

SITING AGREEMENT

This Siting Agreement (this "Agreement") is entered into as of _____, 2016 ("Effective Date") by and between _____ ("Licensor") and the City of Portland, a municipal corporation of the State of Oregon, by and through its Bureau of Transportation ("Licensee" or the "City"). Each of Licensee and Licensor may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

1. The City has entered into that certain Amended and Restated Service Contract dated September 9, 2015 (as may be amended from time to time, the "City Agreement") with Motivate International, Inc. (the "Operator") regarding the design, acquisition, installation, implementation, management and operation of a bike share system for the City within the municipal boundaries of the City of Portland (the "System");
2. Under the City Agreement, the City granted Motivate an exclusive license to operate the System within the municipal boundaries of Portland in accordance with the City Agreement;
3. The City is the owner of the System;
4. Licensor is the sole, fee simple owner of certain real property located at _____ and all improvements thereon (collectively, "Property"); and
5. Licensor desires Licensee to place certain System components including, bicycle rental docking stations (each, a "Docking Station") to be operated by the Operator in the locations designated on the Property as shown on **Exhibit A** hereto ("Licensed Area"), in the same manner in which the Operator operates other stations throughout Portland.

AGREEMENT

NOW, THEREFORE, in consideration of the premises above and the promises below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **License.** Licensor does hereby grant the following non-exclusive licenses (collectively, the "License"): (i) to Licensee and its successors and assigns, including the Operator: the right and license to assemble, install, upgrade, alter, expand, renew, maintain, repair, replace, remove, relocate, and use the Docking Station and all related bicycles and other equipment within the Licensed Area (including, without limitation, the right to place advertisements on all such equipment and secure sponsorships related to the System), and to use and enjoy all rights appurtenant thereto, including the right to enter the Property as may be reasonable and appropriate to exercise all License rights; (ii) to all Users: the right and license to enter and use the Licensed Area in connection with using the System, which may include using the Docking Station or any related bicycles or other equipment

within the Licensed Area; and (iii) to Licensee and its successors and assigns, including the Operator: the right and license to enter the Property to enjoy, undertake, or perform any of Licensee's rights or obligations arising under this Agreement and/or the City Agreement. As used herein, the term "Users" is defined to include Licensee, the Operator and all of Licensee's owners, directors, officers, employees, agents, contractors, customers, guests, invitees, successors, and assigns. Licensor acknowledges and agrees that any member of the public at large may become a User simply by using the System and that each User must be allowed full access to the Licensed Area, in connection with using the System. The Licensed Area must be used only for the Docking Station and other purposes related to the License or the System, and Licensor must not block or impair any User's full and ready access to the Docking Station (24 hours per day, 365 days per year) or otherwise materially interfere with or alter any User's use or enjoyment thereof.

2. **Fee.** Licensee and all other Users have no obligation to pay any fee or rent with respect to the License or this Agreement.
3. **Term; Termination.** The term of this Agreement ("Term") begins on the Effective Date and shall continue (i) through the term of the City Agreement (as the same may be renewed or extended) or (ii) if the City Agreement ends and the City and the Operator enter into a new agreement to provide the System, through the term of such new agreement (as the same may be renewed or extended), unless earlier terminated as set forth herein. Either Party may terminate this Agreement (a) for any reason upon 180 days written termination notice to the other Party or (b) for material breach of this Agreement by any Party hereto upon 30 days written termination notice to the breaching Party by the non-breaching Party, unless such breach has been fully cured prior to the expiration of such 30 day period. Notwithstanding the foregoing, if Licensee determines that it is in the best interest of the System to remove the Docking Station from the Licensed Area it shall have the right to do so and terminate this Agreement, upon thirty (30) days written notice to Licensor. In the event a new agreement is entered into as aforesaid the term "City Agreement" under this License Agreement shall be deemed to include such new agreement.
4. **Insurance.** Licensee must cause the Operator to carry, at no expense to Licensor, a Commercial General Liability insurance policy with limits of at least \$1,000,000 Per Occurrence and \$2,000,000 in the General Aggregate. Such policy must name Licensor as an additional insured, per ISO form # CG 20 36 04 13 or its equivalent.
5. **Indemnification.** Licensee shall, to the fullest extent permitted by law, including the Oregon Tort Claims Act, indemnify, defend and hold harmless Licensor and its employees, officers, directors, members, owners, managers, shareholders, affiliates, partners, fiduciaries, representatives, agents, attorneys, successors and assigns from and against any and all losses, damages, costs and expenses, including the reasonable outside legal fees and expenses incident thereto, arising from any suit, claim or demand brought by any third party as a result of any breach of the indemnifying Party's obligations, representations and warranties under this Agreement (excluding any losses, damages costs and expenses to the extent they arise from the negligent acts or omissions of the indemnified Party). Licensor acknowledges and agrees that the indemnity provided in

this section 5 is fully assignable to, and may be assumed by, the Operator.

6. **Site Preparation.** At no cost or expense to Licensor, Licensee is fully responsible for causing all permits to be obtained and for preparing the Licensed Area for the installation of the Docking Stations and Licensor must reasonably cooperate in connection therewith.
7. **Station Installation and Removal.** Licensee will cause the Docking Stations to be installed within the Licensed Area. At the end of the Term, Licensee will cause the removal of the Docking Stations. At no cost or expense to Licensor, Licensee is fully responsible for causing the installation and removal of each Docking Station within the Licensed Area, and Licensor must reasonably cooperate in connection therewith.

In the event that Licensor desires to undertake essential construction work that would necessitate the temporary removal of a Docking Station, Licensor shall provide 30 days prior advance written notice to Licensee and the Parties shall agree in good faith on the removal or relocation of the Docking Station, as applicable, the costs of which shall be borne by Licensor.

8. **Maintenance.** At no cost or expense to Licensor, Licensee shall cause the Operator to: (i) maintain the Docking Station in good condition (reasonable wear and tear, damage by fire or other casualty and taking by eminent domain excepted); (ii) maintain the improved surfaces of the Licensed Area in good condition, which may include cleaning, sweeping, trash removal, and snow and ice removal, as the case may be (and which maintenance shall not be provided by Licensor); and (iii) communicate with all Users and other 3rd parties, including responding to any and all inquiries made by any of them, and Licensor has no authority to communicate with anyone on Licensee's behalf.
9. **Sponsorships and Advertising.** Licensor acknowledges and agrees that Licensee, or its designees or assigns, may secure various sponsorships and advertising (collectively, "Sponsorships and Advertising") in connection with the System, and Licensee, or its designees or assigns, may display within the Licensed Area the names, trademarks, service marks, and logos (collectively, "Marks") of any of the sponsors and advertisers (collectively, "Sponsors and Advertisers"). Licensor shall have no right to receive any revenues or other consideration arising out of the Sponsorships and Advertising.
10. **Surrender.** Within 30 days after the end of the Term, Licensee must cause the removal of the Docking Station and all related bicycles and other equipment from the Licensed Area and must repair all damage directly caused to the Licensed Area by Licensee or Users, reasonable wear and tear excepted, and any damage by fire or other casualty and taking by eminent domain excepted.
11. **Assignment.** Licensee may assign this Agreement or any of Licensee's rights or obligations hereunder to the Operator without Licensor's consent.
12. **Disputes.** This Agreement is governed by, and must be construed and enforced in accordance with, the laws of Oregon, excluding principles of conflicts of laws.
13. **Entire Agreement.** This Agreement contains the complete, final, and exclusive

integrated agreement between the Parties with respect to its subject matter and supersedes all other agreements relating thereto. Any amendment to this Agreement must be written and signed by each Party. In the event that any provision(s) of this Agreement shall be illegal or otherwise unenforceable, such provision(s) shall be severed (or modified to render it enforceable), and the remaining provisions hereof shall continue in full force and effect.

14. **Representations.** Each Party ("Promising Party") represents and warrants to the other Party that: (i) the Promising Party has the legal power and authority to enter into this Agreement and to undertake and perform all of its duties and obligations hereunder; (ii) there is no contract or other legal obligation that prevents the Promising Party from entering into this Agreement or from undertaking or performing all of its duties and obligations hereunder; and (iii) this Agreement is the Promising Party's legally binding and fully enforceable agreement.
15. **Notices.** All notices and other communications provided hereunder must be in writing and are deemed given: (i) on hand-delivery (ii) when sent by email, with confirmation of transmission; (iii) the day after sending by a nationally recognized overnight delivery service (with confirmation of transmission); or (iv) 3 days after sending by certified mail (return receipt requested).

If to Licensor, notices shall be sent to:

Attention:

Phone:

Email:

If to Licensee, notices shall be sent to:

16. **Miscellaneous.** This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns. Time is of the essence with respect to the full performance by each Party of each of its duties and obligations arising under this Agreement. This Agreement may be executed in original counterparts, where all counterparts taken together create the binding Agreement. Emailed signatures are sufficient to bind the Party sending the emailed signature.

SIGNATURE PAGE FOLLOWS

The Parties execute this Agreement as of the Effective Date.

LICENSEE:

Motivate International Inc.

By:
Print Name:
Print Title:

LICENSOR:

Portland State University_____

By:
Print Name:
Print Title:

DRAFT

EXHIBIT A
PHOTO OF THE LICENSED AREA

DRAFT