

## MCITY ACCESS AND AUXILIARY SERVICES AGREEMENT

This Mcity Access and Auxiliary Services Agreement (the "Agreement") is made effective as of \_\_\_\_\_, 2021 (the "Effective Date") between The Regents of the University of Michigan, a Michigan constitutional corporation ("University"), located in Ann Arbor, Michigan, USA, 48109 and \_\_\_\_\_ ("User"), a \_\_\_\_\_ corporation with offices at \_\_\_\_\_.

**A.** University has a fenced-in facility located at its North Campus Research Complex, Ann Arbor, Michigan suitable for testing of wirelessly connected and autonomously controlled motor vehicles ("Mcity") along with certain storage facilities and administrative facilities (collectively, including Mcity, the "Premises").

**B.** User desires use of some or all of these Premises for purposes of testing autonomously controlled motor vehicles and related technology.

In consideration of University granting permission to schedule use of certain of its facilities on the Premises, and the mutual promises stated below, University and User agree as follows:

### **1.0 Access and Auxiliary Services Use.**

#### **1.1 Access.**

University will provide User access to designated Mcity areas on the Premises for general vehicle testing (the "Access") subject to the limitations and conditions of this Agreement. User's testing hours and locations must be scheduled and approved in advance by the facility management staff. Requests for Access beyond the standard hours of 8 am to 5 pm, Monday thru Friday or Saturday and Sunday may be approved on a weekly basis. User must be on site, ready to proceed within one hour of the scheduled start time for any reserved session and if not, forfeits Access for the balance of the scheduled session. Approved test hours and the surfaces available for Access may vary from test to test based on facility scheduled events. User will be responsible for additional charges related to User scheduled support overtime per Attachment A. When appropriate space is available, User's personal property ("Equipment") required for its testing may be stored overnight during active testing periods at a location(s) on the Premises designated by University ("User Temporary Storage"). All Equipment must be removed at User's expense within 24 hours of completion of the scheduled testing unless otherwise approved in writing in advance by the University.

#### **1.2 Auxiliary Services and Equipment.**

**1.2.1 Auxiliary Services** User will develop its own testing plans and provide qualified driver, fuel, oil, engineering, and garage services ("Auxiliary Services"). If use any of the mentioned Auxiliary Services are requested to be provided by University, including additional support by facility personnel, User must request in advance the services or support through facility staff. The fees for Auxiliary Services are provided in Attachment A.

**1.2.2 Auxiliary Equipment** User must bring and use its own equipment,

including scientific measuring and testing equipment. ("Auxiliary Equipment"). If use of any of the mentioned Auxiliary Equipment which are owned by University are requested, including additional support by facility personnel, User must request in advance the equipment through facility staff. The fees for Auxiliary Equipment are provided in Attachment A. For any University owned equipment User would be taking the equipment "as-is", with no guarantee that it serves User's purposes, even if known by the University. As a condition of the University providing User access to Auxiliary Equipment, prior to accepting any University owned equipment for use the User must inspect it and satisfy itself that the equipment is safe and suitable for User's purposes.

### **1.3 Scheduling.**

User must submit all requests for Access and/or Auxiliary Services on forms provided by University. University will endeavor to promptly process all requests. Generally, University will not approve requests for Access or Auxiliary Services more than 1 month in advance. However, in the sole discretion of the University, requests for Access Use made more than a month in advance may be approved in whole or in part, subject to conditions as may be required by the University to allow flexibility for Mcity operations. University shall make reasonable efforts to meet User's timing requests for Access. However University may delay or refuse provision of Access for any reason. User's sole remedy for any delay or refusal to provide Access is the refund of any prepaid fees.

### **2.0 Fees and Payment.**

Fees for Access and Auxiliary Services ("Fees") are set forth in Attachment A. The University shall propose a new Attachment A before October 1st of each year during the Term of the Agreement and User shall have fifteen (15) days to object in writing to the new proposed Fees and, if User objects, this Agreement shall terminate as of November 1<sup>st</sup> of that year. If User does not provide any such written objection, the new Fees shall take effect beginning November 1st of that year. Payments shall be made within thirty (30) days of receipt of University's invoice. In the event that User requests additional services not on Attachment A, the parties shall mutually agree upon an acceptable fee for the service prior to creating any obligation to provide or pay for the service. Typically, costs for other services will be posted on-site and, if a service is requested by User and provided by University, the posted cost is the fee. User shall be liable to pay for scheduled Access whether used or not, unless the Access is cancelled by University. The amount to be paid by User does not include any sales, use, value-added, excise or other taxes or duties all of which are User's sole responsibility. To the extent that University incurs any such taxes or duties arising out of User's activities, User shall immediately pay the imposed tax. If University has already paid the tax, User will immediately reimburse University for the tax plus 10%. If the University is notified by the User at least two business days in advance that User is cancelling an Access session, the University will make reasonable efforts to schedule another paying user who will use the cancelled session and if scheduled, reduce User's obligation to the University on a pro rata basis. Furthermore, in the event the University does not propose a new Attachment A before October 1st of that applicable calendar year of the Term, the Fees shall remain unchanged and the University shall not have the opportunity to adjust the Fees until the following October 1st.

### **3.0 Duration of Agreement.**

This Agreement shall become effective and shall have a term (the "Term") beginning as the Effective Date and continuing until November 1, 2021. Thereafter, this Agreement shall automatically renew for up to three additional one year periods unless either party gives written notice of its decision to not renew at least 30 days prior to the end of the then current annual period.

#### **4.0 Loss/Damage.**

User bears all responsibility for loss of or damage to any Equipment on the Premises regardless of cause. User will be responsible for adequately insuring its Equipment against loss or damage, with the adequacy determined in User's sole discretion. User assumes all risks of dangerous conditions, if any, associated with the Access.

#### **5.0 Environmental.**

The obligations of User under this Section shall survive any termination or expiration of this Agreement. Nothing in this Agreement shall be deemed to be a waiver by User of any right now or in the future, at law or in equity, to seek contribution from any third parties, including University, for any costs and expenses incurred by User under this Section due to the acts of omissions of parties other than User.

##### **5.1 General Requirements.**

User, at its sole cost and expense, will:

- a) comply with all Environmental Laws and the University's Occupational Safety and Environmental Health ("OSEH") requirements relating to the use and operation of the Premises;
- b) keep the Premises free of any Hazardous Material except as may be necessary in the normal course of business;
- c) maintain a written inventory (including quantity) of Hazardous Material(s) stored, manufactured, processed, or otherwise used on the Premises by User, with the exception of fuel, oil and other fluids and substances used or accommodated within the test vehicles, and make that written inventory reasonably available for inspection and copying by University upon request.
- d) upon the discovery of an Environmental Condition:
  - i) as soon as practicable, but not later than two (2) business days after the discovery of the Environmental Condition, notify University of the Environmental Condition;
  - ii) prior to commencement of any non-emergency Response Activity or Remedial Action, submit a scope of work for it to University for review and comment;
  - iii) attempt to resolve in good faith any disputes with University regarding any

Response Activity or Remedial Action proposed to be completed by User;  
iv) perform Response Activity or Remedial Action as may be required by Environmental Law and University's reasonable requirements;  
v) comply with applicable Release (within the meaning of MCL 324.20101) reporting requirements;

e) upon request, provide University with every environmental report and all material environmental information regarding any Response Activity or Remedial Action or Release (within the meaning of MCL 324.20101) reporting completed by User related to the Premises.

f) not use any above-ground tank (including barrels and drums), of any size within or around the Premises without University's prior written consent.

g) not treat, discharge, dispose of, or permit the treatment, discharge or disposal of any Hazardous Material in, or, under, around, or above the Premises at any time except as may be required for Response Activity or Remedial Action for any Environmental Condition.

### **5.2 Conduct of User.**

If User generates, uses, transports, or stores, any Hazardous Material, User shall, at its own cost and expense, comply with all Environmental Laws relating to the Hazardous Material.

### **5.3 User's Indemnification.**

In addition to any other indemnification obligation in this Agreement and without limiting their scope, as related to activities arising out of or related to this Agreement, User shall reimburse, defend, indemnify, and hold harmless University, its regents, officers, employees, agents and students from and against any and all claims, response costs, losses, liabilities, damages, liabilities, costs, and expenses, including reasonable attorneys' and consultants' fees, to the extent arising out of and are caused by any or all of the following:

a) any Hazardous Material (other than a Pre-Existing Condition) which is or was actually or allegedly generated, stored, treated, released, disposed of, or otherwise located on or at the Premises or any portion thereof at levels or concentrations in excess of those levels or concentrations associated with the Pre-Existing Conditions as a result of the act or omission of User (regardless of the location at which such Hazardous Material is now or may in the future be located or disposed of), including, but not limited to any and all

(i) liabilities under any common law theory of tort, nuisance, strict liability, ultra-hazardous activity, negligence, or otherwise based upon, resulting from or in connection with any Hazardous Material;

(ii) obligations to take response, cleanup, or corrective action pursuant to any Environmental Laws; and

(iii) the reasonable costs and expenses of investigation or remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and

b) any actual or alleged illness, disability, injury, or death of any person, in any manner arising

out of or allegedly arising out of exposure to any Hazardous Material or other substances or conditions present at the Premises or any portion thereof at levels or concentrations in excess of those levels or concentrations associated with the Pre-Existing Conditions as a result of the act or omission of User (including, but not limited to, ownership, operation, and disposal of any equipment which generates, creates, or uses electromagnetic fields, x-rays, other forms of radiation and radioactive materials), regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and

c) any actual or alleged failure of User at any time and from time to time to materially comply with all applicable Environmental Laws or any permit issued thereunder;

d) any failure by User to comply with any obligation under this Article relating to an Environmental Condition for which User is remediating party;

e) User's failure to provide any information, make any submission, and take any step required by any relevant governmental authorities;

f) the imposition of any lien for damages caused by, or the recovery of any costs for, the remediation or cleanup of any Hazardous Material as a result of the act or omission of User;

g) costs of removal of any and all Hazardous Materials from all or any portion of the Premises, which Hazardous Materials came to be present at the Premises or any portion at levels or concentrations in excess of those levels or concentrations associated with the Pre-Existing Conditions as a result of the act or omission of User;

h) any spills, discharges, leaks, escapes, releases, dumping, transportation, storage, treatment, or disposal of any Hazardous Material arising out of any act or omission of the User resulting in levels or concentrations in excess of those levels or concentrations associated with the Pre-Existing Conditions on the Premises which occur during the Term of this Agreement, but only to the extent that the Hazardous Material originated from or were or are located on the Premises.

## **6.0 Repairs and Maintenance.**

a) During the Term User will:

- i) use the Premises only as allowed under Section 1;
- ii) keep the User Temporary Storage area, if any, safe, clean and proper condition;
- iii) make no alterations to the Premises, without the prior written consent of University except minor alterations such as moving the location of moveable signs or other roadside furniture may be made after oral consent of the University; and
- ii) reimburse University its reasonable costs for all repairs and replacements (including structural) arising out of User's acts or omissions.

b) University will make all repairs necessitated by University's acts, omissions, or negligence, and as required to maintain the Premises. University may enter any part of the Premises, including areas provided to User for its Equipment, at any time to:

- i) inspect the same,
- ii) with 48 hours' notice to User, exhibit the same to prospective Users, purchasers, lenders or licensees,
- iii) determine whether User is complying with all of its obligations hereunder,
- iv) supply janitor service and any other services to be provided by University to User hereunder,
- v) post notices of non-responsibility, and
- vi) make repairs required of University under the terms of this Agreement or repairs to any adjoining space or utility services or make repairs, alterations or improvements to any portion of the Premises.

c) User hereby waives any claim for damages for any injury or inconvenience to or interference with User's business, any loss of occupancy or quiet enjoyment of User Temporary Storage area or any other loss occasioned by University entry, except to the extent that the damage was caused by the negligence or wrongful acts of the University or its representatives. University shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (excluding any User vaults or safes located in the User Temporary Storage Area; and University shall have the right to use any and all means which University may deem proper to open any doors or gates in an emergency in order to obtain entry to any portion of the Premises, and any entry to spaces on the Premises obtained by University by any means shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer or an eviction, actual or constructive, of User from the Premises, or any portion.

#### **7.0 Indemnity.**

In addition to any other payment obligation in this Agreement and without limiting their scope, in consideration of University granting User permission to enter and use the Premises for the specified uses, User agrees to release, defend and hold harmless, University, its regents, officers, agents, employees, and students (collectively "Releasees") from any claim for damages from bodily injury, death, environmental damage or property damage, including without limitation damage to any Equipment, from whatever cause (other than to the extent such damage is caused by the gross negligence or willful misconduct of the University or its representatives), arising out of or relating in any way to claims arising out of this Agreement or activities on the Premises of User, its employees, agents, invitees, guests, and contractors. Claim includes without limitation any demand, lawsuit, administrative claim, regulatory actions, and other proceedings arising out of or related in any way to User's presence, or Equipment, in, on or about the Premises. To the full extent permitted by applicable law, User will pay Releasees for all expenses (including reasonable attorney fees, settlements, and judgments) incurred by any of the Releasees in connection with such claims. User's obligation to release, hold harmless, defend and indemnify applies regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise.

**8.0 Insurance.** Please see Attachment B for the insurance requirements.

#### **9.0 Restoration.**

All activities, operations, or work performed by the User, its agents, employees, contractors and invitees on and about the Premises shall be conducted with the least possible inconvenience to the University or other users of the Premises; and upon the Agreement Termination Date or earlier termination as provided in Paragraph 21, User shall, at its sole cost and expense, promptly remove all property from the Premises not belonging to University including, but not limited to, materials and/or equipment, and to the extent changed by User, promptly restore the Premises to substantially the condition existing as of the Effective Date, reasonable wear and tear excepted, free and clear of debris and in "broom clean condition". The University, at User's sole expense, will dispose of any User property remaining on the Premises fifteen (15) days after termination of this Agreement. User shall return all keys and security badges upon the termination date or earlier termination, as provided in Paragraph 21. The provisions of this paragraph shall survive the expiration or early termination of the Agreement.

#### **10.0 University Services.**

- a) University shall maintain the Premises in reasonably good order and condition. Damage caused in whole or part by the act or omission of User will be repaired by University at User's expense, to the extent it arose out of acts or omissions of the User or its representatives. All such work will be performed by University and billed to User at a reasonable rate.
- b) University shall manage, operate and administer the Premises; and will manage and maintain the Premises emergency procedures and equipment, including but not limited to posting evacuation diagrams, running annual evacuation drills, and recording and performing routine maintenance tests for fire extinguishers, sprinklers, and alarms. User, its agents, customers, employees and invitees, shall have the non-exclusive right in common with University and all others to whom University has granted or may hereafter grant rights to use the common areas.
- c) University shall not be liable or responsible for any interruption in any services that are due to causes beyond University's reasonable control. University reserves the right to stop the service of the air conditioning, plumbing, electrical, or other mechanical systems or facilities on the Premises when necessary by reason of accident or emergency, or for repairs, alterations, replacements, or improvements, which, in the judgment of University, are desirable or necessary until the repairs, alterations, replacement, or improvements shall have been completed. If University shall stop or interrupt the service pursuant to this paragraph, and the interruption should last for longer than five (5) business days, User shall have the right to terminate this contract without any liability to University.

#### **11.0 WARRANTY DISCLAIMER.**

ACCESS AND AUXILIARY SERVICES ARE PROVIDED ON AN "AS-IS" BASIS AND USER'S USE OF THE PREMISES, ACCESS OR AUXILIARY SERVICES IS AT ITS OWN RISK. UNIVERSITY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES OR GUARANTEES OF RESULTS, INCLUDING WARRANTIES OF FITNESS FOR PURPOSE OR OF MERCHANTABILITY FOR ANY ACCESS OR SERVICES WHICH MAY BE PROVIDED UNDER THIS AGREEMENT.

## **12.0 LIMITATION OF LIABILITY.**

IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OR EXPENSES (INCLUDING LOST PROFITS OR SAVINGS) ARISING OUT OF THE ACCESS OR SERVICES EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE.

## **13.0 Basis of the Bargain.**

The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement represent the parties' agreement as to the allocation of risk between the parties in connection with University's obligations under this Agreement and that the limitations, exclusions and disclaimers will survive and apply even if found to have failed of their essential purpose. The parties acknowledge that University entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and that they form an essential basis of the bargain between the parties.

## **14.0 Security/Confidentiality.**

User will comply with all safety and security guidelines applicable to the Premises. User agrees to maintain the confidentiality of any non-public University or third party information that it obtains that arises out of the Access or Auxiliary Services including specifics related to the design and operation of Mcity. User agrees that University may retain copies of any information or data generated by University and/or stored on University equipment for University purposes, including maintaining and troubleshooting operational capabilities of the facility. User acknowledges that University, its affiliates and suppliers may be developing similar or competitive technologies to those of User involved in the Access or Auxiliary Services and User waives any claim of intellectual property infringement except to the extent that patent rights are infringed or the University or its Agents misappropriate User's confidential information. Aerial based recording systems are not permitted, without prior approval from the University.

## **15.0 Training.**

User will comply with any training requirements applicable to the Access and Auxiliary Services. All drivers provided by User to conduct testing at the Premises shall complete the Safety Training Program, consisting of a class-room track safety orientation, quiz, and track tour. A valid motor vehicle operating license meeting State of Michigan standards to drive a motor vehicle within the state of Michigan must be verified. Severe testing, such as limit handling, is never permissible at Mcity. University shall have the right to exclude any driver in University's sole discretion. User agrees that the Safety Training Program is provided "as-is" and that neither the Safety Training Program nor University's permission for a driver to operate shall increase University's liability under this Agreement.

## **16.0 Governing Law.**

This Agreement shall be governed by and construed under the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions asserted



against University shall be brought in the Michigan Court of Claims. User, its successors and assigns, consent to the jurisdiction of a court with applicable subject matter jurisdiction sitting in the state of Michigan with respect to any claims arising under this Agreement.

#### **17.0 Dispute Resolution.**

In the event of a dispute between the parties relating to this Agreement, the one raising the matter in dispute will notify the other in a written notice describing in sufficient detail the nature of the dispute. Each party will then appoint one or more representatives to resolve the dispute. These representatives will promptly meet and negotiate in good faith in an effort to reach a fair and equitable settlement. At the end of 60 days, if no settlement has been reached, either party may end discussions, declare an impasse, and pursue any other legal remedy.

#### **18.0 Compliance with Law/Rules and Regulations.**

The User shall, in the exercise of the rights and privileges granted by this Agreement, adhere to and comply with all laws, ordinances, rules and regulations, including, without limitation, any University rules, regulations or Mcity posted policies or procedures, applicable to User's activities, operations and work performed upon, or use of, the Premises.

#### **19.0 Use of Names.**

User shall not state or imply in any publication, advertisement or other medium that the test results, or any product or service bearing any of the User's or User's customers' names or trademarks has been approved or endorsed by University. User shall not use the name of University or any University employee or agent or make reference to the Access or Auxiliary Services in any publicity without the prior written approval of University. The University will not use the name of User in any publicity without the prior written approval of User.

#### **20.0 Results.**

In addition to any other indemnification obligation in this Agreement and without limiting their scope, when any claim arises out of any User decision to act or refrain from acting arising out of Access or Auxiliary Services, User shall indemnify, defend, and hold harmless University from User's use or inability to use the test results, including any loss, damage or liabilities that may result from any claims by:

- a) User's customers, distributors, or resellers of User's products;
- b) User's employees or agents;
- c) User's vendors or suppliers; or
- d) User's shareholders and parties having a financial interest in User.

#### **21.0 Termination/Default.**

This Agreement shall cease and terminate, without requiring any further documents upon (a) the completion of the term of this Agreement, or (b) fifteen days' notice of termination in

writing to the other for any reason. Also, in the event User is in default with respect to any of its obligations hereunder and User fails to cure the default within fifteen (15) days of notification of the default, University may immediately terminate this Agreement upon giving written notice to User. Upon termination, University may, in accordance with the terms of this Agreement, repossess any portion of the Premises used by User, evict User and all persons claiming under and through User, with notice and hearing as may be deemed proper by a court of the appropriate jurisdiction, and remove any effects, without being guilty of trespass and without prejudice to any remedies which may be available for arrears of Rent or for User's breach of a covenant. User shall be liable for fees, charges and reimbursements up to the date of termination and for any costs incurred or committed as of the date of termination, including costs associated with termination requested by User. User agrees to pay all costs within thirty days of receipt of a finalizing invoice. In the event this Agreement is terminated by the University without cause prior to the Agreement termination date, University shall refund to the User the unused and paid portion of the Access fee for approved scheduled Access on a prorated basis with a setoff for any charges User may owe University. Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty, choice of law, jurisdiction, and venue.

## **22.0 Confidentiality.**

- a) Each party ("the disclosing party") acknowledges that the other party ("the receiving party") may have access to certain valuable information ("Information") belonging to the disclosing party which the disclosing party considers confidential, including without limitation: test event data and vehicles, parts and supplies of any kind, correlation studies, blueprints or any likeness or representation of any portion of the Premises, information concerning the Premises, the test track layout, dimensions of events, and event layout, methods and processes for operation of the Premises, methods and processes for testing, evaluating and correlating test results; computer programs, user manuals, testing plans, business plans, customer lists, and other trade secrets.
- b) The receiving party will not disclose such confidential Information to third parties or use such confidential Information for its own benefit, or for the benefit of third parties, except as required to perform its obligations under this Agreement. The receiving party shall disclose confidential Information only to those of its employees and representatives who need to know such information for the purpose of this Agreement, and shall ensure that its employees observe the confidential obligations of this section. The receiving party acknowledges that all rights in confidential Information remain in the disclosing party.
- c) This agreement imposes no obligation of confidentiality upon the receiving party with respect to any portion of the confidential Information which: (i) now or hereafter, through no act or failure to act on the receiving party's part, becomes generally known or available; (ii) is known to the receiving party at the time the receiving party receives same from a third party as evidenced by written records; (iii) is hereafter furnished to receiving party by a third party as a matter of right and without restriction on disclosure; (iv) is independently developed by the receiving party, provided that the person or persons developing same have not had access to the confidential Information as furnished by the disclosing party; or (v) is disclosed only to the extent required by legal process or other legal authority. User acknowledges that all applicable rights in all copyrights, trademarks, trade secrets, trade names, patents and other

intellectual property rights in or associated with the Facility or with User's business are and will remain exclusively in their respective owners.

- d) Except as otherwise allowed by this Agreement, University will not take pictures or any other action which would compromise the confidential nature of User property.
- e) University reserves the right to photograph whether or not confidential in nature for the purposes of documenting actual or potential damage to persons or property.
- f) Unless advance written permission is provided by the University, no persons on the Premises may reveal anything related to the Premises except the User may document and publish information concerning its own data and activity without any further permission from the University. As such, the user may bring no person from the media however described (bloggers, free lancers, newspapers, magazines, and so on) may come onto the Premises and disclose anything unless advance written permission from the University is obtained.

### **23.0 Notices.**

All notices provided for or desired to be sent by the parties shall be in writing, and shall be deemed to have been fully given when deposited in the United States mail via prepaid certified mail, or by prepaid overnight mail delivery service providing written evidence of delivery, and addressed as follows:

- a) If to University: Mcity Manager, 2905 Baxter Road, Ann Arbor, Michigan, 48109-2150
- b) If to User: [INSERT]

### **24.0 Excusable Delays.**

Neither User nor University shall be liable for a failure to perform that arises from causes or events beyond its reasonable control and without its fault or negligence.

### **25.0 Independent Contractor.**

Each party is an independent contractor to the other in the performance of this Agreement. Nothing contained in this Agreement is intended to create any other relationship or be construed as giving either party authority to represent the other.

### **26.0 Severability.**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

### **27.0 Definitions.**

**Environmental Condition** means the presence of a Hazardous Material on, in or under the Premises that is not a Pre-Existing Condition.

**Environmental Law** means any federal, state or local law, statute, code, ordinance,

regulation, rule, judgment, order, decree, injunction, permit or restriction, relating to the environment or Hazardous Substances (including but not limited to ground, air, water, or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Michigan Natural Resources and Environmental Protection Act, MCLA Chapter 324, as amended; the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by the Superfund Amendment and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Sec 300 et seq.; the Rivers and Harbors Act, 33 U.S.C. Sec. 401 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Sec. 11001 et seq.; and the Oil Pollution Act of 1990, 33 U.S.C. Sec. 2701 et seq.

**Hazardous Material** means any toxic, radioactive, flammable, explosive, corrosive, reactive substance, waste or material that may be hazardous to human health or the environment, or any substance, waste or material having any constituent elements displaying any of the foregoing characteristics including petroleum, its derivatives, by-products and other hydrocarbons, and any substance, waste or material regulated under any Environmental Law (including any substances, wastes or materials identified as "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

**Pre-Existing Condition** means the presence of a Hazardous Material on, in or under the Premises as disclosed in an environmental site assessment report(s), if any, attached hereto.

**Response Activity** means evaluation, interim response activity, Remedial Action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of community health and enforcement actions related to any Response Activity.

**Remedial Action** means, but is not limited to, cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment, monitoring, maintenance, or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment.

**User** means the named party.

## **28.0 Entire Agreement.**

All the terms and conditions of this Agreement are embodied in this Agreement and no other terms and conditions shall be considered a part of it unless expressly agreed upon in writing.

## **29.0 Miscellaneous.**

This Agreement may not be changed orally but only by an instrument in writing signed by both University and User. User certifies, represents, and declares that it has no title in and to the Premises or to any portion of it and has not, does not, and will not claim any title, any easement, or any property right however characterized over the Premises. No failure by University or User to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, power or remedy consequent upon a breach of this Agreement constitutes a waiver of the breach or of the covenant, agreement, term or condition. No waiver of any breach affects or alters this Agreement, and each and every covenant, agreement, term, and condition of this Agreement continues in full force and effect with respect to any other then existing or subsequent breach.

**IN WITNESS**, the parties have signed this Agreement as of the day and year first above written.

<b>REGENTS OF THE UNIVERSITY OF MICHIGAN</b>	<b>USER</b>
By:	By:
Date:	Date:
	User Name:
	User Address:

## **ATTACHMENT A – SCHEDULE OF FEES**

Please download the applicable rate sheet according to your Mcity membership level.

## ATTACHMENT B - INSURANCE REQUIREMENTS

User shall procure and maintain insurance continuously throughout the term of the agreement from companies listed in the current "Best's Insurance Guide" as possessing a minimum policy holders rating of "A-"(Excellent) and a financial category no lower than "VI"(\$25,000,000 to \$50,000,000 of adjusted policy holders' surplus) the following insurance which shall cover User activities under this Agreement whether the activities be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

### Liability Insurance

- a) Statutory Workers' Compensation Insurance for statutory limits or a State certificate of self-insurance and Employer's Liability insurance with limits of not less than \$1,000,000 per accident basis or occurrence.
- b) Occurrence type commercial general liability insurance, including blanket contractual coverage, for bodily injury including death, personal injury and property damage with limits of not less than \$5 million combined single limit per occurrence and general aggregate.
- c) Business automobile liability insurance covering all owned, non-owned and hired vehicles, with limits of not less than \$5 million combined single limit per accident basis or occurrence.

**NOTE:** With the exception of Workers' Compensation, the commercial general liability and business automobile liability listed above must name University as an additional insured under the policy(s), which may be met through a blanket additional insured basis.

The commercial general liability and business automobile liability insurance policies of the User shall be primary to, and will not be excess to or contributory with, any self-insurance or insurance policies carried by University. The User shall provide at least 30 days' prior written notice to University in the event of insurance cancellation or material alteration of the policy. User shall furnish to University an acceptable certificate of insurance evidencing the required coverage required. The furnishing of acceptable evidence of required coverage does not relieve User from any liability or obligation for which it is otherwise responsible to University.

User may substitute self-insurance or a captive insurer to meet these requirements, subject to University reasonable approval. Please provide a letter of self-insurance explaining the self-insurance mechanism. User may also use an umbrella policy to meet the limits required by this Attachment.

User shall require that its subcontractors procure and/or maintain insurance coverage at the limits described above. User shall be primarily and fully responsible for any cost to University regardless of any subcontractor's obtaining or failing to obtain and/or maintain the required insurance.