

BIKE SYSTEM PURCHASE AGREEMENT

ENTERED INTO on _____ 20____ (the “Effective Date”).

BETWEEN: **PUBLIC BIKE SYSTEM COMPANY**, 2113, 32e Avenue,
Lachine, Québec, H8T 3J1;

hereinafter referred to as “**Seller**”;

AND: **NICE RIDE MINNESOTA**, Midtown Bike Center, suite 3, 2834
10th Avenue South, Minneapolis, MN 55407;

hereinafter referred to as “**Purchaser**”;

Seller and Purchaser collectively hereinafter referred to as “**Parties**”.

WHEREAS Seller markets the award-winning bike rental system first launched in Montreal and now in use worldwide;

WHEREAS Purchaser has been selected to receive certain Federal Highway Administration funds to provide a public bike rental system in the Twin Cities Metropolitan Area (the “**Project**”);

WHEREAS the City of Minneapolis (the “**Agency**”) served as fiscal agent for the award of federal funds and has also contributed certain funds to Purchaser;

WHEREAS Seller understands that a condition of a federal grant received by Purchaser requires Purchaser to have implemented a fully-operating bike share system by July 1, 2010;

WHEREAS Seller wishes to provide to Purchaser the System (further defined at Section 1.16 of the Agreement);

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1. “**Additional Services**” means all additional by services provided by Seller to Purchaser as set out at Schedule H of the Agreement.
- 1.2. “**Affiliate**” means any entity controlled by or under common control with a party to this Agreement, through ownership or control of more than 50% of the voting power of shares or other means of ownership or control.

- 1.3. **“Defect”** means a situation where the Product does not operate in accordance with the Specifications. A Defect does not cover any malfunction:
- (a) caused by the normal deterioration of parts;
 - (b) caused by the interaction of the Product with a device, component or part not included in the Product such as, by way of example, the use of Spare Parts other than those supplied by Seller;
 - (c) caused by the use, assembly or maintenance of the Product in a way contrary to the Documentation; or
 - (d) caused by vandalism or any other improper or abusive use. The use of the Equipment in wintry conditions (ie. ice, snow) is deemed an improper use of the Equipment.
- 1.4. **“Documentation”** means the documents pertaining to the use, installation, operation, maintenance, repair and storage of the Products described and attached in Schedule D of the Agreement, as updated from time to time by Seller.
- 1.5. **“End-Users”** means the individual users (customers) of the System.
- 1.6. **“Equipment”** means the physical components of the System, including bikes, docks and pay stations and to the exclusion of any material supplied or used by Purchaser, its employees, officers, agents or other subcontractors to be incorporated into the System.
- 1.7. **“Equipment Warranty”** has the meaning set forth in Section 14.1 of the Agreement.
- 1.8. **“Fit for Use”** means an item is suitable for use in a public bicycle sharing program with the core functions listed below, provided that the System is operated and maintained in accordance with the Specifications and Documentation. For the purposes of this definition, the core functions of a public bicycle sharing program are (1) allowing for the general public to have access to a bicycle through the insertion of a membership card in the station or through direct credit card payment at the station and (2) having the Equipment communicate with a back-end system in the way described in Schedule A.
- 1.9. **“First-Level Technical Support”** means the technical support provided to End-Users to identify and resolve functional problems in the System.
- 1.10. **“Intellectual Property Rights”** means all intellectual property rights whether registered or not and whether registrable or not including patents, rights (registered or unregistered) in designs, trade marks, service marks, applications for any of the foregoing, copyright (including copyright in databases and computer programs and/or software), database rights, topography rights, utility models, trade or business names,

domain names, moral rights, rights protecting brand and goodwill and reputation, know-how, rights to use and/or register domain names, telephone/SMS numbers, and all rights and forms of protection of a similar nature to any of the foregoing subsisting now or in the future having equivalent effect anywhere in the world.

- 1.11. **“Product”** means the Equipment and Software.
- 1.12. **“Second-Level Technical Support”** means the technical support provided by the Seller to Purchaser to identify and resolve functional problems in the Software or Equipment that could not be resolved by Purchaser’s internal resources.
- 1.13. **“Services”** means the Training Services, the Software Maintenance Services, the Technical Support Services and the Additional Services.
- 1.14. **“Software”** means the software components of the System conforming to the Specifications at Schedule A of the Agreement and to the exclusion of any software components supplied or used by Purchaser, its employees, officers, agents or other subcontractors to be incorporated into the System.
- 1.15. **“Software Maintenance Services”** means the maintenance and upgrade of the Software provided by Seller to Purchaser as set out at Section 7 of the Agreement.
- 1.16. **“System”** means collectively the Products and Services. The System does not include Purchaser’s website or products and services not developed or supplied by Seller.
- 1.17. **“Spare Parts”** means the replacement parts required for the maintenance, repair and operation of the Equipment, excluding commercially available off-the-shelf tools.
- 1.18. **“Specifications”** means the technical requirements for the Product as defined at Schedule A of the Agreement.
- 1.19. **“Technical Support Services”** means the second level technical support provided by Seller to Purchaser as set out at Section 6 of the Agreement.
- 1.20. **“Term”** means the duration set out at 20.1 of the Agreement.
- 1.21. **“Timeline”** means the production, shipping, installation (where applicable) and payment schedule found at Schedule B of the Agreement.
- 1.22. **“Training Services”** means the training services provided by Seller to Purchaser as set out at Section 5 of the Agreement.
- 1.23. **“User”** means each individual Software access account to be used by an employee of Purchaser.

2. **EQUIPMENT PRODUCTION AND SHIPPING**

- 2.1. **Obligation to Purchase and to Supply.** During the Initial Term, Purchaser shall purchase and Seller shall supply all of Purchaser's Equipment and Spare Parts requirements, subject to the terms and exceptions below. For additional clarity and subject to sections 2.6 and 2.7 below, Purchaser shall not purchase bicycles, docking stations, Spare Parts or pay stations to be used in a bike-share system from someone else than Seller for the whole duration of the Initial Term.
- 2.2. **Initial Order.** Seller shall supply the Equipment, Spare Parts, and other materials listed in Schedule C at prices stated therein on or before May 26, 2010 (the "**Initial Order**").
- 2.3. **Specifications.** The Equipment and Spare Parts shall conform to the Specifications contained in Schedule A to this Agreement. Parties may agree for future orders to modify the specifications to use the updated version of Seller's specification in effect at the time of order provided that such changes account for compatibility with previously delivered Equipment.
- 2.4. **Future Equipment Price.** The price for future orders of Equipment will be determined according to the Price Adjustment Formula found at Schedule C of this Agreement.
- 2.5. **Spare Parts Price.** Seller shall maintain and periodically update a price list. The price of Spare Parts shall be the list price at the time an order is placed. Seller shall use its best efforts to maintain competitive prices for Spare Parts.
- 2.6. **Exception for Emergency Spare Parts Needs.** When necessary to keep Equipment in service and to avoid delay, Purchaser may purchase small quantities of Spare Parts from local suppliers. Purchaser shall make commercially reasonable efforts to maintain an inventory of Spare Parts to minimize occurrence of these circumstances. Purchaser acknowledges that Seller shall be for the duration of this Agreement Purchaser's primary Spare Parts supplier.
- 2.7. **Exception for Spare Parts If List Price Is Not Competitive.** If Purchaser receives a bona fide offer to purchase a certain amount Spare Parts at a price lower than Seller's list price, Seller shall either match the lower price or permit Purchaser to take the other offer. A bona fide offer under this provision must be :
 - (a) in writing;
 - (b) made at arm's length;
 - (c) commercially reasonable;
 - (d) pertaining to the same part of the same quality or brand;

- (e) with equal or lower shipping delays;
- (f) in the same quantities; and
- (g) not be a one-time or limited quantity offer.

For the avoidance of doubt, any Spare Part purchased from a third party other than Seller shall not be covered by any warranty or representation of this Agreement. Purchaser assumes all risks and costs associated with such purchases, notwithstanding any action, permission or comment made by Seller concerning such purchases.

- 2.8. **Best Price Guaranty.** Seller further agrees to sell future Equipment, Spare Parts and Services to Purchaser at the lowest price then offered by Seller to third parties for comparable Equipment and Services who purchases on an annual basis similar quantities of such Equipment and Services.
- 2.9. **Shipping and Risks - Initial Order.** For the Initial Order, Seller will deliver the bicycles Ex Works Loaded Chicoutimi and all other Equipment and Spare Parts Ex Works Loaded Lachine (according to INCOTERMS 2000) at the addresses specified in Schedule C.
- 2.10. **Shipping and Risks - Future Orders.** Unless otherwise agreed, future orders will be shipped Ex Works Lachine to the address specified in the relevant purchase order. Seller agrees to make commercially reasonable efforts to make its products available in packaging and in locations to reduce shipping costs where practical.
- 2.11. **Lead Times – Future Orders.** On future orders, Seller will supply Equipment and Spare Parts within the lead times set forth in Schedule I. When requested by Seller (no more than quarterly), Purchaser will provide a non-binding forecast of its future requirements.
- 2.12. **Inspection and Acceptance.** Purchaser shall inspect and accept the Equipment to be delivered at Seller's premises in Lachine, Québec before it is being shipped to Purchaser's premises. Parties agree that, by mutual agreement, such inspection and acceptance may be performed remotely by the use of photographs taken by Seller and sent to Purchaser.
- 2.13. **Installation.** Purchaser will be responsible for the installation of the System. Purchaser undertakes to respect the Documentation provided and use personnel trained for the installation of the System by Seller or by trainers qualified by Seller through the Training Services. In addition to the Training Services, Seller shall provide to Purchaser, upon request, assistance, either on-site or remotely, in order to help Purchaser with any difficulty it may encounter with the inspection and installation of the Equipment. Purchaser agrees to remunerate Seller for such assistance, if Seller requires to be remunerated, at the same rates as the Training Services, unless the

difficulty with the inspection and/or installation results from a Defect, in which case the Equipment Warranty shall be applicable.

- 2.14. **External Delays.** Seller shall not be held responsible for production or shipment delays caused by Purchaser, the Agency or any other third party (except Seller's subcontractors). Should Purchaser refuse to accept the delivery of certain Equipment otherwise than by reason of Purchaser's default, Seller shall be indemnified by Purchaser for any storage fees incurred plus applicable sales or use taxes, if any.
- 2.15. **Right of First Refusal:** Before selling any Equipment or putting any Equipment to use for a purpose other than the Project, Purchaser will offer Seller in writing to buy back the Equipment for a fair market price. Seller shall have sixty (60) days from the receipt of Purchaser's offer to answer to such offer. Seller shall not be required to provide any services or to honor any warranty on Equipment sold by Purchaser to a third party. Unless Purchaser agrees to undertake responsibility for the Equipment sold to a third party, such sale shall be made "as is" without any representation or warranty binding on Seller. Purchaser undertakes to remove from the Equipment any trade-mark licensed from Seller or its licensors before selling the Equipment to a third party.

3. **CHANGE ORDER PROCEDURE**

- 3.1. **Change Order Procedure.** Any modification requested by Purchaser to the Specifications, the Timeline, the Services or the Agreement (a "**Change**") must follow the procedure found at this Section 3. To initiate a Change, Purchaser must provide Seller in writing (a) the portion of the System impacted with the Change requested (if any); (b) the reason of the Change (the "**Change Order Notice**").
- 3.2. **Categories of Change.** There are two levels of Change that can be requested under the Change Order Procedure:
- (a) *Emergency Change:* a Change that, either (A) if not implemented, (i) poses an immediate risk to the security or integrity of the System or users of the System, (ii) puts into jeopardy the viability of the Project, (iii) will create important and irreparable material losses for Purchaser or Agency; or (B) is (i) a change in law or political situation, (ii) a change in the Agency or third party beneficiary of the System; or (iii) a partial termination of the Agreement of the agreement between Purchaser and the Agency, that has a material adverse effect on the Project.
 - (b) *General Change:* a Change that is not an Emergency Change.
- 3.3. **Change Order Response.** Within a reasonable time following the receipt by Seller of the Change Order Notice, Seller will send to Purchaser a notice stating the following elements : (a) the course of action to implement the Change (if any); (b) the costs

associated with the Change; (c) the modification to the Timeline (if any) (the “**Change Order Response**”).

- 3.4. **Acceptance.** Following the reception by Purchaser of the Change Order Response, the Parties will enter into good faith negotiations concerning the terms and conditions of the Change Order Response. The Change shall be implemented when both Parties have expressly agreed in writing to the Change Order Response. Seller will have no obligation to accept or implement a General Change.

4. **SOFTWARE ACCESS**

- 4.1. **Access.** Seller grants to Purchaser the non-transferable (other than provided at Section 4.3 of the Agreement) right to remotely access the Software for purposes of the Project only, and for the number of Users specified in the Specifications, limited to the Twin Cities Metropolitan Area.
- 4.2. **Modifications.** The Purchaser, the Agency or any other third party shall not modify, upgrade or enhance the Software, nor access the source code except as permitted through Purchaser’s separate agreement with 8D Technologies.
- 4.3. **Access by Subcontractors.** Except as permitted through Purchaser’s separate agreement with 8D Technologies, Purchaser shall seek Seller’s authorization to authorize its local maintenance contractors and website developer to access the Software, consent which may not be unreasonably withheld or delayed. Such transfer will only cover the elements of the Software that the maintenance contractors or website developer will need to access for the purpose of their work in the context of the Project and shall be subject to their undertaking to be bound by the same terms as Purchaser.
- 4.4. **Software Escrow.** Purchaser has or will enter into a separate escrow and license agreement with 8D Technologies (the “**Escrow Agreement**”) that will allow Purchaser, to obtain (i) the source code of the Software, (ii) a license to use the Software and its source code and to sublicense it to a subcontractor and (iii) all data belonging to Purchaser hosted by 8D Technologies (collectively the “**Material**”). Should Purchaser receive the Material from 8D Technologies through the release of the Escrow Agreement, Purchaser shall have the two following options:
- (a) sublicense and/or transfer, as applicable, the Material to Seller in order for Seller to provide, itself or through a new software service provider, the Services related to the Software including, without limitation, the Software Maintenance Services, the Technical Support Services and the Hosting Services; or

- (b) release Seller from the obligation to perform the Services related to the Software including, without limitation, the Software Maintenance Services, the Technical Support Services and the Hosting Services and obtain such Services from a third party, it being understood that Purchaser shall not be in breach of section 2.1 of this Agreement by obtaining such Services from a third party.

In both scenarios, Parties will collaborate and deploy all commercially reasonable efforts to transition the Material and other necessary data to the new software solution to enable Purchaser to continue uninterrupted service to its customers. Purchaser understands that the procurement of an escrow agreement form 8D Technologies is its sole responsibility and that Seller shall not be required to be a party to this escrow agreement.

5. TRAINING SERVICES

- 5.1. **Training Services.** Unless otherwise specified at Schedule E of the Agreement, this Section 5 sets out how the Training Services will be provided to Purchaser.
- 5.2. **Introductory Training.** During the period set out in the Timeline, Seller shall provide introductory training for Purchaser personnel in the installation, use and operation of the System.
- 5.3. **Ongoing Training.** At the request of Purchaser (and at its expense), Seller shall provide ongoing training (to a reasonable level) on a regular basis to Purchaser's personnel in the installation, use and operation of the System.
- 5.4. **Subcontractor's Training.** At the request of Purchaser (and at its expense), Seller shall provide introductory and ongoing training to Purchaser subcontractors' personnel, in order to ensure that all subcontractors' personnel are trained as applicable to their respective roles in the installation, use and operation of the System.
- 5.5. **Parameters of Training.** Seller shall provide such training during working hours, at a time and in a location suitable for such training in the region where the System is implemented. Purchaser shall be responsible for providing a suitable location at its expense.
- 5.6. **Qualified Personnel.** Seller shall provide suitably qualified and trained personnel to deliver the training referred to in this Section 5. Training will only be delivered in the English language.
- 5.7. **Breach of Training Services.** Failure by Seller to meet the obligations found at this Section 5 does not grant Purchaser the right to terminate this Agreement pursuant to Section 20 herein. Upon Purchaser's written notice to Seller, Purchaser may terminate the Training Services part of this Agreement at any time immediately following Seller's material breach of any material provision of this Section 5, when such breach

is not cured by Seller within thirty (30) days following Purchaser's written notice thereof to Seller.

- 5.8. **Termination of the Training Services.** Purchaser may terminate the Training Services by giving Seller a one-hundred-and-eighty (180) days written prior notice to this effect.

6. TECHNICAL SUPPORT SERVICES

- 6.1. **Technical Support Services.** Unless otherwise specified at Schedule F of the Agreement, this Section 6 sets out how the Technical Support Services will be provided to Purchaser.

- 6.2. **First-Level.** Unless otherwise agreed in writing between the Parties, Purchaser shall be responsible for the First-Level Technical Support.

- 6.3. **Second-Level Technical Support Services.** Seller agrees to provide a Second-Level Technical Support through telephone assistance service. The telephone assistance service of Seller is available between 8:00 a.m. and 8:00 p.m. North American Eastern Time, from Monday to Sunday, except for holidays in effect in the province of Quebec, Canada. The purpose of the telephone assistance service of Seller is to attempt to identify and resolve functional problems in the Product. Its purpose is not to identify nor resolve functional problems of other software or equipment used in conjunction with the Product, to provide technical support to End-Users, nor to provide training services with regards to the Product.

- 6.4. **Severity.** Each call received will be given by Seller a severity level according to the following guidelines:

- (a) *Critical Problem:* when the Product is not operational or has suffered a critical loss of capability, such as the inability to use the Product, if the frequency of the failure precludes productive use of the Product, or if the failure or loss entails a critical job/data integrity defect;
- (b) *Major Problem:* when the Product is operational but its capability is severely or moderately degraded, such as the inability to run a major application within the Product, a non-critical product feature or function does not work, or a failure that requires on-going intervention in order to maintain productive use;
- (c) *Minor Problem:* when the Product is operational and the problem entails no significant impact on the performance of the Product.

- 6.5. **Response Time.** Seller shall exercise all commercially reasonable efforts to meet the following response times:

- (a) Four business (4) hours in order to respond to a Critical Problem;
- (b) Twelve business (12) hours in order to respond to a Major Problem; and
- (c) Two (2) business days in order to respond to a Minor Problem.

6.6. **Emergency Technical Support Services.** Seller agrees to provide an emergency Second-Level Technical Support telephone assistance service outside of regular telephone assistance service hours described at paragraph 6.3 of this Agreement to address Critical Problems and Major Problems. If an emergency service call concerns a Minor Problem, the Purchaser agrees to remunerate Seller for the time spent to identify and resolve the problem at the hourly consultation rate in force at such time.

6.7. **Workmanlike Manner.** Seller warrants that it will use commercially reasonable efforts to provide Technical Support Services in a professional and workmanlike manner.

6.8. **Breach of Technical Support Services.** Failure by Seller to meet the obligations found at this Section 6 does not grant Purchaser the right to terminate this Agreement pursuant to Section 19 herein. Upon Purchaser's written notice to Seller, Purchaser may terminate the Technical Support Services part of this Agreement at any time immediately following Seller's material breach of any material provision of this Section 6, when such breach is not cured by Seller within thirty (30) days following Purchaser's written notice thereof to Seller.

6.9. **Termination of the Technical Support Services.** Purchaser may terminate the Technical Support Services by giving Seller a one-hundred-and-eighty (180) days written prior notice to this effect.

7. SOFTWARE MAINTENANCE SERVICES

7.1. **Software Maintenance Services.** Unless otherwise specified at Schedule G of the Agreement, this Section 7 sets out how the Software Maintenance Services will be provided to Purchaser.

7.2. **Warranty.** As long as Software Maintenance Services are in effect, Seller warrants that the Software will conform to its Specifications and, if used as directed in the Documentation and with properly maintained Equipment, will perform the core functions described in its Specifications according to the applicable software service levels described at Schedule A of this Agreement.

7.3. **Maintenance.** Seller shall deploy all reasonable efforts to correct Defects reported by Purchaser that relate to the Software and that interfere with the proper functioning of the Software, as set out in the Specifications. Seller shall not be responsible for the correction of any Defects affecting any equipment or software not supplied by Seller

used in conjunction with the Software. Purchaser agrees to communicate to Seller, in writing, all the details of which it is aware concerning any Defects affecting the Software, in order to allow Seller to properly perform its obligations hereunder. If, pursuant to such communication by Purchaser, Seller concludes that such Defects were non-existent or were caused by third party equipment or software not supplied by Seller used in conjunction with the Software, Seller may, at its discretion, require Purchaser to pay for time spent to detect and, if applicable, correct such Defects, at the hourly consultation rate in force at such time.

7.4. **Revised Versions and Software upgrades.** Seller shall update the Software from time to time and grant access to Purchaser to this updated version. Seller may, at its sole discretion require Purchaser to pay an additional upgrade fee to have access to this updated version. Should Purchaser decline to pay the upgrade fee, Seller shall grant Purchaser access to the last version of the Software to which Purchaser has paid all applicable upgrade fees, if any. Notwithstanding the foregoing, the fees associated with any update or upgrade to the Software that is offered to all Seller's customers are included in the Software Maintenance Fees set out at Schedule C.

7.5. **Software Compatibility.** Seller agrees to cooperate with Purchaser in order for Purchaser to obtain updates to third party software purchased by Purchaser from Seller. Purchaser acknowledges that Seller's ability to provide such updates is conditioned upon the cooperation of Purchaser's other software vendors.

7.6. **Workmanlike Manner.** Seller warrants that it will use commercially reasonable efforts to provide Software Maintenance Services in a professional and workmanlike manner.

8. **HOSTING SERVICES**

8.1. **Data Hosting.** Seller will sub-contract with 8D Technologies to host the Software and the System data according to the service levels set out at Schedule A of this Agreement (the "**Hosting Services**"). The System data will be hosted by 8D Technologies. Seller is responsible to Purchaser for delivery of the Hosting Services. If Seller decides to change the provider of the Hosting Services, Seller will ensure that the new provider meets or exceeds the requirements set forth in Schedule A.

8.2. **PCI Compliance.** Seller will use its commercially reasonable efforts to ensure 8D obtains PCI compliance and is in compliance with the Minnesota Plastic Card Security Act as soon as practicable. Purchaser acknowledges that 8D will likely not be compliant at NRM's "go live" date. Once compliant, 8D will commit to annual re-certifications. Data center (hardware and procedures) and the application services will conform to industry standards and 8D specifications.

- 8.3. **Change.** In the event that Seller desires to change the vendor or location of data hosting, it will obtain approval from Purchaser, which approval shall not be unreasonably denied.
- 8.4. **Workmanlike Manner.** Seller warrants that it will use commercially reasonable efforts to provide Hosting Services in a professional and workmanlike manner.
- 8.5. **Breach of Hosting Services.** Failure by Seller to meet the obligations found in Schedule A will lead to crediting Purchaser's account with an amount as calculated in Schedule A. Upon the third consecutive calendar month in which Uptime is below 85% (as calculated in Schedule A) or in any single calendar month in which uptime is below 70%, Purchaser may terminate this Agreement pursuant to Section 19 herein.

9. ADDITIONAL SERVICES

- 9.1. **Additional Services.** Seller agrees to provide the Additional Services set out at Schedule H of this Agreement.
- 9.2. **Breach of Additional Services.** Failure by Seller to meet the obligations found at this Section 9 does not grant Purchaser the right to terminate this Agreement pursuant to Section 20 herein. Upon Purchaser's written notice to Seller, Purchaser may terminate the Additional Services part of this Agreement at any time immediately following Seller's material breach of any material provision of this Section 9, when such breach is not cured by Seller within thirty (30) days following Purchaser's written notice thereof to Seller.
- 9.3. **Termination of the Additional Services.** Purchaser may terminate the Additional Services by giving Seller a one-hundred-and-eighty (180) days written prior notice to this effect.

10. OPERATION

- 10.1. **Operation by Purchaser.** Unless otherwise agreed in writing between the Parties, the System shall only be operated by Purchaser and its subcontractors who agree to be bound by the relevant terms of this Agreement and shall be limited to the Twin Cities Metropolitan Area. Notwithstanding the foregoing, unless this Agreement is lawfully assigned by Purchaser pursuant to section 21.12 of this Agreement, Purchaser shall not subcontract all or substantially all the operation of the System to third parties without first obtaining the prior written consent of Seller. As between Parties, Purchaser remains fully responsible for the operation of the System by any third party or subcontractor and their compliance with this Agreement. Notwithstanding any of the foregoing, Purchaser shall seek prior written authorization before subcontracting any portion of the operation of the System to a competitor of Seller.

- 10.2. **Documentation.** In order to maintain any warranty applicable to the System, the System must be used in conformity with the Documentation, with any updated version of the Documentation and generally with any reasonable written instruction given by Seller to Purchaser. Updates to the Documentation shall not substantially reduce the duration or scope of warranties or materially increase the costs of repair.

11. FINANCIAL TERMS

- 11.1. **Payments.** The price of the Products and Services is set out at Schedule C of the Agreement and shall be payable according to the payment schedule found at Schedule C of the Agreement plus applicable sales or use taxes, if any.
- 11.2. **Other Payments.** All other fees shall be payable within thirty (30) days of receipt by Purchaser of the invoice, which, for Equipment purchases, shall not be delivered prior to the delivery of a purchaser order by Purchaser.
- 11.3. **Currency.** Unless specified otherwise, all monies stipulated in the Agreement are expressed in US dollars.
- 11.4. **Interest rate.** Payments not received by the due date in accordance hereto shall bear interest at the rate of 1.5% per month (18% per year), compounded monthly, or the maximum rate permitted by law, whichever is less.
- 11.5. **Taxes, Duties and Withholding.** All payments due under this Agreement from Purchaser and, where applicable, the Agency, to Seller are exclusive of all goods and services, sales, commodity, use or other taxes, customs duties and similar levies, if any, payable in or to any jurisdiction or authority whatsoever, which taxes, duties and levies shall be the sole responsibility of the Purchaser. All such payments shall be free and clear of deduction or withholding, for any present or future taxes, levies, imposts, deductions, charges, fees or similar withholdings (collectively “**Withholding Taxes**”) unless Purchaser is compelled by law to deduct or withhold the same, in which event Purchaser will pay to Seller such additional amounts as are necessary to enable Seller to receive, after all deductions or withholdings for such Withholding Taxes, a net amount equal to the full amount that would otherwise have been payable under this Agreement if no such deduction or withholding was required. The Purchaser shall pay or cause to be paid to the appropriate authority the amount of the Withholding Taxes by no later than the latest date permitted by that authority. If Purchaser fails to do so, the penalties and interest that may be payable to that authority as a result of such failure shall be the sole responsibility of Purchaser.

12. PURCHASER REPRESENTATIONS AND WARRANTIES

- 12.1. **Authority.** Purchaser represents that this Agreement has been duly authorized, executed and delivered by its representatives and that there is no requirement for its

representatives to obtain any other authorization, consent or approval from Purchaser as a condition to the enforceability of any provision of this Agreement or the lawful conclusion of the transactions contemplated by this Agreement and that Purchaser has the power and authority to enter into and perform its obligations under this Agreement and to grant all the rights it purports to so grant hereunder.

- 12.2. **Insurance.** Purchaser shall maintain general liability insurance of at least \$2,000,000 per occurrence, including contractual liability, and shall present evidence of insurance upon request.
- 12.3. **Promotion.** Purchaser agrees to make its facilities and staff available to Seller and potential customers of Seller and to assist Seller in describing the features, operation, and performance of Seller's system. To the extent that these activities are requested by Seller and require travel, significant staff time, or other expenses, Seller will reimburse Purchaser at actual cost.
- 12.4. **Intellectual Property Ownership.** Purchaser represents that to the best of its knowledge there are no intellectual property claims or lawsuits or grounds for such claims or lawsuits concerning any material supplied by Purchaser, its employees, officers, agents or other subcontractors to be incorporated into the Products.

13. **SELLER REPRESENTATIONS AND WARRANTIES**

- 13.1. **Authority.** Seller represents that this Agreement has been duly authorized, executed and delivered by its representatives and that there is no requirement for its representatives to obtain any other authorization, consent or approval from Seller as a condition to the enforceability of any provision of this Agreement or the lawful conclusion of the transactions contemplated by this Agreement and that Seller has the power and authority to enter into and perform its obligations under this Agreement and to grant all the rights it purports to so grant hereunder.
- 13.2. **Insurance.** Seller shall maintain general liability insurance of at least \$2,000,000 per occurrence, including contractual liability, and shall present evidence of insurance upon request.
- 13.3. **Representations Pertaining To Agency Required Contract Terms.**
 - (a) Seller does not discriminate on the basis of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era and is in compliance with non-discrimination and equal opportunity laws in force in the province of Quebec and in Canada such as *Charter of Human Rights and Freedoms* and the *Canadian Charter of Rights and Freedoms*.

- (b) Seller understands that Purchaser must protect consumers' confidential information in compliance with the Minnesota Data Practices Act and the Minnesota Plastic Card Security Act and will work with Buyer to comply with those laws and to maintain a thorough and accurate Privacy Policy, which will appear on Purchasers' web site.
- (c) Seller understands that Buyer and its subcontractors should make every reasonable effort to solicit Disadvantaged Business Enterprises. Seller represents that one of its primary suppliers on the Effective Date, 8D Technologies, is substantially woman-owned and that it has developed a program to employ under-privileged youth in the maintenance of Montreal's bike-share system.
- (d) Seller represents that it has complied with non-discrimination and equal opportunity laws in force in the province of Quebec and in Canada such as *Charter of Human Rights and Freedoms* and the *Canadian Charter of Rights and Freedoms* in the sourcing of manufacturing for its products.

Failure for Seller to comply with this section 13.3 shall be deemed a non-material breach of this Agreement.

13.4. **Equipment.** Seller represents that Seller holds clear title to Equipment to be delivered under this Agreement, that the Equipment shall be free of liens and encumbrances, and unless otherwise agreed, that the Equipment shall be new.

13.5. **Intellectual Property Ownership.** Seller represents that, to the best of its knowledge:

- (a) it holds all rights necessary to sell the Product to Purchaser or to allow Purchaser to use the Product; and
- (b) there are no claims or lawsuits or grounds for such claims or lawsuits concerning the Intellectual Property Rights in the Products with respect to the Project to the exclusion of any claim or lawsuit originating from the interaction of the Product with any material supplied or used by Purchaser, its employees, officers, agents or other subcontractors to be incorporated into the System, in respect of which Seller disclaims any representation or warranty.

14. EQUIPMENT WARRANTY

14.1. **Equipment Warranty.** Seller warrants to Purchaser that the Equipment will not be affected by any Defect for five (5) years from the shipping date of the Equipment (the "**Equipment Warranty**"), provided that the Equipment is maintained in accordance with the Documentation. Purchaser acknowledges that certain parts of the System must be replaced periodically by Purchaser according to the maintenance Documentation through Purchaser's purchase of Spare Parts from Seller. Parts that

must be replaced more frequently than five years are listed in the maintenance schedule and shall include, without limitation, the bicycle chain, tires, tubes, handlebar grips, and luggage carrier sandows (bungee cords).

- 14.2. **Fit for Use Warranty.** Seller warrants to Purchaser that the Equipment will be Fit for Use for five (5) years from the shipping date of the Equipment (the “**Fit for Use Warranty**”). Purchaser acknowledges and understands that the Fit for Use Warranty is incumbent on the performance or procurement by Purchaser of actions, services, equipment and other components that are not provided by Seller or its subcontractors, such as, without limitation, telecommunication services or equipment, maintenance personnel and station relocation crew. Purchaser also acknowledges and accepts that the Fit for Use Warranty shall not allow Purchaser to require Seller to upgrade the System or its components based on new development, trends or practices in the bike-share market, even if such development, trend or practice was initiated by Seller, or to modify the Specifications of Equipment delivered in future orders other than through the application of section 2.3 of this Agreement. Seller does not warrant that the Equipment is suitable for use in wintry conditions or that the System will perform any function or will not have any characteristic not specifically identified in this Agreement, the Specifications, or the Documentation.
- 14.3. **Notice of Defect.** When Purchaser notices a potential Defect in a piece of Equipment, it shall send to Seller a notice stating the nature of the Defect and the serial number(s) (if any) of the Equipment affected by the Defect (the “**Notice of Defect**”).
- 14.4. **Repair or Replacement.** Within ten (10) days following the Notice of Defect, Seller shall communicate to Purchaser how the Equipment will be repaired or replaced.
- 14.5. **Costs.** All costs associated with the repair or replacement of Equipment affected by Defects shall be the responsibility of Seller.
- 14.6. **No Defect.** If, pursuant to a Notice of Defect, Seller concludes that such Defect was non-existent, caused by Purchaser or caused by the use of the Equipment in conjunction with third party equipment or software not supplied by Seller, Seller may, at its sole discretion, require Purchaser to pay for time spent to detect and correct (if applicable) such Defect, at the hourly consultation rate in force at such time and any other costs incurred, including without limitation, shipping fees.
- 14.7. **Spare Parts.** The Equipment Warranty does not cover the normal deterioration or wear-and-tear of the Equipment.
- 14.8. **Same or Better Quality.** Seller agrees that the Initial Order (as described in Schedule C) of Equipment delivered to Purchaser will be, at the time of purchase, of same or better quality as the equipment then being used for the Montreal BIXI program.

15. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 15.1. **General.** IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES', ITS OR THEIR RESPECTIVE EMPLOYEES', DIRECTORS', OFFICERS AND AGENTS' TOTAL COLLECTIVE LIABILITY TO THE PURCHASER FOR DAMAGES OF ANY KIND AND ANY INDEMNITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER CLAIMED IN CONTRACT, EQUITY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY OR OTHERWISE, TO THE EXCLUSION OF CLAIMS BASED INTENTIONAL MISCONDUCT, BREACH OF CONFIDENTIALITY OR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT, EXCEED THE AGGREGATE SUMS PAID BY PURCHASER AND AGENCY TO SELLER UNDER THIS AGREEMENT.
- 15.2. **Damages.** EXCEPT FOR CLAIMS BASED ON BREACH OF CONFIDENTIALITY OR FOR THIRD PARTY CLAIMS BASED ON INTENTIONAL MISCONDUCT OR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR FOR THE LOSS OF PROFIT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SUPPLY, DELIVERY AND MANUFACTURE OF PRODUCTS, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. EXCEPT AS PROVIDED OTHERWISE IN THIS AGREEMENT. PARTIES FURTHER AGREE THAT SELLER SHALL NOT BE LIABLE FOR ANY CLAIM OR DEMAND AGAINST SELLER OR PURCHASER BY ANY OTHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.
- 15.3. **Disclaimer.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO THE EQUIPMENT, SOFTWARE, SERVICES, DOCUMENTATION, OR OTHER SUBJECT MATTER OF THIS AGREEMENT, SELLER HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, AND CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN EXPRESSLY PROVIDED HEREIN. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, SELLER DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE PRODUCTS OR DOCUMENTATION ARE ERROR-FREE, OR THAT WILL MEET ANY SPECIFIC NEED THAT PURCHASER HAS NOT SPECIFICALLY SET OUT IN THE SPECIFICATIONS OR THAT THE SOFTWARE WILL FUNCTION WITHOUT INTERRUPTION, OR THAT ALL DEFECTS WILL BE CORRECTED. TO THE

EXTENT THAT A PARTY MAY NOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. THE AGENTS AND EMPLOYEES OF SELLER ARE NOT AUTHORIZED TO MODIFY ANY OF THE EXPRESS WARRANTIES CONTAINED HEREIN OR TO MAKE ADDITIONAL WARRANTIES BINDING ON SELLER, AND PURCHASER ACKNOWLEDGES THAT IT HAS RELIED ON NO REPRESENTATIONS OR WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT.

- 15.4. **Purchaser's Indemnity.** Purchaser shall indemnify, defend and hold harmless Seller, its Affiliates, directors, officers, employees, successors and assigns, harmless from and against any and all loss, damage, liability, cost or expense (including reasonable attorneys' fees and expenses) asserted against, or incurred by, Seller, its Affiliates, directors, officers, employees, successors and assigns, arising out of the negligence or intentional misconduct of Purchaser.
- 15.5. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless Purchaser, its Affiliates, directors, officers, employees, successors and assigns, harmless from and against any and all loss, damage, liability, cost or expense (including reasonable attorneys' fees and expenses) asserted against, or incurred by, Purchaser, its Affiliates, directors, officers, employees, successors and assigns, arising out of the negligence or intentional misconduct of Seller or any breach of the representations and warranties.
- 15.6. **Allocation of Risk.** It is agreed that the limitation of remedies/liability set forth in this Section 15, and elsewhere in this Agreement, allocates the commercial risks between Seller and Purchaser arising out of or in connection with this Agreement, including but not limited to Product Defects, and that the financial terms at Schedule C and the other terms and conditions of this Agreement reflect this allocation of risk.

16. **INTELLECTUAL PROPERTY**

- 16.1. **Use of BIXI Trade Marks.** Nothing in this Agreement shall be interpreted or construed as giving Purchaser or the Agency the right to use the BIXI Trade Marks or any other trade mark owned or licensed by Seller. If Purchaser or the Agency wishes to use the BIXI Trade Marks or any associated trade-mark, a separate license agreement is required.
- 16.2. **Ownership.** Purchaser acknowledges that the technical and non-technical information, and the Intellectual Property Rights used in the development and manufacture of the System, and any enhancement, modification or improvement thereof, regardless of the developing party ("**Seller's IPR**") are valuable and proprietary to Seller or its licensors. Purchaser assigns to Seller all Seller's IPR acquired during or after the Term by Purchaser, its subcontractors, its employees or its Affiliates and agrees to obtain the

execution of any document required to perfect this assignment. Purchaser acknowledges that it may not require compensation or payment from Seller for complying with this section 16.2. All Intellectual Property Rights that are not Seller's IPR shall vest in the developing party. This section 16.2 shall survive the termination or expiry of this Agreement. For clarity, the Parties agree that Purchaser does not assign to Seller Intellectual Property Rights in logos, marketing material, advertising material, color schemes and software developed or purchased by Purchaser from a third party, excluding Seller's subcontractors, for the Project.

- 16.3. **Protection of Software.** Purchaser agrees that all Software shall be treated as the exclusive property of Seller and Seller's suppliers, as appropriate, and as proprietary and trade secret information of Seller and Seller's suppliers, as appropriate. Purchaser shall take such steps as may be necessary to hold the Software in confidence for the benefit of Seller and/or Seller's suppliers, and utilize, and to ensure that others utilize, the Software solely in conjunction with the Products or other hardware and software supplied or approved by Seller. If Purchaser becomes aware of any breaches of these provisions or other misconduct committed by any reseller or any other person, Purchaser shall promptly notify Seller and provide Seller with such reasonable assistance as may be necessary under the circumstances. Except as permitted through Purchaser's separate agreement with 8D Technologies Purchaser shall not copy (except archival copies as provided for in copyright law), translate, modify, create derivative works, reverse engineer, decompile, encumber or otherwise use the Software except as specifically permitted under this Agreement, and shall prevent others from doing so. All appropriate copyright and other proprietary notices and legends contained on or in copies of the Software provided by Seller shall be reproduced on any full or partial copies made by Purchaser. For additional clarity, nothing in this Agreement grants the right to Purchaser, the Agency or any other third party any right or license to use, access or modify the source code of the Software.
- 16.4. **Software Integrity.** Seller represents and warrants that the Software as provided by Seller to Purchaser does not contain any virus, clock, timer, counter or disabling code, design, routine or virus that would cause the same to be, without specific user instructions, duplicated, erased, altered, rendered inoperable or otherwise incapable of being used, or otherwise limit or restrict Purchaser's ability to use the Software after a specific or random number of uses, period of time, number of copies or after the lapse or occurrence of any similar triggering prompt.

17. **BIXI COMMUNITY**

- 17.1. **Creation of the BIXI Community.** Seller may choose to develop an online BIXI branded community, which will aim to provide interoperability, interaction and shared visibility for the bike-share systems using the BIXI Trade-Mark and their users (the "BIXI Community"). Seller may elect, at its sole discretion, to include in the BIXI Community bike-share systems that do not use the BIXI Trade-Mark. Conditions

applicable to non-BIXI branded bike-share systems may differ from the ones applicable to BIXI branded systems. Purchaser will be allowed to participate in the BIXI Community on the same terms as the other non-BIXI branded bike-share systems included in the BIXI Community.

- 17.2. **Negotiations.** Following the creation of the BIXI Community and Seller's decision to allow non-BIXI branded bike-share systems to participate, Parties will enter into good faith negotiations to determine the parameters of Purchaser's participation in the BIXI Community.
- 17.3. **Acknowledgement.** Purchaser acknowledges that the following elements will necessarily be present in the BIXI Community agreement:
- (a) A financial contribution from Purchaser for the costs of operation and maintenance of BIXI Community;
 - (b) Shared visibility of the different bike-share systems in the world;
 - (c) The implementation of a system that will allow users of the BIXI Community to use their membership pass in any other bike-share system which is part of the BIXI Community.

18. CONFIDENTIALITY

- 18.1. **Definition.** "Confidential Information" shall mean all confidential or proprietary information, in any form whatsoever, whether oral, electronic, visual, written or otherwise, relating to the disclosing party's (the "**Discloser**") business and/or those of its suppliers and customers, disclosed to the receiving party (the "**Recipient**") pursuant to this Agreement. Confidential Information shall include both information that is identified as Confidential Information at the time of disclosure and information that a reasonable person would consider from the nature of the information and the circumstances of disclosure, is information proprietary or confidential to the Discloser and/or the Discloser's suppliers, customers or other associated parties.
- 18.2. **Exclusion.** Confidential Information shall not include information which is (i) in or enters the public domain through no breach of this Agreement by Recipient; (ii) already in the possession of Recipient at the time of initial disclosure and with respect to which no obligation of confidentiality exists; (iii) independently developed by Recipient without reference to Discloser's Confidential Information; or (iv) the subject of an order issued by a court or other governmental entity compelling disclosure, provided however that, in the event disclosure is required by law, Recipient will provide Discloser with prompt notice of such requirement in order to enable Discloser to seek an appropriate protective order. Confidential Information does not include the

text of the Agreement and its existence, to the exclusion of the Schedules to this Agreement.

- 18.3. **Use of Confidential Information.** A Recipient will use Confidential Information only for the purposes of the Project. Except as may be permitted by this Agreement, Recipient shall hold in confidence, shall not disclose to any other person who is not under a like obligation of confidentiality, and shall not exploit for Recipient's own benefit or for the benefit of another person or organization, any Confidential Information. Recipient shall use at least the same level of diligence to protect Discloser's Confidential Information from unauthorized use or disclosure as it uses to protect its own confidential or proprietary information, but in no event shall Recipient use less than reasonable diligence. Notwithstanding the previous sentence, Recipient shall only give access to Confidential Information to its directors, officers, employees and contractors with a need-to-know for the purposes of carrying out the intentions contemplated in this Agreement and who are subject to confidentiality terms and conditions at least as strict as those contained herein.
- 18.4. **Reproduction.** Recipient shall not copy or reproduce Confidential Information except as reasonably required for the purposes contemplated in this Agreement, and will ensure that any confidentiality or other proprietary rights notices on the Confidential Information are reproduced on any and all such copies.
- 18.5. **Destruction.** Upon request of Discloser or termination of this Agreement, Recipient shall promptly deliver to Discloser all documents and other materials in any form containing Confidential Information, however recorded, in Recipient's possession or under Recipient's control, or shall immediately destroy all such documents and furnish the other party with written certification of their destruction.
19. **AUDIT**
- 19.1. **Books and Records.** Each Party shall establish and maintain books of account and records pertaining to the Project in accordance with generally accepted accounting practices ("**Records**").
- 19.2. **Seller Audit.** Seller shall authorize Purchaser to audit its Records for the sole purpose of confirming Seller's compliance with sections 2.158, 13, 14.8, and 19.1 of this Agreement. Purchaser shall not conduct such audit more than once in a twelve (12) month period.
- 19.3. **Purchaser Audit.** Purchaser shall authorize Seller to audit its Records and/or to access and inspect its premises for the sole purpose of confirming Purchaser's compliance with sections 2.1, 2.6, 2.7, 2.143, 2.15, 4.2, 4.3, 10, 12, 14.6, 16, 17 and 19.1, of this Agreement. Seller shall not conduct such audit more than once in a twelve (12) month period.

- 19.4. **Independent Auditor.** Both parties agree that the audit rights of sections 19.2 and 19.3 will be conducted by an independent professional auditor at the expense of the entity requesting the audit.

20. **TERM AND TERMINATION**

- 20.1. **Term.** The Agreement comes into force at the Effective Date and expires of five (5) years from the Effective Date (the “Initial Term”). Purchaser may, up to ninety (90) days prior to the termination of the Initial Term, extend the Agreement for an additional five (5) years from the end of the Term (the “**Extension Term**”, the Initial Term and the Extension Term together the “**Term**”). During the Extension Term, all sections of this Agreement, including the Software Access, Technical Support Services, Software Maintenance Services, and Additional Services, shall remain in effect, with exception of all sections contained in Article 2 (*Equipment Production and Shipping*) of this Agreement except section 2.15 (*Right of First Refusal*). Section 2 may be renewed only by mutual agreement.

- 20.2. **Termination by Seller.** Upon Seller’s written notice to Purchaser, Seller may terminate this Agreement at any time immediately following:

- (a) Purchaser becoming insolvent;
- (b) Purchaser filing a voluntary petition in bankruptcy or liquidation;
- (c) Purchaser proposing any dissolution, liquidation, reorganization or recapitalization with its creditors;
- (d) an involuntary petition in bankruptcy or liquidation is filed against Purchaser or a receiver is appointed or takes possession of Purchaser’s property, and such petition or receiver is not dismissed or stayed within sixty (60) days after such filing, appointment or taking possession;
- (e) Purchaser makes an assignment for the benefit of creditors or is adjudicated as bankrupt or Purchaser takes any similar action under similar laws of any jurisdiction; or
- (f) Purchaser’s material breach of any material provision of this Agreement, when such breach is not cured by Purchaser within thirty (30) days following Seller’s written notice thereof to Purchaser.

- 20.3. **Extension Term Termination.** During the Extension Term, Seller may terminate in whole or in part this Agreement by giving a thirty (30) days written notice to Purchaser if Purchaser or its subcontractors use a bike, a docking station or a pay station not produced or supplied by Seller as part of the System.

- 20.4. **Termination by Purchaser.** Upon Purchaser's written notice to Seller, Purchaser may terminate this Agreement at any time immediately following:
- (a) Seller becoming insolvent;
 - (b) Seller filing a voluntary petition in bankruptcy or liquidation;
 - (c) Seller proposing any dissolution, liquidation, reorganization or recapitalization with its creditors;
 - (d) an involuntary petition in bankruptcy or liquidation is filed against Seller or a receiver is appointed or takes possession of Seller's property, and such petition or receiver is not dismissed or stayed within sixty (60) days after such filing, appointment or taking possession;
 - (e) Seller makes an assignment for the benefit of creditors or is adjudicated as bankrupt or Seller takes any similar action under similar laws of any jurisdiction;
 - (f) Seller voluntarily and permanently withdraws from the bike-share system market;
 - (g) Seller's material breach of any material provision of this Agreement, when such breach is not cured by Seller within thirty (30) days following Purchaser's written notice thereof to Seller.
- 20.5. **Other Remedies.** These remedies are in addition to any other legal, equitable or administrative remedies available to the party enforcing termination under this section 20.
- 20.6. **Continued Payment.** Purchaser shall continue to pay for the Services as long as the Agreement is into force. Should Purchaser terminate some of the Services pursuant to this Agreement, Purchaser shall continue to pay for the Services that have not been terminated as long as the Agreement is into force. Failure to do so shall be deemed a material breach of this Agreement.
- 20.7. **General Effects of Termination.** Within ten (10) days of the termination of this Agreement, Purchaser shall return or destroy (to Seller's entire discretion) any copy of Confidential Information in its possession. Subject to the Business Continuity terms below, Seller will be entitled to stop providing all Services within ten (10) days of the termination date or any shorter delay instructed by Purchaser.
- 20.8. **Effects of Termination in the Event Of Expiration of Contract Term.** In the event that this contract shall expire without material breach by either party, Seller shall use commercially reasonable efforts to:

- (a) assist Purchaser to transition subscriber data and other necessary data to another software solution hosted by Purchaser or a third-party to enable Purchaser to continue uninterrupted service to its customers and
- (b) to the extent that Equipment purchased under this Agreement remains functional and valuable, to assist Purchaser to sell that Equipment to a third party for a fair market price.

Seller may charge Purchaser for requested transition services at Seller's actual costs and disbursements, including the time of Seller's employees dedicated to provide these transition services. Seller does not warrant that any Equipment will have resale value.

- 20.9. **Effects of Termination in the Event of Termination by Purchaser.** In the event that Purchaser exercises its right to terminate this Agreement pursuant to section 20.42 of this Agreement, Seller agrees to repurchase the Equipment at its fair market value.
- 20.10. **Survival.** Section 178 (*Confidentiality*) survives the expiration or termination of the Agreement, as does any other provision of this Agreement that, by its nature, must survive the termination of the Agreement.

21. GENERAL PROVISIONS

- 21.1. **Notices.** Any notices required or permitted under this Agreement shall be (i) in electronic form and delivered by email with delivery receipt requested, or (ii) in writing and:

- (a) delivered personally,
- (b) sent by a recognized express mail or courier service, with delivery receipt requested, or
- (c) sent by confirmed facsimile transmission with telephonic confirmation,

to the addresses provided in the introduction of this Agreement, or such other addresses as may have been notified in writing.

- 21.2. **Notice Computation.** Notices given by mail shall be effective upon the earlier of (i) actual receipt, and (ii) seven days after mailing if mailed within Canada, and 10 days after mailing if mailed outside of Canada. Notices delivered personally shall be effective upon delivery (provided that such notice is delivered to a responsible person at the address of the contact person noted above). Notices given by email shall be deemed to have been received upon confirmation of receipt. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no

telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

- (a) within two hours after sending, if sent on a business day between the hours of 9:00 a.m. (EST) and 5:00 p.m. (EST); or
- (b) by 11:00 a.m. on the next following business day, if sent after 5:00 p.m. (EST) on a business day but before 9:00 a.m. (EST) on that next following business day.

- 21.3. **Amendments.** No oral or written amendment or modification of this Agreement by any representative of Seller or Purchaser, either before or after execution and delivery of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by the duly authorized officers of both Parties.
- 21.4. **Waiver.** No waiver of any rights under this Agreement shall be binding or effective unless the waiver is in writing and signed by an authorized representative of the Party giving such waiver.
- 21.5. **Time is of the Essence.** Time is of the essence of this Agreement and each provision herein, provided, however, the remedy of termination in connection with, relating to, or as a result of, a breach of any provision herein relating to time shall not be available to the parties, unless as otherwise specifically provided for under the terms of this Agreement. For additional clarity, Seller understands that a condition of a federal grant received by Purchaser requires Purchaser to have implemented a fully-operating bike share system by July 1, 2010.
- 21.6. **Force Majeure Event.** If there is any delay or failure in either Party's performance under this Agreement, except for the payment of any monies due and owing hereunder, by reason of any circumstance beyond the reasonable control of the Party affected or which makes performance commercially impracticable, including without limitation, fire, explosion, power failure, acts of God, war, revolution, civil commotion or acts of public enemies; any law, order, regulation, ordinance, or requirement of any government or legal body; any labor unrest, including without limitation strikes, slowdowns, picketing or boycotts; any delays in transportation or any subcontractor or supplier interruptions, then the party so affected, upon prompt notice thereof to the other party shall be excused from such performance to the extent so affected by the force majeure. In the event of shortages of any Products by reason of the foregoing, Seller reserves the right to allocate its available Products among its customers at its sole discretion.
- 21.7. **Good Faith and Fair Dealing.** Seller and Purchaser agree to perform and enforce their obligations under this Agreement in good faith and to communicate with a

reasonable time regarding material matters that may prevent performance of any obligation or realization of the expected benefits of this mutual agreement.

- 21.8. **Independent Contractor.** The Parties are independent contractors. This Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, principal and agent. The Parties further agree that:
- (a) except as provided otherwise in this Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation on behalf of or binding upon, or defined as binding upon, the other Party;
 - (b) except as otherwise provided in this Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Agreement; and
 - (c) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.
- 21.9. **Entire Agreement.** Except where provided otherwise herein, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.
- 21.10. **Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law. If any provision of this Agreement shall be invalid, unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.
- 21.11. **Enurement.** This Agreement shall enure to the benefit of and be binding on each of the Parties and their respective successors and permitted transferees and assigns.

21.12. **Assignment.** Any Party shall have the right, with the prior written consent of the other Party, not to be unreasonably withheld or delayed, to assign, transfer or cede its rights under this Agreement to any third party by delivering a notice to this effect to the other Party. Failure by the other Party to withhold its consent and to provide, in writing, the reasons to justify this withholding within fifteen (15) days following receipt of the request for consent, shall be deemed to be a consent by the other Party to such transfer. Notwithstanding the foregoing, the Purchaser's prior written consent shall not be required if the transferee or assignee of Seller is an entity which:

- (a) has acquired the know-how or the right to use the know-how of Seller, including the management team of Seller; and
- (b) has acquired the relevant intellectual property rights of Seller or the right to use them and related to the technology relevant to the System.

Notwithstanding the foregoing, Seller's prior written consent shall not be required if the transferee or assignee of Purchaser is the Agency and the purpose of the transfer or assignment is to enable the Agency to continue operating the System in the event of insolvency of Purchaser. This exception shall only be applicable in the case of a full transfer or assignment of this Agreement to the Agency.

21.13. **Governing Law.** This Agreement, and each of the documents contemplated by or delivered under or in connection with this Agreement, shall be governed by and construed in accordance with the laws of Minnesota applicable therein without regard to conflict of laws principles.

21.14. **Jurisdiction.** Both Parties agree all disputes arising under the agreement that are not resolved by negotiations between the parties shall be resolved by a single arbitrator acting under the rules of the American Arbitration Association. The arbitration will take place in Chicago, Illinois and will be confidential. Any court of competent jurisdiction may be used to enforce any arbitral award.

21.15. **Cumulative Remedies.** Except as otherwise set forth in this Agreement, the rights, powers and remedies of each Party set forth in this Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Agreement.

21.16. **Further Assurance.** Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

21.17. **Language of Agreement.** The Parties have expressly requested that this Agreement be drawn up in English and that all modifications hereof shall be made in this language. *Les Parties ont expressément demandé que ce contrat soit rédigés en anglais et que toute modification à celui-ci puisse se faire également dans cette langue.*

[THE NEXT PAGE IS THE EXECUTION PAGE]

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized officers effective as of the Effective Date.

PUBLIC BIKE SYSTEM

PUBLIC BIKE SYSTEM

By: Alain Ayotte
President

By: Roger Plamondon
Chairman of the Board

NICE RIDE MINNESOTA

NICE RIDE MINNESOTA

By: Bill Dossett
Executive Director

By: Mark Bixby
President

22.

SPECIFICATIONS

EQUIPMENT SPECIFICATIONS

See Station – Specifications document.

[Bicycle Specifications]

SOFTWARE SPECIFICATIONS

See 8D Software Specification document.

SOFTWARE PERFORMANCE LEVELS

See Software Service Level document.

23.

TIMELINE

Shipping date: May 26, 2010.

24.

FINANCIAL TERMS

Currency in USD (exchange rate fixed at \$0,95)

Initial Order	Units	Price Per Unit	Total Price
Bicycles	700	\$965	\$675,500
Bicycle Spare Parts Inventory	-	-	\$0 per need basis
Kiosk paystations	65	\$9,500	\$617,500
Kiosk docks	1,219	\$658	\$802,102
Kiosk technical platform	321	\$1,046	\$335,766
Kiosk cables (per kiosk)	65	\$1,220	\$79,300
Kiosk map frames	65	\$1,433	\$93,145
Shipping	-		Not included
Bixi Key	12,500	\$2.25	\$28,125
Total Equipment price	-	-	\$2,631,438

Training Costs and Rates	\$90.00 per hour plus travelling expenses and reasonable out-of-pocket expenses
Customer Service Call Center	\$90/bike/year (invoiced monthly)
Back-End Operating Services (includes Software Maintenance Services, Technical Support Services and recurring Software fees)	\$54/kiosk/month (invoiced monthly)
Hosting service	\$13/Kiosk/month (invoiced monthly)

PAYMENT SCHEDULE

Deposit of \$400,000 on the date this Agreement is executed by both Parties.

Progressive payment until shipment date.

Balance of payment \$300,000 due January 10, 2011.

PRICE ADJUSTMENT FORMULA

Equipment pricing (Schedule C document attached) plus (Consumer Price Index, FX rate, and Raw material increase). The Raw material increase component of this formula will only be applicable in case of a change of more than 8% in the raw material index in a given year.

SPARE PARTS PRICING

[NTD FMD: to be provided by PBSC]

25.

DOCUMENTATION

INSTALLATION DOCUMENTATION

[NTD FMD: to be provided by PBSC]

MAINTENANCE DOCUMENTATION

See attached document

Schedule D Terminals-Maintenance-Schedule-template_ENG (draft)

Schedule D On-Street_Bicycle_Maintenance-template_ENG (draft)

Schedule D Docking_Points-Maintenance-Schedule-template_ENG (draft)

[NTD FMD: to be provided by PBSC]

26.

TRAINING SERVICES

Training services will be given to Nice Ride at PBSC's facility in April. Course outline and documentation to follow.

27.

TECHNICAL SUPPORT SERVICES

28.

SOFTWARE MAINTENANCE SERVICES

29.

ADDITIONAL SERVICES

CALL CENTER SERVICES

Core Functions. The Customer Service Call Center services will include the following core functions: (1) toll-free phone access to Purchaser's customers, (2) access to a trained customer service representative residing in Montreal with real-time access to System data and customer account data, (3) best efforts to resolve each customer's question or complaint on the call or in a follow-up phone call made in less than one hour, (4) record of the primary reason for each call (5 different logs inquires), (5) reporting of statistics regarding responsiveness to calls (including time of call, time to answer, duration of call, reason code, etc).

Workmanlike. Seller further warrants that it will use commercially reasonable efforts to provide Customer Service Call Center services in a professional and workmanlike manner.

Availability. The Customer Service Call Center will be available between 7:00 a.m. and 12:00 a.m. North American Eastern Time, every day.

Language. Customer service shall be available in English, French, and Spanish (support 40 hours week).

Call Center Performance Levels.

- 80% of calls to the Customer Service Call Center shall be answered within 35 seconds of the time the call is placed.
- Average call duration: if for information between 0 and 3 minutes; if for issue resolution between 0 and 5 minutes.
- % of abandoned call less than 10%.
- Purchaser shall have access to all customer service data and call center performance data.

I.

LEAD TIMES FOR FUTURE ORDERS

- (a) Bikes: 16 weeks
- (b) Terminal: 16 weeks
- (c) Docking point: 14 weeks
- (d) Cables: 16 weeks
- (e) Technical platform: 10 weeks
- (f) Map Frames: 12 weeks
- (g) BIXI keys: 16 weeks
- (h) Toolkits: 8 weeks
- (i) Mobil and fixed orbit: 16 weeks