CONTRACT FOR GOODS AND SERVICES

BY AND BETWEEN

METROPOLITAN AREA PLANNING COUNCIL

AND

PAYBYPHONE TECHNOLOGIES, INC.

This AGREEMENT, dated [April 9, 2018], is made and entered into by and between the Metropolitan Area Planning Council ("MAPC"), a public body politic and corporate, established by Chapter 40B, Sections 24 through 29 of the Massachusetts General Laws, with its principal office located at 60 Temple Place, Boston, Massachusetts 02111, acting as the collective purchasing agent for the Massachusetts Bay Transportation Authority ("MBTA"), and the following regional planning agencies, on behalf of 329 municipalities that they represent: Berkshire Regional Planning Commission, Cape Cod Commission, Central Massachusetts Regional Planning Commission, Franklin Regional Council of Governments, Martha’s Vineyard Commission, Merrimack Valley Planning Commission, Nantucket Planning and Economic Development Commission, Northern Middlesex Council of Governments, Old Colony Planning Council, Pioneer Valley Planning commission, Southeastern Regional Planning and Economic Development District (to be referred to hereafter as the "BUYER" in their individual legal capacity). Such collective purchasing has been accomplished pursuant to M.G.L. c. Chapter 7, Section 22B of the Massachusetts General Laws and without liability to MAPC, and PayByPhone Technologies Inc. ("VENDOR"), with its principal office located at 403-1168 Hamilton Street, Vancouver, BC V6B 2S2.

RECITALS

WHEREAS, MAPC has, on behalf of the above named BUYERS, has conducted a procurement to enable BUYERS to purchase Mobile Parking Payment Systems (RFP # MAPC 2018 Mobile Parking Payment Systems, hereinafter ("RFP")); which procurement was conducted pursuant to M.G.L. c. 30B; and,

WHEREAS, VENDOR proposal has been evaluated and selected by the MAPC Evaluation Team to provide Mobile Parking Payment Systems to any of the above listed BUYERS; and,

NOW THEREFORE, in consideration the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:
TERMS AND CONDITIONS

Article I

General Description of the Work

1. Pursuant to the Terms and Conditions of this AGREEMENT and those Special Terms and conditions listed in Exhibit C, the Request for Proposals ["RFP"] – RFP # MAPC 2018 Mobile Parking Payment Systems referenced attached in Exhibit B; and the VENDOR’S Price Proposal and Technical Proposal referenced in Exhibit D, MAPC hereby authorizes BUYERS to engage the VENDOR to provide Mobile Parking Payment Systems to the BUYERS.

Article II

Services of the VENDOR

2. The VENDOR will provide the goods and/or services as described in the RFP and its response thereto and VENDOR will, if required by the BUYER, negotiate an SOW and/or municipal contract.

3. The VENDOR shall report, and be responsible to MAPC or its designee to comply with all requirements set forth in The Contract Administration Fee which has been included herein as Exhibit E.

4. There shall be no amendment to this AGREEMENT without the written approval of MAPC. MAPC shall be under no obligation to pay for any goods provided or services performed by the VENDOR.

5. The VENDOR represents and warrants to MAPC as follows:

   i. That it and all its personnel (whether employees, agents or independent) are qualified and duly licensed as required by Massachusetts state law and/or local municipal code to provide services and/or goods required by this AGREEMENT.

   ii. That it further agrees to perform services, including any manufacturing, in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.

   iii. That it will obtain any and all permits, bonds, insurances and other items required for the proper and legal performance of the work.

11 Exhibits B (the RFP) and D (Vendor’s proposal) referenced herein shall be in name only. MAPC retains the original copies of the RFP and the Vendor’s Proposal. These documents are hereby incorporated and annexed to this AGREEMENT.
iv. That it is not a party to any AGREEMENT, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this AGREEMENT.

Article III

Performance of the VENDOR

6. In the performance of services under this AGREEMENT, the VENDOR acts at all times as an independent contractor. There is no relationship of employment or agency between MAPC, on the one hand, and the VENDOR on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this AGREEMENT which the parties view as consistent with their independent contractor relationship.

7. The VENDOR agrees to be responsible for and warrantee the work of its subcontractors listed in Exhibit F and to ensure their compliance with all legal, quality and performance requirements of the Request for Proposals ["RFP"] – RFP No. attached in Exhibit B; and the VENDOR'S Price Proposal and Technical Proposal attached in Exhibit D. The VENDOR agrees that it may not use subcontractors not named in Exhibit F without the prior written consent of MAPC, which consent will not unreasonably be withheld.

8. VENDOR agrees that it will meet with MAPC quarterly (or a lesser period of time as determined by MAPC) to discuss the status of any implementation and review any concerns. Such meetings can be either in person at the MAPC office, or it may be conducted remotely. VENDOR shall prepare a written status report and send such written report to MAPC four (4) business days in advance of the meeting.

Article IV

Time of Performance and Liquidated Damages

9. Time shall be of the essence in relation to VENDOR'S performance under this AGREEMENT. VENDOR shall complete performance as promised in its quote that accompanies BUYER'S purchase order or other document confirming its authorization to the VENDOR to proceed. Reasonable extensions shall be granted by the BUYER at the written request of the VENDOR, provided the justifying circumstances are documented by and are beyond the reasonable control of VENDOR and without fault of VENDOR. In the event of such an extension, all other Terms and Conditions of this AGREEMENT, except the dates of commencement and completion of performance, shall remain in full force and effect between the parties unless modified in writing.
10. MAPC and VENDOR agree that the economic damage suffered by BUYER as a result of delay in the successful implementation of BUYER'S Mobile Parking Payment Systems is not readily ascertainable. Where delay is solely attributable to VENDOR, BUYER may elect to impose liquidated damages as set forth herein. Liquidated damages shall be due to BUYER in the amount of 0.1% (one-tenth of one percent) of the face value of the VENDOR'S quoted or modified purchase price for each day performance exceeds the promised date(s). Such liquidated damages may be acknowledged in VENDOR'S final invoice or taken by BUYER as a deduction to such final invoice. In the event that VENDOR'S, final implementation of its system fails to perform in accordance with the RFP and VENDOR'S proposal, BUYER shall, in writing, advise VENDOR of such failure to comply. VENDOR shall be given a 2 (two) week period to cure such failure. If VENDOR has not been able to cure such failure within 2 (two) weeks post written notice, BUYER may invoke liquidated damages, which shall include the assessment calculated above, as well as to require VENDOR to assume fiscal responsibility to recompense VENDOR for the cost of cover to engage a subsequent VENDOR to provide Mobile Parking Payment Systems.

11. Any dispute in the amount of liquidated damages shall be submitted to arbitration by either BUYER or VENDOR through the American Arbitration Association within 10 (ten) business days of written notice given by the party declaring impasse. BUYER and VENDOR agree to fully comply with the arbitrator's decision within a reasonable time.

Article V

Revisions in the Work to Be Performed

12. If during the VENDOR'S Time of Performance, BUYER requires revisions or other changes to be made in the scope or character of the work to be performed, BUYER will promptly notify VENDOR in writing. For any changes to the scope or character or work, VENDOR shall provide BUYER with a written quote of change in price and/or change in time of performance and shall proceed with such changes only upon written consent of BUYER, which shall be construed as a modification to VENDOR's original purchase order.

13. BUYER will neither unreasonably request revisions nor will it unreasonably withhold final acceptance of delivered products.

Article VI

Term of AGREEMENT

14. The term of this AGREEMENT shall commence upon execution by MAPC, and it will continue until October 31, 2018, or until otherwise terminated as provided by this AGREEMENT or the RFP. MAPC, in accordance with the RFP, may elect to exercise 2 (two) 1 (one) year options to extend this AGREEMENT.
15. All Terms and Conditions of: This AGREEMENT and any amendments thereto; the RFP; VENDOR’S proposal and any amendments thereof, shall remain in full force and effect during the entire Term of this AGREEMENT and any extension thereto. Notwithstanding this provision, VENDOR may, in the event of MAPC’s exercise of the second extension, request that MAPC negotiate a reasonable cost escalation, which price cannot exceed 5% of the cost at the time of the request. VENDOR shall make such request in writing and demonstrate the basis for such price increase. MAPC will in good faith negotiate such price increase request. However, MAPC will not guarantee that the requested price increase will be accepted.

Article VII

Orders, Fees, Invoices, and Payments

16. Orders, fees, invoices, and payment shall be processed and paid as specified in Sections 9.10 and 9.14- Terms & Conditions of the RFP.

Article VIII

Assignment

17. Neither party shall assign, transfer or otherwise dispose of this AGREEMENT or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

Article IX

Indemnification

18. VENDOR agrees to indemnify and save MAPC, The Commonwealth of Massachusetts and BUYERS harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by VENDOR (including all its employees or agents) in performing under this AGREEMENT, or any breach of the terms of this AGREEMENT, which constitute an obligation of VENDOR. VENDOR shall reimburse MAPC and BUYER for any and all costs, damages, and expenses including reasonable attorney’s fees which MAPC and BUYERS pay, or becomes obligated to pay, by reason of such activities or breach. The provisions of this Section shall be in addition to and shall not be construed as a limitation on any other legal rights of MAPC, BUYERS, and The Commonwealth of Massachusetts expressed or not expressed in the RFP and with respect to this AGREEMENT.
Article X

Insurance

19. Before performing under this AGREEMENT, the VENDOR shall obtain, and shall maintain throughout the term of this AGREEMENT, insurance at limits specified in the RFP and provide written documentation of such in the form specified in the RFP.

20. The VENDOR shall give MAPC 20 days (twenty) written notice and copies of documentation in the event of any change or cancellation of coverage.

Article XI

Termination of Agreement

21. Either MAPC or the VENDOR may terminate this AGREEMENT for cause upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill any material duty hereunder in a timely and satisfactory manner.

22. MAPC shall have the right to terminate this AGREEMENT for its convenience upon 14 (fourteen) calendar days of written notice.

23. MAPC shall have the right to terminate this AGREEMENT immediately in the event that MAPC, in its exclusive right determines that there has been a breach of security with regards to Personally Identifiable Information or Credit Card Data. MAPC shall bear no liability to VENDOR if it is ultimately determined that no breach occurred.

24. MAPC shall not be liable for payments for the services and/or expenses or lost profits of the VENDOR in the event of any termination.

25. The VENDOR shall remain liable for any damages, expenses, warrantees, or liabilities arising under this AGREEMENT (including its indemnity obligations) with respect to work performed pursuant to the AGREEMENT.

Article XII

Negotiation in the Event of Disputes

26. In the event of an unresolved dispute between BUYER and VENDOR, BUYER reserves the right to submit a written request to MAPC to work with the parties to resolve the dispute. Pursuant to this AGREEMENT, VENDOR is required to participate in good faith in such dispute resolution. BUYER and VENDOR would submit its positions in writing to MAPC. MAPC shall apply best efforts to resolve disputes in a fair and reasonable manner. Such
efforts shall include remote or in person meetings with either or both of the parties. Participation in dispute resolution does not obviate the parties' ability to seek any legal remedies after MAPC has been given 2 (two) weeks to attempt to facilitate issue resolution. Such resolution must be mutually agreed to in writing by the parties. MAPC will not be a party to any resolution nor will it become liable for any issue resolution between the parties.

Article XIII

Entirety of Agreement

27. This AGREEMENT, together with its Exhibits, the RFP referenced above and its Addenda, the required supplemental documents and any additional Exhibits, constitute the entire AGREEMENT between MAPC and the VENDOR with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, email, fax or courier to the persons designated in Exhibit A.

28. The provisions of the RFP and the VENDOR's Proposal are incorporated herein by reference. In the event of any conflict among the named Documents, the documents shall be construed according to the following priorities:

Highest Priority: Amendments to Contract (if any)
Second Priority: Contract
Third Priority: Addenda to the RFP (if any)
Fourth Priority: RFP
Fifth Priority: VENDOR'S Proposal

Article XIV

Severability

29. In the event any provision of this AGREEMENT is found by a court of appropriate jurisdiction to be unlawful or invalid, the remainder of the AGREEMENT shall remain and continue in full force and effect.
Article XV

Governing Law and Jurisdiction

30. This AGREEMENT shall be governed by, construed and enforced in accordance with laws of the Commonwealth of Massachusetts. MAPC, BUYER, and VENDOR agree to submit their respective jurisdiction and venue to the state and federal courts in the Commonwealth of Massachusetts to resolve any disputes or disagreements that may arise under any provision of this AGREEMENT.

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Article XVI

Notice

31. Except as otherwise expressly provided in this AGREEMENT, any decision or action by MAPC relating to this AGREEMENT, its operation, or termination, shall be made only by MAPC or its designated representative identified in Exhibit A.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their duly authorized officers on the date written below.

For MAPC and any VENDOR identified herein:

\[ \text{Signature} \]
\[ \text{Name} \]
\[ \text{Title} \]

For the VENDOR:

\[ \text{Signature} \]
\[ \text{Name} \]
\[ \text{Title} \]

\[ \text{Date} \]

\[ \text{Date} \]

* Affix Corporate Seal

(or mark “n/a”)
## EXHIBIT A

### Notice Addressees

**For MAPC:**

| Name          |  
|---------------|---
| Rebecca Davis | 
| Deputy Director |  
| Title | 
| MAPC | 
| Organization | 
| 60 Temple Place | 
| Street Address |  
| Boston, MA 02111 | 
| City, State, ZIP |  
| 617.933.0708 | Phone 
| 617.482.7185 | Fax 
| r dav is@MA PC.org | e-mail |

**For the VENDOR:**

| Name          |  
|---------------|---
| Jules Marshall | 
| Director of Finance | 
| Title | 
| PayByPhone Technologies Inc. | 
| Organization | 
| 403-1168 Hamilton Street | Street Address 
| Vancouver BC Canada V6B 2B2 | 
| (604) 647-4286 | Phone 
| (566) 256-5401 | Fax 
| finance@paybyphone.com | e-mail |
EXHIBIT B

Request for Proposals

RFP # MAPC 2018 Mobile Parking Payment Systems

(Incorporated by Reference)
EXHIBIT C

Special Terms & Conditions

1. **VENDOR** attests to and warrants any and all representations made in **VENDOR's** Complete Price and Complete Non-Price Proposals including, but not limited to, any and all representations and warranties made by it that exceed those of the manufacturers of products and assemblies used in its manufacture of subject apparatus and fitments.

2. **VENDOR** shall indemnify **VENDOR** for any and all loss of value of manufacturers' warranties incurred prior to **VENDOR**'s complete performance with regard to each individual **VENDOR**.

*** *** *** ***
EXHIBIT D

VENDOR’S PROPOSAL IN RESPONSE TO MAPC 2018 MOBILE PARKING PAYMENT SYSTEMS

(INCORPORATED BY REFERENCE)
EXHIBIT E

CONTRACT ADMINISTRATION FEE

Pursuant to Section 9.14 of the RFP, VENDOR will be responsible to pay MAPC a Contract Administration Fee to be calculated as follows:

A. If VENDOR is engaged by a “BUYER”, for Software as a Service (SaaS), whereby BUYER will pay an Annual Subscription Fee for the use and enjoyment of a Mobile Parking Payment System/Solution, then MAPC will be paid 1% of the value of the Annual Subscription Fee, which payment shall be made to MAPC within 10 business days of BUYER’S Subscription Payment to the VENDOR.

B. If VENDOR is engaged by BUYER for a fixed Software Licensing and Implementation Fee, then MAPC will be paid 1.5% of the total value of said fee. If thereafter VENDOR requires BUYER to pay an Annual Software Licensing Fee; then VENDOR will make payment to MAPC for .5% of the Annual Software Licensing Fee within 10 business days of BUYER’S payment to the VENDOR.

C. If after implementation, BUYER engages VENDOR in an Annual Support and Maintenance Agreement, then VENDOR will pay MAPC .5% of said fee within 10 business days of BUYER’S payment to the VENDOR.

D. If VENDOR is engaged by BUYER to provide its own or a third party Cloud Hosted Environment; then VENDOR will pay MAPC .5% of such fee within 10 business days of BUYER’S payment to VENDOR. If the Cloud Hosted Environment is an annual fee, after year one, VENDOR will make payment to MAPC .25% of such annual fee within 10 business days of BUYER’S payment to the VENDOR.

E. If VENDOR and BUYER enter into any of the above listed engagements, and they determine that fees will be paid on a monthly or quarterly basis; then VENDOR will make payment to MAPC in the allotted percentages within 10 days of BUYER’S payments to the Vendor.
EXHIBIT F

Vendor's Subcontractors

1.
EXHIBIT G

Other Documents:

1. Insurance Guarantee(s)___(to be provided By Vendor in order to effectuate Contract Execution)
CERTIFICATE OF INSURANCE
No 2018-00017

THIS IS TO CERTIFY TO:

Metropolitan Area Planning Council
60 Temple Place, 6th Floor
Boston, MA 02111

that the following described policy(ies) or cover note(s) in force at this date have been affected to cover as shown below:

NAMED INSURED: PayByPhone Technologies Inc.
ADDRESS: 403-1168 Hamilton Street, Vancouver, BC V6B 2S2

Description of operations and/or activities and/or locations to which this certificate applies:
All operations usual to the business of the Named Insured

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<th>TERM</th>
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Limits are in CAD Currency
- Each Occurrence: $1,000,000
- General Aggregate: $2,000,000
- Tenant's Legal Liability: $1,000,000
- Non-Owned Automobile: $1,000,000
- Products/Completed Operations Aggregate: $2,000,000
- Employers Liability: $1,000,000

(Includes: Blanket Additional insured Endorsement, Contractual Liability and Cross Liability)

Additional Information
This certificate is issued as a matter of information only and is subject to all the limitations, exclusions and conditions of the above-listed policies as they now exist or may hereafter be endorsed.

Should one of the above-noted policies be cancelled before the expiry date shown, notice of cancellation will be delivered in accordance with the policy provisions.

Limits shown above may be reduced by Claims or Expenses paid.

BFL CANADA Risk and Insurance Services Inc.

Authorized Representative
Alyssa Donity

Signed in Toronto this March 05, 2018