportunity to Cure (General Provision) City in its sole discretion may, in the case of a termination for breach or default, allow Motivate ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Motivate fails to remedy to City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Attachment within ten (10) days after receipt by Motivate of written notice from City setting forth the nature of said breach or default, City shall have the right to terminate the Attachment without any further obligation to Motivate. Any such termination for default shall not in any way operate to preclude City from also pursuing all available remedies against Motivate and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that City elects to waive its remedies for any breach by Motivate of any covenant, term or condition of this Attachment, such waiver by City shall not limit City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Attachment

13. Government-wide Debarment and Suspension (Nonprocurement)

This Attachment is a covered transaction for purposes of 49 CFR Part 29. As such, Motivate is required to verify that none of Motivate, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

Motivate is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by City and the City of Seattle. If it is later determined Motivate knowingly rendered an erroneous certification, in addition to remedies available to City and the City of Seattle, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

14. Privacy Act

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to Motivate and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) Motivate agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Motivate agrees to obtain the express consent of the Federal Government before Motivate or its employees operate a system of records on behalf of the Federal Government. Motivate understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) Motivate also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

15. Civil Rights Requirements

The following requirements apply to the underlying contract:

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Motivate agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Motivate agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity

requirements apply to the underlying contract:

(1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Motivate agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Motivate agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Motivate agrees to comply with any implementing requirements FTA may issue.

(2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Motivate agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Motivate agrees to comply with any implementing requirements FTA may issue.

C. Motivate also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

16. Breaches and Dispute Resolution

Disputes - Disputes arising in the performance of this Attachment which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of City's Program Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Motivate

mails or otherwise furnishes a written appeal to the Program Manager. In connection with any such appeal, Motivate shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Program Manager shall be binding upon Motivate and Motivate shall abide by the decision.

Performance During Dispute - Unless otherwise directed by City, Motivate shall continue performance under this Attachment while matters in dispute are being resolved.

Claims for Damages - Should either party to this Attachment suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this Attachment provides otherwise, all claims, counterclaims, disputes and other matters in question between City and Motivate arising out of or relating to this Attachment or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which City is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City, or Motivate shall constitute a waiver of any right or duty afforded any of them under this Attachment, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

17. Disadvantaged Business Enterprises

a. This Attachment is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0%. A separate contract goal DBE has not been established for this procurement.

b. Motivate shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Attachment. Motivate shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Attachment. Failure by Motivate to carry out these requirements is a material breach of this Attachment, which may result in the termination of this Attachment or such other remedy as City deems appropriate. Each subcontract Motivate signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. Motivate is required to pay its subcontractors performing work related to this Attachment for satisfactory performance of that work no later than 30 days after Motivate's receipt of payment for that work from City. In addition, Motivate may not hold retainage from its subcontractors, is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Attachment is satisfactorily completed, is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by City, and Motivate's receipt of the partial retainage payment related to the subcontractor's work.

e. Motivate must promptly notify City, whenever a DBE subcontractor performing work related to this Attachment is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Motivate may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of City.

18. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Attachment. Motivate shall not perform any act, fail to perform any act, or refuse to comply with any City or City of Seattle requests which would cause City or City of Seattle to be in violation of the FTA terms and conditions.

SCHEDULE L

WSDOT STATEMENT OF FINANCIAL ASSISTANCE

Statement of Financial Assistance:

"This AGREEMENT is subject to the appropriations of the State of Washington."

Section 1 Reports and Project Use

A. The CONTRACTOR agrees that the Project shall be used for the provision of transportation services within the area described in Exhibit I, "Project Scope, Schedule and Budget" and Attachment A for the Project's reporting period of project term plus four years after the project is complete, as set forth in WSDOT's *Guide to Managing Your Public Transportation Grant*, 2011 version, and any subsequent amendments thereto. The CONTRACTOR further agrees that it will not use or permit the use of the Project in a negligent manner or in violation of any law, or so as to avoid any insurance covering the same, or permit the Project to become subject to any lien, charge, or encumbrance. Should the CONTRACTOR unreasonably delay or fail to use the Project during the project term and reporting period, the CONTRACTOR agrees that it may be required to refund up to the entire amount of the "State Regional Mobility Grants Funds" expended on the Project. The CONTRACTOR shall immediately notify WSDOT when any Project facilities and/or infrastructure is withdrawn from Project use or when the Project or any part thereof is used in a manner substantially different from that identified in Exhibit I, "Project Scope, Schedule and Budget" and Attachment A. If the Project is permanently removed from transportation services, the CONTRACTOR agrees to immediately notify WSDOT of its intentions regarding the disposal of the Project or any part of the Project thereof.

B. Reports. The CONTRACTOR shall submit quarterly reports to WSDOT for the period from March 1, 2014, through February 30, 2015 regarding the progress of the Project and annual performance reports for four calendar years after the project is operationally complete, as prescribed in WSDOT's *Guide to Managing Your Public Transportation Grant* 2011 version, and any subsequent amendments thereto or as WSDOT may require, including, but not limited to, interim and annual reports. The CONTRACTOR shall keep satisfactory written records with regard to the use of Project and shall submit the following reports to, and in a form and at such times prescribed by WSDOT as set forth in WSDOT's *Guide to Managing Your Public Transportation Grant*, 2011 version, and any subsequent amendment thereto.

1. A final inspection report within ninety (90) days following completion of the Project and submission of the final billing for the Project. The final inspection report shall be submitted to the Public Transportation Director or designee.
2. Reports describing the current usage of the Project and other data which WSDOT may request from the CONTRACTOR by memos, e-mails or telephone requests.

3. In the event any portion of the Project sustains disabling damage, the CONTRACTOR shall notify WSDOT immediately after the occasion of the damage, including the circumstances thereof.

4. The CONTRACTOR shall collect and submit to WSDOT, at such time as WSDOT may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by WSDOT.

C. Remedies for Misuse or Noncompliance. The CONTRACTOR shall not use the Project or any part thereof in a manner different from that described in Exhibit I, Project Scope, Schedule and Budget, and Attachment A, as set forth in Section 2 of the AGREEMENT. If WSDOT determines that the Project has been used in a manner different from Exhibit I, Project Scope, Schedule and Budget, and Attachment A, WSDOT may direct the CONTRACTOR to repay WSDOT the State funded share of the "Project Costs." WSDOT may also withhold payments should it determine that the CONTRACTOR has failed to comply with any provision of this AGREEMENT.

Section 2 Maintenance of the Project

The CONTRACTOR shall make all necessary repairs and reasonably maintain the Project to assure it remains in good and operational condition until the end of its useful life. The useful life of the constructed project will be determined by using the North American Industry Classification System (NAICS) code tables. All service, materials, and repairs in connection with the use and operation of the Project during its useful life shall be at the CONTRACTOR's expense. CONTRACTORS who are transit agencies must also have a Transit Asset Management Plan certified by WSDOT that details the transit agency's plan to maintain the Project. All other CONTRACTORS must submit a written Maintenance Plan to WSDOT for approval prior to the occupation and/or operations of the Project. The CONTRACTOR agrees, at a minimum, to maintain the Project and service or replace parts at intervals recommended in the manuals and/or instructions provided by the subcontractors and/or component manufacturers, or sooner if needed. The CONTRACTOR shall have the Project routinely inspected and make arrangements for any appropriate service and repair under the manufacturer's warranty. WSDOT shall not be liable for repairs. The CONTRACTOR shall retain records of all maintenance and parts replacement performed on the Project in accordance with Section 22, Audits, Inspection, and Retention of Records. The CONTRACTOR shall provide copies of such records to WSDOT, upon request.

Section 3 General Compliance Assurance

The CONTRACTOR agrees to comply with all instructions as prescribed in WSDOT's *Guide to Managing Your Public Transportation Grant*, 200 I version, and any amendments thereto. The CONTRACTOR agrees that, WSDOT and/or any authorized WSDOT representative, shall have not only the right to monitor the compliance of the

CONTRACTOR with respect to the provisions of this AGREEMENT, but also have the right to seek judicial enforcement with regard to any matter arising under this AGREEMENT. It is understood by the CONTRACTOR that this assurance obligates the CONTRACTOR and any transferee of the CONTRACTOR, or said transferee's successor(s), for the term of this AGREEMENT.

Section 4

Compliance with State Design Standards

The CONTRACTOR agrees the Project design must comply with all Washington State Standard Specifications for Road, Bridge, and Municipal Construction (www.wsdot.wa.gov/Publications/Manuals/M41-10.htm) and any revisions thereto. Projects that wish to use design standards that differ from state standards must submit a request to WSDOT's Public Transportation Division and obtain documented approval before design work commences.

Section 5

No Obligation by the State Government

No contract between the CONTRACTOR and its subcontractors shall create any obligation or liability of WSDOT with regard to this AGREEMENT without WSDOT's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof and the CONTRACTOR hereby agrees to include this provision in all contracts it enters into for the design, acquisition, and construction of facilities and or infrastructure related to the Project, or the performance of any work to be accomplished under this AGREEMENT.

Section 6

Ethics

A. Relationships with Employees and Officers of WSDOT. The CONTRACTOR shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall the CONTRACTOR rent or purchase any Project equipment and materials from any employee or officer of WSDOT.

B. Employment of Former WSDOT Employees. The CONTRACTOR hereby warrants that it shall not engage on a full, part-time, or other basis during the period of this AGREEMENT; any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of WSDOT without written consent of WSDOT.

Section 7

Compliance with Laws and Regulations

The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to

evidence compliance with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all of the nondiscrimination provisions in Chapter 49.60 RCW.

Section 8 State and Local Law

Except when a federal statute or regulation pre-empts state or, local law, no provision of this AGREEMENT shall require the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of state or local law. Thus if any provision or compliance with any provision of this AGREEMENT Violates state, or local law, or would require the CONTRACTOR to violate state or local law, the CONTRACTOR agrees to notify WSDOT immediately in writing. Should this occur, WSDOT and the CONTRACTOR agree to make appropriate arrangements to proceed with or, if necessary, expeditiously, terminate the Project.

Section 9 Labor Provisions

Overtime Requirements. No CONTRACTOR or subcontractor contracting for any part of the Project work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed On such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in 'excess of forty (40) hours in such workweek. CONTRACTOR will comply with Title 49 RCW, Labor Regulations.

Section 10 Environmental Protections and Archeological Preservation

The CONTRACTOR agrees to comply with all applicable requirements of chapter 43.21C RCW "State Environmental Policy Act" (SEPA). The CONTRACTOR also agrees to comply with all applicable requirements of Executive Order 05-05, Archeological and Cultural Resources, for all capital construction projects or load acquisitions for the purpose of a capital construction project, not undergoing Section 106 review under the National Historic Preservation Act of 1966 (Section 106).

Section 11 Accounting Records [*Grantee responsibility*]

A. Project Accounts. The CONTRACTOR agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily .accessible and available to WSDOT upon request, and, to the

extent feasible, kept separate from documents not pertaining to the Project.

B. Documentation of Project Costs and Program Income. The CONTRACTOR agrees to support all allowable costs charged to the Project, including any approved services contributed by the CONTRACTOR or others, with properly executed payrolls, time records; invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The CONTRACTOR also agrees to maintain accurate records of all program income derived from implementing the Project.

Section 12 Audits, Inspection, and Retention of Records

A. Submission of Proceedings, Contracts, Agreements, and Other Documents. During the term of the Project and for six (6) years thereafter, the CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as WSDOT may require. Project closeout does not alter these recording and record keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six (6) year period then the CONTRACTOR's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.

B. General Audit Requirements. The CONTRACTOR agrees to obtain any other audits required by WSDOT at CONTRACTOR's expense. Project closeout will not alter the CONTRACTOR's audit responsibilities.

C. Inspection. The CONTRACTOR agrees to permit WSPOT, and the State Auditor, or their authorized representatives, to inspect all Project work materials, payrolls, maintenance records, and other data, and to audit the books, records, and accounts of the CONTRACTOR and its contractors pertaining to the Project. The CONTRACTOR agrees to require each third party to permit WSDOT, the State Auditor, or their duly authorized representatives, to inspect all work, materials, payrolls, maintenance records; and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Project.

Section 13 Permitting

The CONTRACTOR agrees to be solely responsible for all required Federal, State and/or local permitting as related to the Project.