

COOPERATION AND SERVICE AGREEMENT

This Cooperation and Service Agreement (the “Agreement”) is entered into as of October 1, 2023 (the “Effective Date”) between PayByPhone US Inc., a provider of enhanced mobile commerce solutions, a Delaware corporation with its address at 48 Wall Street, Suite 1100, New York, New York 10005 (“PayByPhone”) and the City of Naperville, a provider of parking services with its address at: 400 South Eagle Street, Naperville, IL 60566-7020 (“Client”). The City of Naperville’s General Terms and Condition, by this reference, are included as part of this Agreement and attached hereon as Appendix B. In the event of a conflict between the City’s General Terms and Condition and the terms of this Agreement, the City’s Terms and Conditions shall prevail.

RECITALS

The objective between PayByPhone and Client provided for in this Agreement is for PayByPhone to provide wireless applications to enhance the payment process for parking at parking facilities and metered parking stalls owned and/or managed by Client, described in more detail in Appendix A (each address listed is a “Parking Location”). PayByPhone mobile commerce solutions will also provide Client with a management information system, including real-time operation and transaction reports.

AGREEMENT

Section 1 THE PAYBYPHONE MOBILE PAYMENT PLATFORM AND APPLICATIONS

1.1 PAYBYPHONE MOBILE PAYMENT APPLICATION

PayByPhone agrees to roll out the PayByPhone mobile payment service for use at Client’s managed and owned parking facilities as agreed upon by PayByPhone and Client, to allow for consumers to pay for the use of Client’s parking facilities through personal wireless devices (e.g., cellular telephones) or other wireless systems.

1.2 PAYBYPHONE MANAGEMENT INFORMATION SYSTEM

PayByPhone will operate and manage a software application for Client that will provide near real time information and management reports on the transactions conducted utilizing the PayByPhone mobile payment service (the “Portal”). PayByPhone will host the Portal on its network. Client will access the Portal through a browser-based program installed on Client’s computer hardware.

1.3 COMPUTER, NETWORKING AND TELECOMMUNICATION SYSTEMS

PayByPhone [or its parent, PayByPhone Technologies Inc.] will own or possess, and will operate and maintain, all computer and networking hardware and software and data required to operate the PayByPhone mobile payment services service as contemplated in this Agreement, other than Client’s existing computer and telecommunications systems.

1.4 MOBILE PAYMENT SERVICE ENFORCEMENT

Client agrees to supply Wireless Devices to employees in the field to provide real time confirmation of validly parked vehicles.

1.5 REPORTS

PayByPhone will provide Client with a set of standard self-serve reports in the Portal. Any changes or customizations to the standard set of reports will be subject to PayByPhone’s prior approval and then-current PayByPhone professional services fees.

See https://www.paybyphone.com/pdf/us/pbp_professionalserviceessamplerates.pdf for sample rates.

1.6 PAYBYPHONE INTERACTIVE VOICE RESPONSE

PayByPhone will provide the PayByPhone interactive voice response solution (“IVR”) for use at Client’s managed and/or owned parking facilities, as agreed upon by PayByPhone and Client, to allow for consumers to call and pay for the use of the Parking Location by calling the applicable service number displayed on the parking sign, parking meter, and/or pay station. Client is responsible for paying all Transaction Fees, as outlined in Appendix A, for each Transaction made through IVR.

Section 2 FEES AND PAYMENTS

2.1 PRICING AND PAYMENT

Client agrees to pay the fees, as outlined in Appendix A. All amounts payable hereunder are exclusive of any and all taxes, including taxes applicable on fees paid by the consumer, and Client is responsible for payment of such taxes. Unless otherwise specified, all prices are stated, and Client shall pay, in US dollars. Payment is due within 30 days of invoicing.

2.2 MERCHANT ACCOUNT

Merchant account refers to Client’s merchant account set up with Client’s acquiring bank. PayByPhone will cover the cost of linking one (1) Client merchant account with PayByPhone’s gateway provider. Client agrees to cover the cost of merchant account updates including all third party fees and then-current PayByPhone professional services fees. See https://www.paybyphone.com/pdf/us/pbp_professionalservicesamplerates.pdf for sample rates.

2.3 TRANSACTION TESTING

PayByPhone reserves the right to execute test transactions from time to time to ensure top performance of the system and account. PayByPhone may execute up to ten test transactions per month without adjusting the Client invoice.

2.4 THIRD PARTY INTEGRATION

In the event that system changes (such as upgrades) by a third party impact the PayByPhone integration(s) with Client sub-systems such as enforcement, Client agrees to pay for all PayByPhone development costs required to maintain such integration. PayByPhone will notify Client, in advance, of any such integration costs that could be added.

Section 3 EXCLUSIVITY

Client agrees that PayByPhone will be the sole and exclusive provider of all mobile payment service applications (using whatsoever technology) for Client, including, but not limited to, all wireless payment applications employing wireless devices to pay for parking at the specific Client parking lots where PayByPhone is deployed pursuant to this Agreement during the term of this Agreement.

Section 4 MARKETING, PROMOTION AND USER EDUCATION

4.1 SIGNAGE

4.1.1 Client agrees to provide adequate space for and permit placement of PayByPhone signage at each parking facility at which the PayByPhone mobile payment service is to be available. Specific placement of the signage is to be mutually agreed by PayByPhone and Client acting reasonably. PayByPhone will provide the first round of signage (excluding installation) for each Initial Parking Location and any Additional Parking Location implementing PayByPhone as mobile payment service provider at its own cost. The first round of signage includes:

- a) Standard signage template listing PayByPhone as the sole provider of the mobile payment service and, if requested by Client, incorporating, alongside logos, fonts, colors and design of PayByPhone, logos, fonts, colours and design of Client.
- b) The maximum size of any signage will be 12” x 18”; the maximum size of any decal will be 8” x 12”.

- c) The number of signs included for a Parking Location will be determined by the number of parking spots at the Parking Location divided by 20, plus one sign or decal per pay station and one decal per meter at the Parking Location.

All additional and replacement signage is at Client's cost. Client agrees to either use PayByPhone's standard signage template or ensure that its non-standard signage complies with all PayByPhone's marketing and branding guidelines (available on request). Client shall not modify PayByPhone's logos, fonts, colours, design, and other brand/marketing related items without PayByPhone's prior written consent and approval. In the event Client requests that PayByPhone produce non-standard signage for Client, such customization work will be subject to PayByPhone's prior approval and then-current PayByPhone professional services fees. See https://www.paybyphone.com/pdf/us/pbp_professionalservicessamplerates.pdf for sample fees. Client will be responsible for installation of all decals and signs at the Parking Locations, including the first round of signage.

4.2 MARKETING EVENTS

PayByPhone may conduct on-site marketing events and campaigns for its service, whereby PayByPhone will inform parking lot consumers of the availability of the PayByPhone mobile payment services as well as any promotions available, with the knowledge and approval of Client which is not to be unreasonably withheld.

4.3 CLIENT TRAINING

PayByPhone will provide initial training to Client using a "Train the Trainer" (the "Client Trainer") model on the self-served PayByPhone Service Management Interface (SMI). The said Client Trainer will, at its own expense, train its staff and employees, including patrollers, to operate the mobile payment services and related applications and technology. Additional training sessions are available at the then current professional services rates. See https://www.paybyphone.com/pdf/us/pbp_professionalservicessamplerates.pdf for sample rates.

Section 5 INTELLECTUAL PROPERTY

5.1 INTELLECTUAL PROPERTY RIGHTS

5.1.1 The parties acknowledge and agree that any trademarks, patents, trade names, logos, trade dress, domain names, copyrights or licenses therein, or other enforceable intellectual property rights and whether in hard or electronic copy (collectively "Intellectual Property") belonging to the other party, given to them under this Agreement is and shall remain the property of that party for the duration of the Term of this Agreement.

5.1.2 Except as expressly stated, nothing in this Agreement shall be deemed or interpreted to convey, transfer or assign any Intellectual Property rights to the other party.

5.1.3 Each party reserves the right to approve in advance the use of its Intellectual Property by the other party in each and every instance.

5.1.4 Upon termination of this Agreement for any reason the parties will use reasonable endeavours to ensure that all such Intellectual Property and material are removed from display and/or destroyed at the request of the other party save where such Intellectual Property is held by the parties in compliance with any statutory obligations and/or the maintenance of proper records.

5.1.5 The parties undertake that they have all necessary permissions, licenses and rights to use the Intellectual Property of third parties for the purposes of this Agreement.

5.1.6 To the extent permitted by law, each party shall indemnify (for the purposes of this clause, the "Indemnifying Party") the other (for the purposes of this clause the "Indemnified Party") against all actions, claims, proceedings,

costs and expenses (including reasonable legal fees) arising from any actual infringement of Intellectual Property rights of whatever nature insofar as these relate to the Intellectual Property rights developed and owned by the Indemnifying Party or licensed to the Indemnified Party which claims, actions or proceedings arise as a result of the Indemnified Party's use of any of the Services, except that the indemnity shall not apply to any actions, claims or proceedings which are attributable to any breach of contract or negligent act or omission on the part of the Indemnified Party or where such actions, claims or proceedings relate to any developments of the services carried out by or at the request of the Indemnified Party except where the Indemnified Party knew or ought to have known that such development of the services requested by the Indemnified Party would result in an infringement of Intellectual Property rights.

5.1.7 The Indemnified Party shall notify the Indemnifying Party in writing of any such action, claim or proceeding and shall not make any admission unless the Indemnifying Party gives prior written consent.

5.1.8 At the Indemnifying Party's request and expense, the Indemnified Party shall permit the Indemnifying Party to conduct all negotiations and litigation. The Indemnified Party shall give all assistance as the Indemnifying Party may reasonably request and the Indemnifying Party shall pay the Indemnified Party's costs and expenses so incurred.

5.1.9 The Indemnifying Party may, at its expense: (i) obtain a license to enable the Indemnified Party to continue to use the Services, or (ii) modify or replace the Services to avoid any alleged or actual infringement or breach, or (iii) terminate the provision of the affected elements of the Services. Where the Indemnifying Party exercises options (i) or (ii) the functionality of such modification or replacement shall not materially affect the performance of the Services.

5.2 CLIENT INFORMATION

5.2.1 "Client Data" means all data provided directly by the Client to PayByPhone in relation to this Agreement, including Client's parking rates, Client's identifiers for Parking Locations and parking stalls, merchant account information, enforcement equipment and practices, and parking policies.

5.2.2 During the term of this Agreement and for such time after as not expressly prohibited, PayByPhone may obtain, store and use such Client Data for any purpose, including without limitation providing and improving services under this Agreement, so long as it complies with applicable data protection laws, contractual obligations and any other applicable requirements with respect to the Client Data. PayByPhone shall retain exclusive ownership of all rights in any derivative data it develops based on Client Data.

5.2.3 Following termination of this Agreement, PayByPhone will, at Client's written request, return to Client or destroy all Client Data and copies thereof. Notwithstanding the foregoing, PayByPhone shall be permitted to retain such copies of, or any computer records or files containing, the Client Data: (a) that has been archived by PayByPhone's automatic electronic archiving and back-up procedures, to the extent created and retained in a manner consistent with PayByPhone's standard archiving and back-up procedures; and (b) to the extent required by applicable law.

5.3 CUSTOMER INFORMATION

5.3.1 The parties will share information and data directly relating to drivers' parking sessions through the PayByPhone service at the Parking Locations and as may be required by the Client for parking enforcement, fines, and proceedings ("Transaction Data"). Transaction Data may include vehicle license plate, parking session date, time, duration, zone number and amount paid, details of parking fines/violation notices, and parking session details obtained through customer service centre, and does not include User Profile Data (defined below).

5.3.2 In using, sharing, or otherwise processing Transaction Data, PayByPhone and Client must comply with applicable data protection laws, contractual obligations and any other applicable requirements. Each party is responsible to the PayByPhone service users and other third parties for its respective use, sharing and processing of Transaction Data, whether it performs such use, sharing and processing directly or through third parties. Each party acts as a “data controller” with respect to Transaction Data for the purposes any privacy legislation that uses that concept and is applicable to the party’s activities. Each party agrees to provide such assistance as is reasonably required to enable the other party to comply with the applicable data protection laws.

5.3.3 Any information about or with respect to PayByPhone service users that is not related to parking sessions at the Parking Locations, including without limitation, information provided by users upon registration for a PayByPhone account and data about the user’s activity in the PayByPhone account or the PayByPhone applications (“User Profile Data”) shall be exclusively owned by PayByPhone. PayByPhone shall retain exclusive ownership of all rights in any derivative data it develops based on Transaction Data and User Profile Data.

5.4 PAYBYPHONE’S SERVICES TO CUSTOMERS

The parties acknowledge that PayByPhone service users hold the PayByPhone account under terms of service established by PayByPhone. Under these terms of service, PayByPhone may offer users an option to receive service communications by SMS text (“SMS Communications”), including reminders to extend a Parking Session and confirmations of successful registration for a Parking Session. Client agrees that, at any time during the Term, PayByPhone may charge any users who opt into these services a fee for each SMS Communication sent by PayByPhone with respect to a Parking Session (“SMS Fee”) and may set the amount of the SMS Fee with reference to the cost PayByPhone incurs in delivering this optional service. At the time of entering into this Agreement, the SMS Fee is equal to \$0.00, inclusive of taxes payable by the user. PayByPhone will provide Client with 30 day written notice of an increase in the amount of the SMS Fee. PayByPhone shall be responsible for any taxes applicable to the SMS Fees. PayByPhone records will be conclusive evidence with respect to the amount of SMS Fees collected during a billing period. The SMS Fees will be added to the total charged to the user in respect of a Parking Session. For the purposes of this section 5.4, PayByPhone and Client agree to designate Client as the merchant of record for any SMS Fees only. Client will collect PayByPhone’s SMS Fees and remit to PayByPhone. Remittance will be made via electronic payment or cheque and may be included in the amount that also includes fees payable by Client to PayByPhone under this Agreement.

Section 6 TERM AND TERMINATION

6.1 TERM

6.1.1 This Agreement shall enter into force on the Effective Date and shall remain in force and effect for a period of three years (the “Initial Term”) from the date that the first end user Transaction (as defined in Appendix A) is made through the PayByPhone mobile payment service unless earlier terminated in accordance with this Section 6. PayByPhone records will be conclusive evidence of the date of the first end user Transaction for the purposes of this section.

6.1.2 Prior to expiration of Initial Term, either party to give the other party at least ninety (90) days prior written notice of its intent to enter into a new Agreement before the end of the Initial Term.

6.2 TERMINATION

Should a party breach a material term and such breach remains uncorrected for thirty (30) days after receipt of a notice by the breaching party, the non-breaching party may, in addition to all other remedies available at law, terminate this Agreement by providing written notice to the breaching party, without further obligation provided, however, that if the nature of the breach is such that it cannot be reasonably cured within such thirty (30) day period, the breaching

party will not be deemed in default of this Agreement so long as such party commences efforts to effect a cure and is diligently pursuing such efforts. Provided, further, that if the breach is as a result of the non-payment of any fee, the non-breaching party may terminate this Agreement if such breach remains uncorrected for ten (10) days after the breaching party's receipt of notice of such breach.

Section 7 REPRESENTATIONS AND WARRANTIES

7.1 MUTUAL REPRESENTATIONS AND WARRANTIES

Each party represents and warrants to the other that:

- i) it has the full corporate right and authority, and possesses all licenses, permits, authorizations and rights to intellectual property, necessary to enter into and perform this Agreement;
- ii) its entry into and performance of this Agreement do not and will not conflict with or result in a breach or violation of any agreement or order by which it is bound; and
- iii) this Agreement constitutes its legal, valid and binding obligations enforceable against it in accordance with the terms of this Agreement.

Section 8 DISCLAIMER, INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1 DISCLAIMER

Except as expressly set forth in this agreement, PayByPhone does not make, and hereby specifically disclaims, any representations or warranties, express or implied, regarding the PayByPhone mobile payment services, including any implied warranties of title, merchantability, fitness for a particular purpose or non-infringement. Client acknowledges that the PayByPhone mobile payment services and services furnished by PayByPhone under this agreement (including, without limitation, any servers or other hardware, software, applications and any other items used or provided by PayByPhone or any third parties in connection with providing access to or hosting any of the foregoing or the performance of any services by PayByPhone under this agreement) are provided by PayByPhone “as is”.

8.2 INDEMNIFICATION

To the extent permitted by law and subject to Section 8.3, each party (the “Indemnifying Party”) will defend, indemnify and hold harmless the other party (the “Indemnified Party”) from and against any and all third party claims, actions, losses (collectively, “Losses”) resulting from or arising out of the Indemnifying Party’s breach of any representation, warranty or other obligation set forth in this Agreement. The Indemnified Party shall not be entitled to be so indemnified unless it has given the Indemnifying Party prompt written notice of any Losses, afforded the Indemnifying Party the opportunity to assume sole control over the defence and settlement, if applicable, of the Losses, and provided the Indemnifying Party (at the Indemnifying Party’s expense) all relevant information, assistance and authority to enable the Indemnifying Party to perform its obligations hereunder. The Indemnifying Party shall not settle any Losses without the Indemnified Party’s written consent, which shall not be unreasonably withheld.

8.3 LIMITATION OF LIABILITY

In no event shall any party be liable for consequential, special, indirect or incidental damages, including but not limited to any damages resulting from loss of use or profits arising out of or in connection with this agreement, whether in an action based on contract, tort (including negligence) or any other legal theory, even if the party has been advised of the possibility of such damages.

8.4 PARKING RATES

Client will be given access to parking rate data in order to confirm the parking rates at each Parking Location via the Portal. PayByPhone will make every attempt at ensuring the rates are configured correctly; upon completion of each Parking Location setup, it is the Client’s responsibility to ensure all rates are configured correctly. Failing to do so shall exclude PayByPhone from any liability. Client shall implement any parking rate changes via the Portal following

the Parking Location setup.. In the event Client requests that PayByPhone configure the parking rate changes after the Parking Location setup, Client shall provide PayByPhone with sufficient notice of the rate changes and such work will be subject to PayByPhone's prior approval and then-current PayByPhone professional services fees.

Section 9 CONFIDENTIALITY

Neither party will disclose the other party's or its affiliates' confidential or proprietary information, including Transaction Data and User Profile Data ("Confidential Information") (including the terms of this Agreement and any information provided by the other party that is confidentially maintained or proprietary or which derives value from not being generally known to persons who can obtain economic value from its disclosure or use or that a reasonable person would consider confidential, given the context) except:

- i) with the other party's consent;
- ii) to employees, agents and contractors who have a need to know in the discharge of their duties and who are subject to a contractual obligation to keep such information confidential that is at least as restrictive as this Agreement; or
- iii) when required to do so by law or by any binding rule, order or request.

For purposes of this Section 9, the parties agree that confidential or proprietary information does not include any information that is:

- i) already known to the receiving party at the time of disclosure hereunder (other than from the other party or its affiliates) as demonstrated by its written records;
- ii) now or hereafter becomes publicly known other than through acts or omissions of the receiving party, or anyone to whom the receiving party disclosed such information;
- iii) disclosed to the receiving party, by a third party, under no obligation of confidentiality to the disclosing party or any other party; or
- iv) independently developed by the receiving party without reliance on the confidential information of the disclosing party as shown by its written records.

Each party shall exercise reasonable commercial care in protecting the confidentiality of the other party's confidential information disclosed to it. The parties agree that an actual or threatened breach of this provision would result in irreparable harm to the party whose confidential information would be disclosed in breach, and shall entitle that party to temporary or permanent injunctive relief without proof of actual damages.

Section 10 MISCELLANEOUS

10.1 ASSIGNMENT

This Agreement shall be binding on the parties, their successors and their permitted assigns. PayByPhone may assign its rights or obligations under this Agreement without Client consent.

10.2 AMENDMENT

All amendments to this Agreement shall be in writing. In the event Client wishes to add new Parking Locations in addition to the Initial Parking Locations (the "Additional Parking Locations") or to add parking spaces to an existing Parking Location, the amendment will be effective against both parties if it is in the form of email between implementation personnel of the parties and, effective the date of such email, the Appendix A will be read to include these Additional Parking Locations or parking spaces.

10.3 SURVIVAL

The confidentiality, intellectual property and indemnification obligations in this Agreement and any other terms that by reasonable implication contemplate continued performance, shall survive the expiry or termination of this Agreement.

10.4 NO AGENCY

Each party, in all matters relating to this Agreement, will act as an independent contractor and independent employers. Except as otherwise expressly set forth herein, neither party will have authority and will not represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other, or to represent the other as an agent, employee or in any other capacity. Except as otherwise expressly set forth herein, nothing in this Agreement shall be construed to have established any agency, joint venture or partnership between the parties. Neither party shall make any warranties or representations on behalf of the other party.

10.5 GOVERNING LAW

This Agreement, and all matters relating hereto, shall be governed in all respects by the laws of the State of Delaware, excluding the application of any conflict of laws principles and/or rules. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the competent courts located in State of Delaware], and consent to the personal and exclusive jurisdiction and venue of these courts.

10.6 SEVERABILITY

In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

10.7 ATTORNEY'S FEES

In any legal proceeding between the parties, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses.

10.8 FORCE MAJEURE

If performance hereunder is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of a party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference.

10.9 ENTIRE AGREEMENT

This Agreement, together with the Appendices attached to it, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, any prior agreements with respect to the subject matter hereof. This Agreement may not be modified, amended or any provision waived except by the parties' mutual written agreement.

10.10 NO WAIVER

Failure by either party to enforce any provision of this Agreement (whether in any one or more instance) shall not be deemed a waiver of future enforcement of that or any other provision.

10.11 NOTICE

Any notices provided hereunder shall be given at the address of the recipient specified below or at such other address as specified in writing. Any notice or other communication required to be given hereunder by either party shall be deemed duly given (a) when personally delivered to the other party, or (b) on the date of receipt when such notice was mailed by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth above, or such other address as either party may designate by giving written notice to the other; or (c) on the date of receipt when such notice was sent by facsimile or e-mail to the other party; provided the sending party receives a written or electronic notice of receipt from the other party of the facsimile or e-mail.

10.12 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. The parties further agree that a signature transmitted via facsimile shall be deemed original for all purposes hereunder.

10.13 CAPTIONS

The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of the provision set forth herein.

10.14 AGREEMENT APPROVAL

Each party hereby represents and warrants that all necessary corporate and/or governmental approvals for this Agreement have been obtained, and the person whose signature appears below has the authority necessary to execute this Agreement on behalf of the party indicated.

10.15 SOPHISTICATION OF PARTIES

Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the agreement.

10.16 CLIENT'S CONDUCT OF BUSINESS THROUGH AFFILIATES

The parties acknowledge that Client may carry out its business through affiliates. Client agrees to cause its affiliates to take such actions and to execute such documents as may be reasonably required to give effect to this Agreement as though references to Client in this Agreement were references to Client and those of its affiliates through which it carries on the business of owning and operating parking facilities.

10.17 PCI-DSS: PAYMENT CARD INDUSTRY DATA SECURITY STANDARD

PayByPhone is responsible for the security of cardholder data which PayByPhone possesses or otherwise stores, processes, or transmits on behalf of the Client. PayByPhone abides by the rules and regulations set forth in the PCI-DSS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

City of Naperville

PayByPhone US Inc.

Signature: _____

Signature: Satyajit Samra

Name: _____

Name: Satyajit Samra

Title: _____

Title: President

Notice Address:
400 South Eagle Street
Naperville, IL 60566-7020

Notice Address:
c/o PayByPhone Technologies Inc.
#600 – 1290 Homer Street, 6th floor
Vancouver, British Columbia, V6B 2Y5

With a copy to: legal@paybyphone.com

APPENDIX A

PARKING FACILITIES AND METERED PARKING STALLS:

Parking facilities located throughout the City of Naperville including 3,623 on-street parking spaces.

(together, “Initial Parking Locations”).

PRICING:

All amounts are exclusive of any and all taxes, including taxes applicable on fees paid by driver.

For the purposes of this Agreement “Transaction” includes (a) user registration for a parking session, permit, validation or extension at a Parking Location through the PayByPhone mobile payment service (whether or not any amount is payable to Client by the user), (b) a refund, (c) a charge reversal and (d) any other operation for which PayByPhone incurs a fee from its gateway provider or an acquirer, if applicable.

ITEM	PRICE
ONE-TIME SETUP FEES	
Signage – first round of signage production at service launch (installation not included)	Included
Training, consulting, marketing, and customer support as described in the Agreement	Included
Mobile payment services setup fee for all Initial Parking Locations	Included ¹
Integration with enforcement solution software	Included
Standard PayByPhone city dynamic label	Included
TRANSACTION FEES	
Client to charge driver a non-embedded, on-top of price of parking convenience fee following per annual schedule ² : -October 1, 2023 to December 31, 2023: \$0.35 -January 1, 2024 to September 30, 2024: \$0.40 -October 1, 2024 to September 30, 2025: \$0.42 -October 1, 2025 to September 30, 2026: \$0.45	Client will be invoiced for the Transaction Fee as shown in Transaction Fees column.

NOTES:

1. Mobile payment services setup fee includes configuration, testing and implementation of a dedicated client account within the PayByPhone system; merchant account integration and testing; set up and training on reporting, customer service and other elements of the PayByPhone Service Management Interface. One-time setup fees are invoiced at contract signing.
2. Any change in the convenience fee will not affect the price the Client will pay to PayByPhone per Transaction. The convenience fee may only be increased by mutual agreement of both parties. Services covered by the Transaction Fee include interactive voice response solution (IVR).
3. Monthly minimum will apply when Transaction Fees per calendar month total less than the specified monthly minimum. Client is responsible for covering the difference between the monthly minimum and the Transaction Fees.
4. IVR additional per transaction fee applies to all Transactions, including without limitation, Transactions made through the PayByPhone mobile application, web application, and/or IVR.
5. Client is responsible for paying all Transactions Fees and any IVR additional per transaction fees for all Transactions made through the PayByPhone mobile application, web application, and/or IVR (if applicable).
6. Client is responsible for paying its own credit card processing and merchant banking fees, if Client is MOR.
7. In the event that PayByPhone is the only form of payment, Client will be responsible for 100% of the call centre fees as a pass through.
8. All fees and charges are payable within 30 days of invoicing.

CITY OF NAPERVILLE: GENERAL TERMS AND CONDITIONS

TAX EXEMPTION: The City of Naperville is tax exempt, ID # **E9997-4398-07**.

AMENDMENTS:

No modifications to the terms of the Agreement or Terms and Conditions shall be binding upon the City unless in writing and signed by the City's authorized agent. All specifications, drawings, and data submitted to the Vendor with this order are hereby incorporated and made a part hereof.

PATENTS AND COPYRIGHTS:

If an article sold and delivered to the City hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and save harmless the City, from and against any and all suits, claims, judgments, and costs instituted or recovered against it by any person whomsoever on account of the use or sale of such articles by the City in violation or right under such patent or copyright.

NON-WAIVER OF RIGHTS:

No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Contract shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

COMPLIANCE WITH LAWS:

The Vendor certifies that in performing this contract they will comply with all applicable provisions of the federal, state and local laws, regulations, rules and orders.

LAWS GOVERNING:

This contract shall be governed by and construed according to the laws of the State of Illinois except that sections 2 through 8 of the Local Government Prompt Payment Act (50 ILCS 505/2-8) shall not be applicable. Venue for any action related to this Contract shall be in the Circuit Court for the 18th Judicial Circuit, DuPage County, Illinois.

PAYMENT TERMS:

The City of Naperville's payment terms are net 30. The payment date will be calculated based on the invoice receipt date or delivery date, whichever is later. All payments shall be made with electronic payment transfer.

PAYMENT:

All invoices shall be addressed to the Bill To Address, as indicated on the Purchase Order or Contract and must include Purchase Order or Contract number, Vendor's name and phone number, and clearly list quantities, item descriptions and units of measure.

WARRANTY:

The Vendor warrants to the City that all goods and services furnished hereunder will conform in all respects to the terms of this Agreement, including any drawings, specifications or standards incorporated herein,. In addition, Vendor warrants the goods and services are suitable for and will perform in accordance with the purposes as described in this Agreement.

UNIFORM COMMERCIAL CODE:

All applicable portions of the Illinois Uniform Commercial Code shall govern contracts with the City of Naperville.

DELIVERY:

All prices must be F.O.B. destination, freight prepaid and allowed. Time is of the essence on this contract. Where the Vendor is providing goods and if completed deliveries are not made at the time agreed, the City reserves the right to cancel or purchase elsewhere and hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise the City, in writing of the earliest possible shipping date for acceptance by the City.

RISK OF LOSS:

Regardless of F.O.B. point, Vendor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which may for any reason occur prior to acceptance by City where the Vendor is providing goods and materials to the City. No such loss, injury or destruction shall release Vendor from any obligations hereunder.

INSPECTION:

Goods and material must be properly packaged. Damaged goods and materials will not be accepted, or if the damage is not readily apparent at the time of delivery, the goods shall be returned at no cost to the City. The City reserves the right to inspect the goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

MATERIAL SAFETY DATA SHEETS:

Proper Material Safety Data Sheets, in compliance with OSHA's Hazard Communication Standard, must be provided by the Vendor to the City at the time of purchase, when applicable.

PREVAILING WAGE:

It shall be the responsibility of the Vendor to comply, when applicable, with the Illinois Prevailing Wage Act 820 ILCS 130/01 *et seq.* It shall be the responsibility of the Vendor to monitor the prevailing wage rates as established by the Illinois Department of Labor for any increase in rates during the project and adjust wage rates accordingly.

NON-DISCRIMINATION:

The Vendor shall comply with the Illinois Human Rights Act, 775 ILCS 5/1 - 101 *et seq.* (2000), as amended and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, 5 Ill. Admin. Code § 750 Appendix A. The Vendor shall also comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.* (2000), as amended.

It shall also be an unlawful employment practice for the Vendor (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to their compensation, or the terms, conditions, or privileges of their employment, because of such individual's race, color, religion, sex, age, handicap or national origin; or (2) to limit, segregate, or classify their employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee, because of such individual's race, color, religion, sex, age, handicap or national origin. Vendor shall comply with The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 *et seq.* (2000), as amended.

NON-APPROPRIATIONS CLAUSE:

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being approved by the City Council. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the City may terminate its obligations under the Contract if sufficient appropriations are not approved by the City Council to pay amounts due for multiple year contracts. The City's decision as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final and binding.

Signature Certificate

Reference number: K47ZM-DQ87P-NWHPR-AHUKR

Signer

Timestamp

Signature

Sonny Samra

Email: ssamra@paybyphone.com

Sent:

29 Jun 2023 16:55:17 UTC

Viewed:

29 Jun 2023 20:33:11 UTC

Signed:

29 Jun 2023 20:35:18 UTC

Satyajit Samra

Recipient Verification:

✓ Email verified

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IP address: 208.184.88.173

Location: Vancouver, Canada

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