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**MICROMOBILITY PILOT PROGRAM**

**TEMPORARY PARTICIPANT LICENSE**

THIS TEMPORARY PARTICIPANT LICENSE (the “Participant License”) is made and entered into this \_\_\_day of\_\_\_\_\_, 20\_\_\_, by and between the Town of Gilbert, an Arizona municipal corporation (“Town”), and \_\_\_\_\_, a \_\_\_\_\_ (“Participant”).

**RECITALS**

- A. WHEREAS, the Gilbert Town Council adopted the Gilbert Micromobility Pilot Program (“Pilot Program”);
- B. WHEREAS, the Gilbert Town Manager adopted the Micromobility Pilot Program terms attached hereto as Exhibit A and incorporated herein by this reference, which set out the terms and conditions that govern this Participant License (collectively the “Terms”).
- C. WHEREAS, Participant desires to participate in the Pilot Program in accordance with the Terms and to comply with all Pilot Program Rules, including the Pilot Program Rules adopted by the Town Manager.
- D. WHEREAS, this License allows Participant to participate in the Pilot Program subject to the Terms as may be amended from time to time by the Town Manager.
- E. NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Participant, and the covenants and agreements contained herein to be kept and performed by Participant, and other good and valuable consideration, Participant agrees as follows:

**TERMS**

- 1. Participant License Terms. Subject to the Terms and this Participant License, the Town hereby grants to Participant a Participant License.
- 2. Terms and Rules Incorporated by Reference. The Terms are incorporated herein by reference as if set out in full. **PARTICIPANT WARRANTS AND REPRESENTS THAT IT HAS READ AND AGREES TO THE TERMS.** Capitalized terms used but not defined in this Participant License shall have the meanings assigned by the Terms and Conditions.
- 3. Data Sharing. Participant agrees to the data sharing requirements attached hereto and incorporated herein as Exhibit B.

4. Participant Contact Information.

(a) The name, title, phone number, and email address of Participant's Pilot Representative is:

\_\_\_\_\_.

\_\_\_\_\_.

\_\_\_\_\_.

\_\_\_\_\_.

\_\_\_\_\_.

(\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_.

(c) Participant's address for billing and notice purposes:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EXECUTED as of the date first given above.

**TOWN OF GILBERT,**

an Arizona municipal corporation

\_\_\_\_\_

Patrick Banger, Gilbert Town Manager

PARTICIPANT:

\_\_\_\_\_

An \_\_\_\_\_ corporation

\_\_\_\_\_

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

\_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT A

### MICROMOBILITY PILOT PROGRAM TERMS AND CONDITIONS

The Common Council of the Town of Gilbert hereby adopts MICROMOBILITY PILOT PROGRAM TERMS AND CONDITIONS described herein, which govern the Town of Gilbert Micromobility Program and may be amended from time to time by the Town Council and Town Manager (“Terms”).

#### ARTICLE 1. DEFINITIONS

For the purposes of the Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific article or paragraph of the Terms & License. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 “**Application**” shall mean the documentation and non-refundable fees required by the Town to be eligible for review to participate in the Micromobility Pilot Program, including but not limited to proof of a valid Gilbert business license, fleet and device information, 24-hour contact information, deployment plan, and other executed forms as required by the Town.
- 1.2 “**User**” means persons utilizing the devices provided by Participant within Gilbert.
- 1.3 “**Indemnified Parties**” shall mean the Town of Gilbert and its officers, employees, contractors, agents, representatives, and their respective successors and assigns.
- 1.4 “**Indemnitor Parties**” shall mean the Participant and its officers, managers, employees, contractors, agents, and volunteers.
- 1.5 “**License**” means a revocable, nonexclusive, and temporary license to use Licensed Property as part of the Micromobility Pilot Program. Said License does not create or confer any interest in real or personal property.
- 1.6 “**Micromobility device**” shall mean as defined in the Gilbert Town Code.
- 1.7 “**Micromobility Company**” means any entity offering short-term rental of micromobility devices within Gilbert.
- 1.8 “**Participant**” means an entity that has been approved to conduct business in Gilbert pursuant to an executed License and License’s agents, License’s contractors (including independent contractors), and every person and entity retained by the Participant to maintain Participant’s Fleet.
- 1.9 “**Pilot Program**” means the Town of Gilbert Micromobility Pilot Program.

1.10 “**Licensed Property**” means those public rights-of-way, streets, sidewalks, alleys, easements, Town property, and other areas and facilities of the Town within the scope of the Pilot Program, as determined by the Town Manager.

## ARTICLE 2. PILOT PROGRAM

2.1 **Pilot Program Purpose.** The purpose of the Pilot Program is to enable private micromobility companies to provide a service, while enabling the Town to learn about this new technology and business model, assess potential safety risks, identify how the model does or does not meet Town objectives, and make changes to the Program Rules based on an on-going evaluation of the findings. The rules and requirements that govern the Pilot Program are meant to ensure that Participants operate in a manner that provides for the responsible management of the right-of-way and promotes the safety of all users of the right-of-way.

2.2 **Program Non-exclusivity.** All micromobility companies who wish to operate in the Town shall be permitted to apply for the Pilot Program. The Town may execute a license agreement with multiple business entities at its sole discretion and no micromobility company shall take any action to interfere with such agreements.

2.3 **Pilot Program Duration.** The Pilot Program shall commence on April 6, 2019, and shall continue until terminated by the Gilbert Council pursuant to a resolution. The Town has the discretion to terminate the Program and any License for any reason at any time without fault to Town. Following termination of the Pilot Program, the Town shall have no obligation to allow continued operations of any Participant within the Town. Should the Town exercise the rights described in this section, the Town will provide prior notice to the Participant Designee. Said notice may be provided by email. Should the Town’s notice require removal of the Fleet from Gilbert, a Participant shall have no more than five (5) days from the date of Town’s notice to remove its entire Fleet unless the Town Manager specifically agrees to a longer period of time.

2.4 **Pilot Program Subject to Change.** The Town of Gilbert reserves the right to modify any component of the Pilot Program at any time without fault to the Town. The Town reserves the right to require a Participant to remove some or all of its Fleet from Town limits at the sole cost to the Participant. Should the Town exercise the rights described in this section, the Town will provide prior notice to the Participant Designee. Said notice may be provided by email. Should the Town’s notice require removal of the Fleet from Gilbert, a Participant shall have no more than five (5) days from the date of Town’s notice to remove its entire Fleet unless the Town Manager specifically agrees to a longer period of time.

2.5 **Pilot Program Eligibility.** As a condition precedent to the License, and prior to commencement of operations, a micromobility company shall: (a) apply, procure and remit payment for a business license from the Town, and (b) submit a Pilot Program application together with all documentation and fees as required by the Town. Any micromobility company which was in operation in the Town prior to the commencement of the Pilot Program, shall submit a complete application for review by the Town no later than Thursday, April 25, 2019 by close of business (6:00 pm).

**2.6 Pilot Program Designee.** Participant shall identify one or more designee(s) in the application who are legally authorized to sign on behalf of Participant and execute legal agreements.

**2.7 Pilot Program Rules.** It shall be the sole obligation of the Participant to identify, comply with, and inform all its users and potential users of all rules. Participant shall also be responsible to ensure compliance with rules by all persons acting on behalf of Participant through or under a License. Participant shall take all measures to ensure that its micromobility devices are operated in compliance with all rules. All Participants of the Pilot Program shall adhere strictly to these Terms herein and the following:

The Pilot Program Rules as may be amended by the Town Manager or the Town Council;

All federal, state and local laws, rules, and regulations;

The Gilbert Town Code, as amended, including but not limited to Chapters 54, 58, and 62; and

All applicable safety and manufacturer standards and guidelines, including but not limited to terms relating to the age of device users, device speeds, the safe operation of devices, suitable terrains, user warnings, and safety gear and clothing.

**2.8 Pilot Program Disclaimer.** THE TOWN OF GILBERT MAKES AVAILABLE LICENSED PROPERTY AND OTHER PUBLIC PROPERTY IN “AS IS” CONDITION. THE TOWN EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS. Nothing in these Terms shall be interpreted to mean that, by licensing areas within the Town for operations, the Town is deeming such areas as suitable or safe for any particular micromobility device. No micromobility device shall be structurally altered from the original manufacturer's design. It shall be Participant's sole responsibility to ensure that each of its micromobility device is used in a manner that is suitable and safe for that particular type, model, and condition of the micromobility device. This responsibility includes, but is not limited to, ensuring that all micromobility devices are operated at safe speeds, operated on suitable terrain, and equipped with sufficient lighting and safety features to be operated at night or at other times of limited visibility. This responsibility also includes ensuring that all micromobility devices can be safely operated by users in all weather conditions, including in rain and extreme heat conditions.

**2.9 Pilot Program Conditions.** By agreeing to participate in the Pilot Program, Participant agrees to assume all risk, costs, and expenses for any and all damages and injuries that may occur due to damage, destruction or collapse of any public property or due to any incompatibility of the operation of the micromobility with the public property. By agreeing to participate in the Pilot Program, the Participant warrants that all micromobility devices deployed by it in Gilbert shall be designed, constructed and maintained so as to be free of any defects in materials or workmanship and shall at all times be safe for members of the public to use in the ordinary course of usage. Participant may terminate its operations within the Town at any time with prior written notice to Town. Terminating its operations within the Town shall not relieve Participant from its



obligations under this License regarding indemnification, payment obligations, data sharing and protection obligations, and obligations to repair or restore damage to public property.

ARTICLE 3. PILOT PROGRAM LICENSE

**3.1 Pilot Program License.** A License that is executed by Participant and the Town Manager shall grant said Participant a revocable license to use License Property within the scope of the Pilot Program on a temporary and non-exclusive basis, provided said Participant adheres strictly to Pilot Program Rules. The term of each License shall commence on its date of execution and shall continue until terminated by the Town Manager or the Gilbert Council. Participant shall have five (5) days from the date of the Town’s request to remove all micromobility devices within Gilbert at its sole cost and expense.

ARTICLE 4. PILOT PROGRAM OPERATING STANDARDS

**4.1 Pilot Program Operating Standards.** Included as part of the Pilot Program Rules are the operating standards contained in this Article, which may be amended from time to time by the Gilbert Town Council or the Town Manager as necessary to further the purposes of the Pilot Program or to preserve public safety (“Operating Standards”).

<b>General Provisions</b>	
<i>4.1.1. Areas of Operation</i>	<p>(a) The operation of Micromobility devices during the Pilot Program will be permitted Town-wide, with the exception of areas identified as prohibited in the Gilbert Town Code or as identified by the Town separately as areas with unique restrictions (i.e. no travel zones or reduced speed zones).</p> <p>(b) Permissible and prohibited areas of device operation for micromobility devices are defined in Chapter 62 of the Gilbert Town Code and are subject to all other applicable restrictions in the code and Arizona Revised Statutes, Title 28.</p>
<i>4.1.2. Fleet Size</i>	<p>(a) At the initial onset of the Pilot Program, there will be no fleet size limitations. The Town reserves the right to require fleet size adjustments at any point during the Pilot Program.</p>
<i>4.1.3. Fleet Management</i>	<p>(a) Any inoperable or unsafe device shall be removed from the right-of-way within twenty-four (24) hours of notice by any means to Participant by any individual or entity, and shall be repaired before placing back into the right-of-way.</p> <p>(b) Participant shall ensure that all devices in the Fleet are in good working order, clean and safe to operate. At a minimum, maintenance shall include: regular device inspection for wear and tear; maintenance and repair consistent with or exceeding manufacturer’s recommendations; immediate replacement of worn or damaged parts including kickstands.</p>

	<p>Participant shall keep a record of all maintenance performed for each device, which is made available to the Town upon request.</p> <p>(c) Participants shall perform, at a minimum, one daily Fleet inspection to rebalance and properly park micromobility devices.</p> <p>(d) All micromobility devices shall be remotely “deactivated” and made inoperable for new riders to initiate a ride by 10:00 pm nightly until 5:00 a.m. the following day on every 24 hour cycle.</p> <p>(e) In order to safely conduct the process of staging, rebalancing, recharging or other process that requires a person to interact with the micromobility device, the Participant shall not cause any obstruction, for any amount of time, on the roadway, bike lane, nearby driveway, or sidewalk with the motor vehicle used to transport the employee and/or devices.</p>
<i>4.1.4. Speed Restrictions</i>	<p>(a) All micromobility devices that have an electric assistance mechanism shall be equipped with technology that prevents the device from operating at unlawful or otherwise unsafe speeds.</p> <p>(b) For the purposes of this Pilot Program, all electric stand-up scooters shall be limited utilizing the device technology to a maximum speed of 15 mph. In dense pedestrian areas, as identified by the Town, all micromobility devices shall be limited to a maximum speed of 10 mph.</p> <p>(c) The Town reserves the right to raise or lower speed limits throughout the duration of the Pilot Program with notice to the Participant.</p>
<i>4.1.5. Response Time</i>	<p>(a) Participants shall be required to relocate or remove any micromobility device that is causing an obstruction within two (2) hours if notified by any party between 7am and 7pm (excluding holidays) and within four (4) hours at all other times.</p> <p>(b) If the device(s) is not causing an obstruction but the Town requests it be relocated for other reasons set forth in this agreement, the Participant shall move the device within twenty-four (24) hours (excluding holidays and weekends) and forty-eight (48) hours at all other times.</p>
<i>4.1.6. Damage to property</i>	<p>(a) Any and all damage to Town property (including but not limited to damage to sidewalks and rights-of-way of the Town) resulting from Participant’s activities, shall be remedied at the sole cost to the Participant.</p> <p>(b) Required repairs may include the restoration of rights-of-way, sidewalks, and landscaping to substantially the same condition as it was immediately before the effective date of the Participant’s License.</p> <p>(c) The obligation to remedy damaged property shall survive termination of a License.</p>

	(d) The Town will provide notice of property damage and require the remedy within a prompt but reasonable time frame that will be specified in notice.
<b>Parking and Use Regulations</b>	
<i>4.1.7. Obstructions</i>	<p>(a) Devices shall be parked in accordance with the Pilot rules, including but not limited to the Gilbert Town Code that prohibits parking of any device in such a manner as to potentially impede or obstruct ingress or egress in any rights-of-way.</p> <p>(b) Chapter 54 of the Gilbert Town Code defines what constitutes an obstruction.</p> <p>(c) Additionally, Participants shall avoid staging micromobility devices within ten (10) feet of the following locations:</p> <ul style="list-style-type: none"> <li>○ Loading zones</li> <li>○ Accessible parking and associated loading zones</li> <li>○ Curb ramps and signal push buttons</li> <li>○ Fire lanes/red curb zones and fire hydrants</li> <li>○ Driveways</li> <li>○ Building entrances and exits</li> </ul> <p>The Town reserves the right to modify the staging and separation requirements throughout the duration of the Pilot Program.</p>
<i>4.1.8. Spacing and Quantity</i>	<p>Participant shall comply with the following requirements:</p> <ul style="list-style-type: none"> <li>i. Bus stops: <b>no more than two (2) lawfully parked devices per company</b></li> <li>ii. All other locations: <b>no more than four (4) lawfully parked devices per company at a minimum interval of approx. one hundred and fifty (150) feet</b></li> </ul>
<i>4.1.9. Geo-Fencing for Parking and Operations</i>	<p>(a) All micromobility devices shall be equipped with technology that allows for geo-fencing.</p> <p>(b) Gilbert reserves the right to mandate parking and operations of Participant’s micromobility devices within specific geographical area(s), including geo-fenced “virtual station areas” or “virtual operating areas” as determined by the Town Manager. Any and all associated expenses shall be at the sole cost to the Participant.</p>
<i>4.1.10. Regulations for Shared Use of Rights-</i>	<p>(a) While operating in permissible areas, the operator of a micromobility device shall yield the right-of-way to pedestrians and other users.</p> <p>(b) To cross any prohibited location, bicycle lane, intersection, crosswalk, railroad track, or other prohibited location the operator of a</p>

<i>of-way and other Licensed Areas</i>	<p>micromobility device shall dismount the micromobility device and walk the micromobility device across said areas.</p> <p>(c) No person shall operate a micromobility device at a speed greater than the posted speed limit or at a speed greater than is reasonable and prudent under then-existing circumstances.</p> <p>(d) No person operating or riding upon a micromobility device shall attach themselves or the micromobility device to any other vehicle.</p> <p>(e) No person shall operate a micromobility device while carrying any package, bundle or other item that prevents the operator from safely steering the device.</p> <p>(f) When operating on public roadways, all operators of micromobility device shall comply with applicable rules and regulations of Arizona Revised Statutes, Title 28.</p>
<b>Communications and Community Engagement</b>	
<i>4.1.11. Customer Service</i>	Participant shall maintain a 24/7 staffed customer service phone number. Participant shall be responsible for investigating said concern or complaint and taking all measures to ensure device compliance according to the response times required in the operating standards, Section 4.1.5.
<i>4.1.12. Operations Representative</i>	Participant shall designate an experienced and competent “Operations Representative” to supervise all operations within the Town of Gilbert and be available to the Town by phone twenty-four (24) hours a day, seven (7) days a week (on-call basis). The Operations Representative shall be authorized to represent and act on behalf of a Participant in matters pertaining to all emergencies and the day-to-day operations of a micromobility company. Participant shall provide the Town with the name, street address, electronic mail address, and regular and after-hours telephone number of the Operations Representative.
<i>4.1.13. Device Identification</i>	The following information shall be included on the device in a location that is easily visible and photographable: (a) Company name; (b) toll-free phone number; (c) email address; and (d) a unique identification number for each micromobility device that matches the digital identification number that will be provided to the Town.
<i>4.1.14. Location Tracking</i>	<p>(a) All devices shall be equipped with a Global Positioning Satellite (GPS) tracker or another tracking technology mounted on the device that is capable of recording and transmitting the device’s location on demand in decimal degrees to four decimal places. The GPS technology shall be kept up-to-date and participants shall remove devices from deployment if the tracking device is not functioning properly.</p> <p>(b) All devices or device tracking components shall be capable of recording and transmitting the device’s location at the following times: 1) when the Participant deploys or removes the device; 2) when a trip begins and ends; 3) at least once every three minutes, if the device is</p>

	<p>being rented; and 4) at least once every 30 minutes, if the device is deployed and is not being rented.</p> <p>(c) Devices shall each have a unique digital identification number to use in data sharing/reporting as required by the Town.</p>
<i>4.1.15. Push Notifications</i>	<p>Participant shall agree to send information to the Customer via the app platform relating to the following topics:</p> <ul style="list-style-type: none"> <li>• Gilbert specific rules and regulations;</li> <li>• Safety tips; and</li> <li>• Participant shall encourage the use of helmets.</li> </ul>
<i>4.1.16. Customer Survey</i>	<p>Participants shall work with the Town to promote surveys through their app including “end of ride” satisfaction surveys. Data retrieved from the surveys shall be shared with the Town if requested in the data share agreement.</p>
<i>4.1.17. Gilbert 311 Application – Notification Procedures</i>	<p>Participants shall be required to utilize the Gilbert 311 application according to the procedures provided by the Town to engage in communication with the Town staff and residents regarding complaints and notices of violation.</p> <p>A detailed process guide for the rules governing the Gilbert 311 application notification procedures will be provided prior to execution of the Pilot Program License.</p>
<i>4.1.18. Coordination Meetings</i>	<p>Participants shall meet with the Town from time to time as requested by Town to discuss and coordinate matters addressed in the Pilot Program Terms.</p>
<b>ADVERTISING RESTRICTIONS</b>	
<i>4.1.19. Non-Sponsorship</i>	<p>No participant shall be authorized to use the name or logo of Gilbert or other Gilbert departments, or agencies, or to otherwise make any statement to state or imply Gilbert sponsors or supports a Participant or micromobility company, without prior written permission.</p>
<i>4.1.20 Signs</i>	<p>All signage is prohibited except unless approved pursuant to a sign permit. “Signage” does not refer to markings or decals on a micromobility device. If signage is required by the Town or by law, Participant shall comply with all of the following: (a) The location, size, content, and style of each sign shall be subject to the provisions of the applicable sign ordinance and shall comply with the Town’s sign programs, as the same may change from time to time; (b) Participant shall update signs as required to comply with changes in the applicable sign ordinance and sign programs (c) Participant shall design, make, install, and maintain all signage in a first-class, professional manner without broken panels, faded or peeling paint or other</p>

	damage, and (d) Participant shall bear all costs pertaining to the erection, installation, operation, maintenance, replacement and removal of all signs, including, but not limited to, the application for and obtaining of any required building or other permits regardless of the reason for any such activity, even if such activity is required by the Town pursuant to these Pilot Terms & License.
<i>4.1.21. No Third Party Advertising</i>	Participant shall not use a micromobility device, kiosk, or any other equipment for the sale or display of third party advertising within Gilbert.

ARTICLE 5. DATA OBLIGATIONS

- 5.1 During the term of the License, Participant shall make available to Town the data as more particularly set forth in a separate agreement with the Town (“Data”). At a minimum, the required data may include, but is not limited to, monthly reporting of: 1) flat file in agreed upon csv template capturing uniquely identified device activity within town borders: such as number of trips, distance traveled per trip, duration per trip, deployment numbers, utilization rates, device status changes and/or duration during non-operable times; 2) flat file in agreed-upon csv template on anonymized user activity within town borders: such as trip frequency per month, number of first time riders and repeat riders, and number of any scheduled delivery of device in advance directly to user; 3) other visualizations that help the town see heavily trafficked areas and corridors, as well as entry/exit points along Town’s geographical border; and 4) flat file in agreed upon csv template on complaints, including number reported, method of reporting, number resolved, and categorization of type of complaints.
- 5.2 Prior to execution of the License, all Participants shall meet with the Town to discuss specific data needs and requirements, as well as reporting capabilities to map to an output that can be standardized in a monthly csv data reporting. A data sharing agreement signed by the Town Manager will be required prior to execution of the License.
- 5.3 Examples of datasets that may be required include, but are not limited to:
- (a) User demographic data gathered by the system application that does not identify individual Users, payment methods or tie individuals to trip history, to the Town not less than monthly, using anonymized keys;
  - (b) Origin, routing, and destination data in heat map form;
  - (c) Trip details including total number of trips conducted and average trip length;
  - (d) Total number of devices in service in the past month and total number of devices needing repair or replacement;
  - (e) A point-map of the location of all micromobility devices at some designated time point on each day in the past month;
  - (f) Report on all crashes occurring involving micromobility devices in the past month;
  - (g) Report on all instances of Fleet rebalancing due to customer or Town request in the past month;

- (h) Summary report of vandalism or theft, and the information needed to access any police reports filed in the past month;
- (i) Report showing all maintenance and repair activities, including but not limited to device identification numbers and maintenance performed;
- (j) Report of all calls and emails received through the User-service hotline or other means, including telephone wait times, email response times, and the nature of the User inquiry; and
- (k) Report on monthly push notifications and or user surveys that are provided through the Participant’s app platform.

5.4 Participant shall provide data to the Town in an agreed upon format at a minimum interval of once per month, or as otherwise required by the Town.

5.5 Throughout the duration of the Pilot Program, the Town may modify the data requirements and will provide notice to the Participant detailing such requested changes. Data security requirements shall be addressed in data sharing agreement.

5.6 Except as specifically required by the Town, Participant will not share personally identifiable information with the Town. Participant shall share personally identifiable information in Participant’s possession about a device user with the Town where there is an injury alleged to be related to a device, or a claim or lawsuit against the Town and the device user may have information about, or responsibility for, the claim.

5.7 Participant shall not claim any legal right in its terms of use, privacy policy, or elsewhere to institute retroactive changes to its privacy policy and shall provide an opportunity for the User to explicitly assent prior to any changes to its data practices, including uses of data Participant collected under a prior policy.

ARTICLE 6. FINANCIAL OBLIGATIONS AND PENALTIES

6.1 **Fees and Penalties.** Each Pilot Program Participant shall be subject to the following non-refundable fees and penalties:

Type	Amount(s)
<b>One-Time Pilot Program Fee</b> for processing of application and management of program	\$2,500 per Participant, due at the time of application submittal
<b>Monthly Operating Fee</b> for use of Licensed Property	\$0.10 per ride, due monthly  Fee for total number of rides per Participant shall be remitted monthly no later than the fifth (5 <sup>th</sup> ) day of each month, along with any supporting documentation as required by the Town.

<p><b>Relocation Penalty</b> for failure to respond and relocate any device within the time required by the Terms &amp; License</p>	<p>Penalties: 1<sup>st</sup> failure: \$50 per device, per day. 2<sup>nd</sup> failure: \$250 per device, per day. 3<sup>rd</sup> and subsequent failures: \$500 per device, per day. 3<sup>rd</sup> and subsequent failures that are within one month of 1<sup>st</sup> failure: \$1,000 per device, per day.</p>
<p><b>311 Notice Procedure</b> for failing to follow the 311 notification procedures as required by the Town.</p>	<p>\$50 per failure to follow 311 notification procedures.</p>
<p><b>Violation Penalty</b> for violation of the License terms or data share agreement</p>	<p>1<sup>st</sup> failure: \$50 per day 2<sup>nd</sup> failure: \$250 per day 3<sup>rd</sup> and subsequent failures: \$500 per day 3<sup>rd</sup> and subsequent failures that are within one month of 1<sup>st</sup> failure: \$1,000 per day.</p>
<p><b>Hold Over Penalty</b> for failure to remove entire fleet within the time required by the Town.</p>	<p>\$100 per device per day</p>
<p><b>Late Payment Penalty</b></p>	<p>Any required penalty that has been issued to a company shall be subject to a late payment penalty of 10% of the total amount owed per calendar day.</p>

ARTICLE 7. ASSURANCES

7.1 Each permit holder will be responsible for paying into a public property repair and maintenance performance bond that the Town can draw upon as needed for costs associated with auditing, removing and storing improperly parked vehicles. Minimum performance bond requirements are outlined below.

<p><b>Performance Bond Requirement:</b> One performance bond equivalent to \$25 per device.</p>	<ul style="list-style-type: none"> <li>• The total number of devices to be deployed in the Town shall be disclosed by the Participant at the start of the Pilot Program.</li> <li>• If a Company increases the size of its fleet by 25 or more devices, the performance bond shall be adjusted appropriately before deploying the additional devices.</li> <li>• The Town Manager has the authority to modify the performance bond requirements based on modifications to the Fleet size.</li> <li>• The total number of devices shall be determined by those that are officially deployed in the Town under these terms and conditions</li> </ul>
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	<p>and does not include devices that are left here by riders from adjacent jurisdictions.</p> <ul style="list-style-type: none"> <li>• Bond to be released upon termination of the Program.</li> </ul>
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ARTICLE 8. INDEMNIFICATION

8.1 To the fullest extent permitted by law, Participant shall indemnify, defend and hold harmless the Town of Gilbert, its elected and appointed officials, employees, agents, and all other representatives (hereinafter collectively referred to as the “Indemnified Parties”) from and against any and all claims, demands, suits, causes of action, expenses and other liability of whatsoever kind or nature whether in contract or tort, and by whomsoever brought, including without limitation reasonable attorney fees, fees for outside consultants, contractors and experts, and court costs, threatened or brought against any of the Indemnified Parties arising out of or relating to, or alleged to arise out of or relate to, any direct or indirect act or omission of Participant and its officers, directors, employees, agents, subcontractors, suppliers and other representatives for which it is responsible by contract or by law except to the extent actually caused by the sole intentional wrongdoing of one or more of the Indemnified Parties hereunder. This indemnity includes any claim arising out of the failure of Participant or any of its owners, officers, directors, employees, affiliates, contractors or agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Participant’s obligations under this article shall not be limited or defined in manner whatsoever by the amount of insurance required by Gilbert. The rights of the Indemnified Parties under this provision shall not be diminished, waived, discharged or released, in whole or in part, by the exercise of any other remedy allowed by law or other provisions of the Terms or License. The requirements of this indemnification provision shall survive the termination of the Pilot Program and Participant’s License.

8.2 To the fullest extent permitted by law, Participant shall indemnify, defend, save and hold harmless the Town and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and cost of claims processing, investigation and litigation) for any damage and loss arising in whole or in part, from the failure of Participant or any of its owners, officers, directors, employees, affiliates, contractors or agents, to comply with laws or requirements of the Pilot Program regarding data and privacy. This indemnity also includes any claim arising out of the use, misuse, or disclosure of User information by Participant or by any of its owners, officers, directors, employees, affiliates, contractors or agents. The obligations of Participant under this section shall survive the termination of this Agreement.

8.3 To the fullest extent permitted by law, Participant, for itself, its officers, directors, employees, agents and all other representatives of Participant, hereby releases, waives, holds harmless, and forever discharges the Town of Gilbert, and its elected and appointed officials, employees, agents, design professionals, project inspectors, separate contractors and consultants, and all other representatives together with all officers, directors, employees,

agents and representatives of any of them (hereinafter collectively referred to as the "Released Parties") from and against any and all actions, causes of action, damages, liability, obligations, rights, torts, wrongs and claims, including but not limited to claims of death and personal injury, regardless by whosoever brought, in any way related directly or indirectly, to the Pilot Program or the Participant's deployment, operation, or maintenance of any micromobility device within the Town of Gilbert, except to the extent actually caused by the sole intentional wrongdoing of the Town. Participant covenants not to make or bring any such claims against the Town of Gilbert or the Released Parties, and hereby releases and forever discharges the Town of Gilbert and the Released Parties from any and all liability under such claims. The obligations of Participant under this section shall survive the termination of this Agreement.

8.4 Indemnification under this Article shall be at Participant's sole cost and expense, and the Town shall reasonably approve selection of the counsel to represent the Town as proposed by Participant.

8.5 This agreement shall apply to all claims and liability regardless of whether any insurance of Participant, its affiliates or other parties are applicable thereto. The policy limits of any insurance of Participant, its affiliates or other parties are not a limitation upon the obligation of Participant, including without limitation, the amount of indemnification to be provided under this section. The provisions of this section shall survive the termination of this agreement.

#### ARTICLE 9. INSURANCE

9.1 Without limiting any liabilities or any other obligations of any Participant and any of its contractors and subcontractors under any Participant License or otherwise, Participant and each of its contractors and subcontractors shall provide and maintain, with forms and insurers acceptable to Town, and until all obligations under all Participant License are satisfied, the minimum insurance coverage, as follows unless otherwise agreed to in writing by the Town Attorney:

- (a) **Commercial General Liability Insurance.** Commercial General Liability Insurance, including coverage of contractual liability assumed under each Participant License, affording protection of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit for bodily injury and property damage, against damages because of, or on account of, bodily injuries to or the death of any person or destruction of or damage to the property of any person, occurring on or about any of Facilities or due in any way to the use, occupancy, maintenance or operation of Facilities.
- (b) **Commercial automobile liability insurance.** Commercial automobile liability insurance with a combined single limit for bodily injury and property damage of not less than TWO MILLION DOLLARS (\$2,000,000.00) each occurrence with respect to vehicles assigned to or used in the performance of the work, whether owned, hired, or non-owned.

- 9.2 The insurance policies required by this Article shall include the Town of Gilbert, members of its governing bodies, its officers, agents and employees as additional insureds and shall stipulate that the insurance afforded for shall be primary insurance and that any insurance carried by the Town of Gilbert, members of its governing bodies, its officers, agents and employees shall be excess and not contributory.
- 9.3 Participant and each of its contractors and subcontractors (and the insurers providing the required coverages) shall waive all rights of subrogation against the Town of Gilbert, members of its governing bodies, its officers, agents, and employees.
- 9.4 Prior to execution of the License, Participant and each of its contractors and subcontractors shall furnish the Town Certificates of Insurance and related endorsements as evidence that policies providing the required coverage, conditions and limits are in full force and effect. Such certificates shall provide that not less than thirty (30) calendar days' prior written notice of cancellation, termination, or material change shall be sent directly to Town.
- 9.5 All insurance policies shall be obtained from companies duly authorized to issue such policies in the State of Arizona, having Best's ratings of "A" and acceptable to Town.

#### ARTICLE 10. OTHER

- 10.1 **Payment Amounts Cumulative.** All amounts payable by Participant hereunder or under any tax, assessment or other existing or future ordinance, law or other contract or obligations to the Town or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.
- 10.2 **Remedies Cumulative.** Unless otherwise specified in these Terms or Rules, the rights and remedies contained herein are not exclusive, but are cumulative of all rights and remedies that exist now or in the future.
- 10.3 **Taxes.** Participant agrees that it shall be solely responsible for the payment of any and all applicable taxes, fees and assessments.
- 10.4 **Workers' compensation insurance.** Participant shall at all times maintain adequate workers compensation insurance.
- 10.5 **Assignment.** Participant shall not assign, sell or transfer its interest under a Participant License without the prior written approval or consent of Town.
- 10.6 **Severability.** If any a provision of these Pilot Terms & License, including its exhibits, is invalidated by a court of competent jurisdiction, all other provisions hereof shall continue in effect.
- 10.7 **Attorneys' Fees and Expenses.** In the event of default or suit arising out of these Pilot Terms & License and its exhibits, the prevailing party or the non-defaulting party shall be entitled to recover its costs, expenses, reasonable attorneys' fees, experts' fees and witness fees of any type.

- 10.8 **Non-Waiver.** The Town’s failure to enforce a term herein shall not prevent the Town from later enforcing that term and all other terms.
- 10.9 **Exhibits.** The forms of exhibits attached to these Terms may change from time to time at the Town Manager’s discretion as the law changes or as technology and business needs change.
- 10.10 **No Third Party Rights.** Neither the Pilot Terms & License nor any Participant License shall bestow any rights upon any third party. A Participant License binds and benefits the Town and Participant only.
- 10.11 **Governing Law; Venue.** The Pilot Terms & License shall be governed in accordance with Arizona law. Venue shall be in Maricopa County.
- 10.12 **Conflict of Interest.** In the event Town elects to cancel this Agreement due to a conflict of interest as outlined in A.R.S. § 38-511, as amended, Town agrees to immediately give notice thereof to Licensor.
- 10.13 **Right to Audit.** During the Program and for two years thereafter, records of Company regarding the number of devices and the number of rides (“Records”) shall be open to inspection and subject to audit and/or reproduction by the Town during normal working hours for the purposes of verifying fees and tax compliance. To the extent necessary for the Town to audit Records as set forth herein, Company and its subcontractors hereby waive any rights to keep such Records confidential. The Town shall give reasonable advance notice of intended audits.

## **EXHIBIT B – DATA SHARING REQUIREMENTS**