

UBC OKANAGAN TRANSPORTATION NETWORK SERVICES PERMIT STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions (the “**Agreement**”) are incorporated into and form part of the Transportation Network Services Permit (the “**TNS Permit**”) that the University of British Columbia (“**UBC**”) grants to an operator (the “**Licensee**”) with respect to UBC’s 105 hectare Okanagan Campus within the northeast quadrant of the City of Kelowna in British Columbia as shown outlined in black in Schedule A (the “**Campus**”). Application for a TNS Permit is conclusive evidence of the Licensee’s consent to be bound by the terms and conditions of this Agreement, as may be amended from time to time by UBC, and those rules (the “**Traffic and Parking Rules**”) enacted by the UBC Board of Governors under the authority of the *University Act* to regulate vehicle and pedestrian traffic and parking on the Campus.

1. GRANT OF LICENSE AND REPRESENTATIONS AND WARRANTIES

1.1 UBC hereby grants the Licensee a license to operate Transportation Network Services (as set out in the *Passenger Transportation Act*) (the “**Program**”) on Campus, all on the terms and conditions of this Agreement.

1.2 The Licensee acknowledges and agrees that:

- (a) this Agreement creates a non-exclusive contractual license for the Licensee to operate the Program only and the Licensee acquires no interest in any of UBC’s lands or property whatsoever;
- (b) the Licensee’s Transportation Network Service providers (the “**Drivers**”) shall have the non-exclusive right to access and use roadways open to the public within the Campus in accordance with the terms and conditions of this Agreement;
- (c) UBC is constantly changing to meet the needs of its diverse academic, research, recreational, residential and cultural activities and nothing in this Agreement precludes UBC from doing anything whatsoever with the physical structure of the Campus, including, without limitation, construction, renovation, maintenance, repair and replacement of buildings, maintaining, improving and installing infrastructure, and the granting of rights and privileges to third parties with respect to any part of the Campus; and
- (d) UBC has given no representations or warranties with respect to the Campus or the surrounding lands including, without limitation, with respect to the suitability of those locations for Licensee’s intended use, and the Licensee accepts and uses the Campus on an “as is” basis.

1.3 The Licensee represents and warrants to UBC as follows:

- (a) the Licensee is a corporation duly incorporated under the laws of Canada or a Province of Canada, is qualified and registered to do business in the Province of British Columbia, and has the full legal right, power and authority to enter into this Agreement and comply with its terms and conditions;
- (b) the Licensee has done all things required by law and by its constating documents to duly authorize the entry of the Licensee into this Agreement;

- (c) the Licensee holds a valid Transportation Network Service Authorization from the British Columbia Provincial Passenger Transportation Board;
- (d) the Licensee has the necessary licenses and permits from all applicable regulatory authorities to operate the Program; and
- (e) entering into this Agreement and complying with all of its terms and conditions will not cause the Licensee to be in default under any of its obligations to any party.

2. TERMINATION

2.1 This Agreement commences on the date that UBC issues a TNS Permit to the Licensee and terminates on the earlier of (i) the date that is 30 days after either party provides notice of termination to the other party; and (ii) the date on which UBC terminates this Agreement in accordance with section 2.2.

2.2 UBC may, at its option, immediately terminate this Agreement and revoke the TNS Permit in the event of any of the following:

- (a) the Licensee is in default in the payment of any amount payable under this Agreement and the default continues for ten (10) days after written notice by UBC to the Licensee;
- (b) the Licensee does not fully observe, perform and comply with each and every term, covenant, requirement, obligation, condition and provision of this Agreement to be observed, performed and kept by the Licensee, and persists in such default for ten (10) days after written notice from UBC;
- (c) the Licensee's license, permit, or any other approval required under applicable legislation, including, without limitation, the *Passenger Transportation Act*, is revoked or suspended;
- (d) an effective order is made or resolution passed for the winding up or dissolution of the Licensee;
- (e) the Licensee becomes insolvent or makes an authorized assignment for the benefit of its creditors or commits any voluntary or involuntary act of bankruptcy;
- (f) a receiver is appointed in respect of any of the assets of the Licensee; or
- (g) the Licensee ceases to carry on business.

2.3 Upon termination of this Agreement in accordance with this Part 2, UBC will revoke and cancel the TNS Permit issued to the Licensee.

3. FEES, COST RECOVERY, AND DATA REQUIREMENTS

3.1 UBC shall bear no costs for the operation of the Program by the Licensee. Licensee shall pay to UBC a licensing and administration fee of \$155.00 per year (the "**Licensing and Administration Fee**") and the Program Fees as set out in Schedule A of this Agreement. The Licensee acknowledges and agrees that UBC may modify Schedule A including the nature and amount of the Program Fees upon 90 days' written notice to the Licensee.

- 3.2 UBC will include the Licensing and Administration Fee in the first invoice it issues in each calendar year and the Licensee will pay the Licensing and Administration Fee in full within thirty (30) days of UBC providing such invoice to the Licensee.
- 3.3 The Licensee will pay the additional Program Fees set out in Schedule A in accordance with this Part 3.
- 3.4 Within fifteen (15) days following the end of each calendar month, the Licensee shall provide UBC with a monthly report (the “**Summary Report**”) that contains, for the immediately preceding calendar month the following information:
- (a) the total number of pick-ups and drop-offs to which Program Fees apply (as set out in Schedule A) (“**PUDO Totals**”);
 - (b) data regarding all trips where a Driver picked up or dropped off one or more passengers on Campus, including, the date, time, and location (signed decimal degrees longitude and latitude to at least three decimal places) of such pick-ups and drop-offs (the “**Campus-wide PUDO Data**”). The Licensee will submit the Campus-wide PUDO Data in CSV file format using the following naming convention: “[YEAR]_[MONTH]_PUDO_Data_[COMPANYNAME].csv” (e.g. “2021_01_PUDO_Data_ACME.csv”). For greater certainty, the Campus-wide PUDO Data files will be part of the Summary Reports.
- 3.5 UBC will issue invoices to the Licensee, which shall be based on the data provided by the Licensee in its monthly Summary Report pursuant to this Part 3, and the Licensee shall remit payment to UBC of the Program Fees set out in Schedule A within thirty (30) days of UBC providing each invoice to the Licensee. For greater certainty, UBC will not issue invoices more frequently than once per calendar month.
- 3.6 The Licensee will ensure that each Summary Report contains accurate and complete information. The Licensee acknowledges and agrees that UBC may use data provided by the Licensee as part of the Campus-Wide PUDO Data to review and confirm the PUDO Totals reported in each Summary Report and UBC reserves the right to adjust the amount of Program Fees in the applicable invoices to reflect any adjustments required as a result of such review.
- 3.7 Upon reasonable notice during normal business hours, UBC or its authorized auditor or agent may conduct an audit or review of the books and records of the Licensee to verify the completeness and accuracy of the Summary Reports submitted by the Licensee to UBC pursuant to this Agreement. As part of such audit, UBC or its authorized auditor or agent may request copies of those books and records, and the Licensee will provide such books and records within thirty days of receipt of the request. If an audit or review reveals that the Licensee has provided inaccurate or incomplete Summary Reports to UBC, the Licensee will pay to UBC any amount payable by the Licensee to UBC as Program Fees under this Agreement and will reimburse UBC for all costs and expenses incurred in connection with the audit or review. The remedies in this section 3.7 will be in addition to any other remedies available to UBC under this Agreement or applicable laws.
- 3.8 The Licensee acknowledges and agrees that UBC may use the information in the Summary Reports for the following purposes:

- (a) for planning and analysis purposes with respect to transportation and curbside management on Campus;
- (b) to determine whether the Licensee is in compliance with the terms of this Agreement; and
- (c) to determine the applicable fees payable by the Licensee under this Agreement.

3.9 UBC agrees that, for the duration of this Agreement and for a period of three (3) years following the termination of this Agreement, it shall not use or disclose to any third parties the Summary Reports or any other information provided by the Licensee to UBC and marked as confidential (the “**Confidential Information**”) other than as necessary in the course of performance or enforcement of this Agreement. UBC will disclose Confidential Information only to its personnel having a need-to-know for the performance of this Agreement, provided UBC shall have entered into confidentiality agreements with any such personnel having obligations of confidentiality as strict as those herein prior to the disclosure to such personnel and shall cause all such personnel to adhere to said confidentiality obligations. UBC will protect Confidential Information using security precautions at least as great as the precautions it takes to protect its own confidential information and using no less than reasonable care. The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent certain Confidential Information is required to be disclosed by UBC as a matter of law or by order of a court, tribunal, or other administrative or regulatory body provided that UBC provides Licensee with prior written notice of such obligation to disclose. UBC will promptly upon discovery of any loss or unauthorised use or disclosure of Confidential Information notify Licensee in writing and take all necessary steps to mitigate the loss or unauthorised use or disclosure of Confidential Information. UBC shall retain material containing Confidential Information obtained in connection with this Agreement only so long as necessary in the course of performance of this Agreement or in enforcing or defending its rights or obligations under this Agreement or as otherwise required by law.

3.10 For greater certainty, Confidential Information will not include any information that: (i) was in UBC’s lawful possession prior to the disclosure by the Licensee, as evidenced by written records; (ii) is lawfully disclosed to UBC by a third party without restriction on the disclosure; or (iii) is independently developed by UBC without use of or access to the Confidential Information, as evidenced by written records.

4. **OPERATIONS AND USE OF CAMPUS**

4.1 The Licensee shall inform Drivers of the Traffic and Parking Rules, and any other rules or requirements established by UBC, as UBC may determine in its sole discretion to update, add or change (“**UBC Rules**”), if and when requested by UBC, and shall inform Drivers that, as part of the UBC Rules, (i) Drivers must not stop in any location within Campus except to actively pick up or drop off passengers and then only as permitted by UBC’s Traffic and Parking Rules; and (ii) UBC prohibits pick-up and drop-off activity in the following locations:

- (a) within off-street parking lots/garages unless in designated spaces for such activity;
- (b) within the protected pedestrian pathways and large common spaces of Campus;

- (c) where infringing upon or impacting transit operations, including within or adjacent to bus stops, exchanges, or layover facilities;
 - (d) where obstructing any part of a crosswalk, sidewalk, bike lane or other pedestrian or cycling facility;
 - (e) within or where blocking streets or roadways, loading zones, laneways, fire access routes or lanes, driveways, curb ramps or building entrances;
 - (f) where blocking access to:
 - (A) street furniture, including without limitation, benches, parking pay stations, bus shelters and transit information signs; or
 - (B) services, including without limitation, utility services and fire hydrants;
 - (g) on private property without a separate agreement;
 - (h) within any non-publicly accessible spaces;
 - (i) where prohibited under UBC's Traffic and Parking Rules;
 - (j) where otherwise prohibited by UBC; and
 - (k) where otherwise creating a safety hazard
- (collectively, the "**Restricted Locations**").

4.2 UBC will use reasonable efforts to promptly notify the Licensee of any material changes to the UBC Rules and shall allow Licensee a period of seven (7) days to communicate any such changes to Drivers.

4.3 UBC may designate pick-up and drop-off spots ("**PUDO Spots**") to provide orderly locations for Drivers to pick up and drop off customers of Transportation Network Services.

4.4 UBC will determine the location of PUDO Spots and will provide to the Licensee from time to time, at UBC's sole discretion, updated information about the location of all PUDO Spots, and, where applicable, associated restricted pick-up areas ("**Restricted Pick-up Areas**") in which trip requests must be "snapped" to the nearest PUDO Spots. The Licensee shall reflect the locations of the PUDO Spots in the Licensee's rider version of its smartphone application and shall ensure that pick-ups requested within Restricted Pick-up Areas are made only at designated PUDO Spots.

4.5 Upon request by UBC, the Licensee shall geofence and communicate the following to its Drivers and customers: (i) PUDO Spots within the Campus where trip starts or ends are required or encouraged; (ii) Restricted Pick-up Areas where pick-ups are made only at the designated PUDO Spots; (iii) Restricted Locations; and (iv) other areas or locations on the Campus as requested by UBC from time to time.

4.6 The Licensee shall comply with all applicable municipal, provincial, and federal laws with respect to affiliated Drivers while they are engaged in the Program.

5. **USER EXPERIENCE AND PROTECTION**

- 5.1 The Licensee will use commercially reasonable efforts to ensure that Drivers operate the “**Vehicles**” (meaning any motor vehicle operated by a Driver as part of the Program) in accordance with all applicable laws, the Traffic and Parking Rules and any other applicable UBC Rules.
- 5.2 The Licensee will comply with all applicable laws, including, without limitation, all applicable data and privacy laws, and with the Traffic and Parking Rules and any other applicable UBC Rules.
- 5.3 The Licensee acknowledges that UBC is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia). In the event that UBC receives a *Freedom of Information and Protection of Privacy Act* request in connection with this Agreement, UBC will use reasonable efforts to promptly notify the Licensee.

6. **ADVERTISING AND SPONSORSHIP**

- 6.1 The Licensee shall retain its own brand identity and the Licensee will not suggest any direct affiliation with, nor have the right to use, UBC’s name, logos or trademarks in any material, including without limitation any promotional or advertising material, without the prior written consent of UBC to each instance of such use. In particular, and without limiting the generality of the foregoing, sponsorship and third party advertising by the Licensee with respect to the subject matter of this Agreement, including, without limitation, the Program, is prohibited, except where UBC has agreed in a separate agreement with the Licensee to permit such sponsorship and/or third party advertising. For greater certainty, and notwithstanding anything to the contrary in this Section 6.1, the Licensee may indicate to customers that it provides Transportation Network Services on Campus without further written consent from UBC.
- 6.2 UBC and the Licensee shall make all reasonable efforts to coordinate the communication and promotion of the Program with each other so that each is aware of the other’s intentions with regard to issuing press releases, responding to media inquiries, and printed or electronic advertising or social media campaigns.

7. **INDEMNITY AND RELEASE**

- 7.1 The Licensee shall indemnify, defend and save harmless UBC and its employees, directors, governors, senators, officers, agents, and affiliates (collectively, the “**UBC Indemnitees**”) from and against any and all liabilities, damages, losses, liens, charges, claims, demands, payments, suits, causes of action, proceedings, actions, recoveries and judgments, including without limitation all expenses and reasonable legal fees incurred in connection therewith (collectively “**Claims**”), which arise out of or result from the Program or this Agreement, except to the extent such Claims are caused by the negligence or wilful misconduct of the UBC Indemnitees.
- 7.2 Notwithstanding anything to the contrary in this Agreement, neither party shall be liable for any indirect, special, incidental, punitive or consequential damages (including any damages for lost profits or revenues) arising out of any matter or incident related directly or indirectly to this Agreement.

8. **INSURANCE**

- 8.1 The Licensee will, at its own expense, obtain and maintain in full force and effect commercial general liability insurance in an amount not less than \$5,000,000 per occurrence and \$5,000,000 in aggregate for bodily injury and property damage, and also commercial automobile liability insurance for owned, hired and non-owned vehicles for bodily injury and death for limits of five million dollars (\$5,000,000) each accident combined single limit, and any other insurance required by applicable laws. The Licensee will ensure that its commercial general liability and commercial automobile liability insurance policies described herein include UBC, its officers, governors, senators, employees and agents as additional insureds.

9. **NOTICE**

- 9.1 Notices shall be made by email to UBC at info.planning@ubc.ca and to the Licensee at the email address provided by the Licensee in its application for the TNS Permit.

10. **GENERAL**

- 10.1 All sums of money expressed in this Agreement are expressed in lawful money of Canada.
- 10.2 The Licensee agrees to execute any further and other documents and instruments and to do any further and other things that may be reasonably necessary to implement and carry out the intent of this Agreement.
- 10.3 The Licensee will not assign its rights or interest in this Agreement without the prior written consent of UBC, which consent may be withheld in UBC's sole discretion.
- 10.4 Time will be of the essence of this Agreement.
- 10.5 Nothing contained in this Agreement creates the relationship of principal and agent or of partnership, joint venture or business enterprise or other entity between the parties or gives the Licensee any power or authority to bind UBC or any of its assets or property in any way.
- 10.6 Nothing contained or implied herein prejudices or affects UBC's rights and powers in the exercise of its functions pursuant to the *University Act* or its rights and powers under any other enactments, UBC policies, procedures, rules and guidelines, all of which may be fully and effectively exercised as if this Agreement had not been entered into.
- 10.7 This Agreement will be construed in accordance with the laws of British Columbia and the parties shall attorn to the jurisdiction of the British Columbia courts. Any references in the Agreement to any law, by-law, rule, regulation, requirements, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.
- 10.8 No condoning, excusing or waiver by any party of any default, breach or non-observance by any other party under this Agreement at any time in respect of any agreement, covenant, representation, warranty, or condition herein contained will operate as a waiver of that party's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the right of that party in respect of any such continuing or subsequent default, breach or non-observance and no waiver

will be inferred from or implied by anything done or admitted to be done by the party having those rights.

- 10.9 Section 1.2(d), Section 1.3, Part 3, Section 5.3, Part 7, Part 8, Part 10, and any other section of this Agreement which by its nature is continuing notwithstanding expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.
- 10.10 If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to any person or circumstances other than those in which it is held invalid or unenforceable shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SCHEDULE "A"

Program Fees:

Pursuant to Section 3.1 of the Agreement, the Licensee will pay the following fees with respect to the operation of the Program (the "Program Fees"):

None

UBC will calculate the Program Fees using the data in the Summary Reports provided by the Licensee in accordance with this Agreement.

Figure 1 – Campus Boundary:

