

## LICENSE, SERVICE AND PRODUCT USAGE TERMS AND CONDITIONS

These License, Service and Product Usage Terms and Conditions (the “Agreement” or “Terms and Conditions”, which shall include any and all schedules, addendums, or attachments incorporated herein, as well as all amendments or supplements of such documents and the Agreement) is entered into on \_\_\_\_\_ (“Effective Date”) by and between ITSA Solutions, LLC, a Delaware limited liability company (“BPE” or “Company”) and the undersigned third-party (“Customer”). BPE and Customer at times are each referred to herein as a “Party” and, collectively, as the “Parties.”

### RECITALS

A. The Company provides certain Services, Products and Applications, as defined herein, relating to The Barnacle Parking Enforcement System, as generally described at [www.barnacleparking.com](http://www.barnacleparking.com) (the “Parking Enforcement System” and such website, including any particular web pages relating specifically to the Customer, the “Website”).

B. As provided for in that certain order form between the Company and Customer, Customer has expressed interest to license certain technology, services and products from the Company relating to the Parking Enforcement System (such order form, as it may be amended or supplemented, the “Order Form”).

C. Company is willing to provide such technology, services and products, all pursuant to the terms of this Agreement.

### AGREEMENT:

NOW THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **1. Description of Services, Products, and Programs**

1.1 “Services” or “Applications”, as used in this Agreement, shall mean all services furnished by Company to Customer as set forth in any order form or other written purchase order between Company and Customer, that may include, without limitation, services relating to:

1.1.1 Barnacle® Enterprise Management System. The “Barnacle Enterprise Management System”, when used in this Agreement, shall mean the software application provided to Customer from Company in any form for Customer’s use in managing and applying the BPEDs, which use shall at all times be

subject to any terms and conditions or terms of use provided to Customer as part of its use of the Barnacle Enterprise Management System.

1.1.2 Interactive Voice Response (“IVR”) System. The “IVR”, when used in this Agreement, shall mean the automated telephone and voice response system that connects to the Barnacle Enterprise Management System that is offered by the Company to the Customer for Customer and Customer’s third-party end-users to obtain unique codes to release a BPED from such third-party end-user’s vehicle.

1.1.3 Web Payment Application. The “Web Payment Application” provides access to a web based application for the payment of fines by a third-party end-user or motorist. The Web Payment Application connects with the Barnacle Enterprise Management System to provide Customer’s third-party’s end-user unique codes to use in releasing a BPED from such third-party end-user’s vehicle.

1.2 “Products”, as used in this Agreement, shall mean the Barnacle Parking Enforcement Device (“BPED”) or any other tangible products provided from Company to Customer.

1.3 “Payment-Processing”, as used in this Agreement, shall mean the Payment Processing service provided to Customer for processing payment of any fines. Payment Processing will perform all of the steps necessary to pre-authorize a motorist’s credit card, debit card, and obtain payment for the fines owed to Customer and applicable deposit.

1.4 Customer Programs. The Company intends to provide the Services and Products to the Customer by offering certain “Customer Programs”, which Programs shall include terms relating to pricing, minimum usage, system access, and other terms. The Customer Program applicable to Customer shall be as set forth in that certain Order Form between Customer and the Company. For the avoidance of doubt, unless specifically provided otherwise in this Agreement, Customer acknowledges and agrees that specific terms relating to a Customer Program applicable to such Customer may be provided to Customer from the Company through other communications (including e-mail, text message, or messages through the Applications, and such terms shall control as they relate to the Services and Products provided to Customer by the Company relating to that certain Customer Program.

## **2. General Use; Use Restrictions.**

2.1 Subject to the terms and conditions set forth in this Agreement and any applicable schedule, Customer is hereby granted a restricted, limited, revocable,

non-transferable, non-exclusive license to use the Services, Applications and Products, subject always to the following terms: (a) access will be limited to the permitted users identified by Customer from time to time, each of whom is an employee or authorized agent or contractor of Customer; (b) Customer's rights are personal, non-transferable, non-sub licensable, non-exclusive; and (c) access may be terminated and this license revoked by BPE upon any breach by Customer of this Agreement or any Web Site Policies or additional terms and conditions that may be set forth in separate schedules, statements, or other documents provided to Customer. The Applications, Services and Products provided by BPE to Customer shall be referred herein as the "Deliverables".

2.2. Except as expressly permitted herein or in any applicable schedule, Customer will not: (a) alter, modify or adapt the Deliverables including, but not limited to, translating or creating derivative works of the Deliverables or any data or content contained therein; or (b) distribute, resell, permit access to, publish, commercially exploit, disclose or otherwise transfer or make the Deliverables available to any other person or organization. Customer agrees that any user identifications, passwords or other entitlement information related to Customer's authorized users shall be maintained in confidence and used only by the user to which such information is assigned. Customer agrees to use the Deliverables only as expressly permitted by this Agreement and in accordance with all applicable laws, rules and regulations. Customer shall have no rights or license of any kind with respect to the Deliverables other than as set forth in this Agreement. Customer agrees that, upon reasonable notice during the term of this Agreement, BPE may, at its sole discretion, request documentation from Customer to confirm that Customer is in compliance with the terms and conditions of this Agreement. If BPE is required to bring any action or suit to enforce Customer's obligations hereunder or to pursue any remedies BPE may have for Customer's violation of terms and conditions set forth in this Agreement or on the Company's website, BPE shall be entitled to recover from the Customer, in addition to any other rights and remedies it may have, all reasonable costs and expenses, including without limitation all attorneys' fees for such suit and/or enforcement.

### **3. Proprietary and Confidential Information**

3.1 Company's Ownership of Intellectual Property. To the extent allowed under Chapter 119 Florida Statutes, and unless specifically provided in Section 2 above, Company retains all of its right, title and interest in all now known or hereafter known or developed tangible and intangible intellectual property, including without limitation, all: (a) rights associated with works of authorship throughout the universe, including, but not limited to, copyrights, moral rights and mask works; (b) trademarks, services marks, trade names and any other indicia of

origin; (c) technical and non-technical information (regardless of whether such information is in tangible or intangible form) including source code, object code, computer code, data, ideas, concepts, formulae, methods, techniques, processes, financial business plans and business methods (including any derivatives of any of the foregoing) that derive economic value, actual or potential, from not being generally known to other persons who could obtain economic value from the disclosure or use thereof, and which are the subject of efforts that are reasonable under the circumstances to maintain their secrecy (“Trade Secrets”); (d) patents, pending patent applications, designs, algorithms and other industrial property rights; (e) other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated, including “rental” rights and rights to remuneration), whether arising by operation of law, contract, license or otherwise; and (f) registrations, initial applications, renewals, extensions, continuations, divisions or reissues now or hereafter in force (including any rights in any of the foregoing), (collectively, “Intellectual Property”). Customer covenants not to prejudice or impair the interest of Company in any of its Intellectual Property. At no time shall Customer challenge or assist others to challenge any of Company’s Intellectual Property or the registration thereof.

3.2 Proprietary Information. Customer agrees, to the extent allowed under Chapter 119 Florida Statutes, to hold in confidence all Proprietary Information (defined below) that it receives from the Company. Customer will not disclose any of the Company’s Proprietary Information to any party or person whatsoever other than to their respective employees or agents who have a need to know such Proprietary Information consistent with the purpose for which it was disclosed. Customer will not use, directly or indirectly, any of the Company’s Proprietary Information for any purpose other than the purpose for which it was disclosed. Customer will not use, directly or indirectly, under any circumstances, any of the Company’s Proprietary Information for any purpose that is in any way detrimental to the Company. This includes, but is not limited to, contracting with Company’s employees, consultants, contractors, vendors or partners to provide services to Customer similar to those provided to Customer by Company. Customer shall take reasonable precautions to protect the confidentiality and value of Company’s Proprietary Information, including measures to prevent loss, theft and misuse. Customer shall immediately give notice to Company of any unauthorized use or disclosure of Company’s Proprietary Information. Customer agrees to assist Company in remedying any unauthorized use or disclosure of Proprietary Information caused by such Customer. Customer acknowledges expressly that each and every one of its employees and agents are bound to the terms and conditions of this Section 3.2.

3.3 Definition of Proprietary Information. To the extent allowed by Chapter 119 Florida Statutes, Proprietary Information shall mean Confidential Information (defined below) and Trade Secrets (defined above), whether in written, oral, electronic or other form, furnished, transmitted to, observed or obtained by one of the parties. The following information, all as reasonably substantiated by documentation, however, is not Proprietary Information and Customer is not restricted as to its use or disclosure: (a) information already in the possession of, or already known to, the Customer as of the Effective Date, and not under any other obligations of confidentiality due to any other agreements between the Parties; (b) information that enters the public domain after the Effective Date, or which, after such disclosure, enters the public domain through no fault of the Customer; (c) information lawfully furnished or disclosed to the Customer by a non-party to this Agreement without any obligation of confidentiality; (d) information independently developed by any Party without use of any Proprietary or Confidential Information; or (e) information that is explicitly approved for release by the Company.

3.4 Definition of Confidential Information. To the extent allowed by Chapter 119 Florida Statutes, Confidential Information means information identified on, in or constituting: all strategic and development plans, financial information, results of the Applications, Services, or Products, business plans, information about parent, subsidiaries or sister companies, co-developer identities, data, business records, client lists, identity of vendors and partners, policy information, personally identifiable information, personal financial information or personal health information (as those terms are defined by governing law), product designs, test data, project records, market reports, investor information, know-how, discoveries, ideas, concepts, specifications, models, diagrams, methodologies, research, technical and statistical data, drawings, models, flow charts, work-flow, marketing, pricing, selling, distribution, database descriptions, software code, source code, object code, Intellectual Property, and any and all other tangible or intangible information, other than Trade Secrets, encompassed in any medium, which may be disclosed, whether or not in writing, whether or not marked as "Confidential" or "Proprietary" by the Company or to which the Customer may be provided access to by Company in accordance with this Agreement, or which is generated or learned as a result of or in connection with the Deliverables and is not generally available to the public.

3.5 Disclosure Required by Law. Upon receipt of any confidential information by Customer, said information becomes "a public record" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. If Licensee wishes to claim an exemption to disclosure, they shall provide the specific statutory

authority for the claimed exemption, identifying the data or other materials to be protected and stating the reasons why such exclusion from public disclosure is necessary. However, if a request is made of the Customer, pursuant to chapter 119, Florida Statute, for public disclosure of proprietary property of Licensee, the Customer shall advise Licensee of such request and it shall be Licensee's sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the courts and to immediately serve notice of the same upon the party requesting the public records. The Customer shall, at all times, comply with the public records disclosure requirement of Chapter 119 Florida Statutes and shall not be subject to any liability for its compliance with Florida Statute Chapter 119.

3.6 Ownership. Except as specifically provided otherwise in this Agreement, all materials, including Deliverables, transmitted from Company to Customer and which constitute Proprietary Information as defined above are to remain the sole and exclusive property of the Company. Except for the licenses or ownership rights granted pursuant to this Agreement, this Agreement and transmission or disclosure of any Proprietary Information from Company to Customer does not grant the Customer a license or ownership of any type.

3.7 Survival of Obligations. All obligations and restrictions of confidentiality and ownership of Proprietary Information under this Agreement are to survive the termination of this Agreement.

3.8 Responsibility for Affiliates and Representatives. Customer is solely responsible for any breach of this Agreement by its representatives including, without limitation, any improper use or disclosure by its representatives of the Company's Proprietary Information. Customer may disclose Proprietary Information to its representatives who in Customer's reasonable judgment have the need to know such information in connection with this Agreement. Customer shall inform its representatives of the confidential nature of such Proprietary Information, shall direct them to hold Proprietary Information in strict confidence, shall take all reasonable precautions to prevent improper use of Proprietary Information by them, and shall be responsible for any breaches by them of the terms found in this Agreement.

3.9 Certain Rights Granted to Company. Customer authorizes and grants to Company a right and license to use Customer's name and logo on its marketing and promotional material, including on its website and customer lists. Customer grants Company the right to make certain press releases available to the general public regarding the services provided by Company to Customer. Customer acknowledges and agrees that Company may collect and retain aggregate non-

identifiable data derived from performance of the Company Products and Services in accordance with Company's privacy policy and terms of use.

**3.10 Use of Company's Trademarks for Promotional Purposes.** Company hereby authorizes Customer to use the BARNACLE trademark and logo (the "Marks") in its marketing and promotional materials solely for cross-promotional purposes to identify that Customer uses Company's parking enforcement system (the "Purpose"), and must be used according to the Company's guidelines provided in Exhibit A (the "Guidelines"). The Guidelines can be updated by Company periodically and Customer shall be responsible for checking for updates. Customer shall not use the Marks for any other Purpose without Company's prior written authorization, which can be denied for any reason. Customer agrees that it shall not harm, misuse, or bring into disrepute the Marks. All uses of the Marks pursuant to this Agreement shall inure to the benefit of Company. You may not use or register, or otherwise claim rights in the Marks, including as or as part of any trademark, service mark, company name, trade name, username, domain registration or copyright. Company may revoke permission to use the Marks at any time.

**3.11 Public records.** Contractor shall comply with all provisions of Florida Statutes Chapter 119. Specifically Contractor shall: 1. Keep and maintain public records required by the Customer in order to perform the service; 2. Upon request from the Customer's custodian of public records, provide the Customer with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Customer; and 4. Upon completion of the contract, transfer, at no cost to the Customer, all public records in possession of the Contractor, or keep and maintain public records required by the Customer to perform the service. If the Contractor transfers all public records to the Customer upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Customer, upon request from the Customer's custodian of public records in a

format that is compatible with the information technology systems of the Customer.

Failure to comply with said statutory requirements may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

## **PUBLIC RECORDS CUSTODIAN**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
RecordsCustodian@copbfl.com**

#### **4. Fees**

4.1 Usage Fees and Payment Terms. Customer shall pay the usage fees applicable to such Customer Program, all as set forth in that certain Customer Order Form provided to Customer by the Company and signed by Customer, or as found on any relevant invoices provided to Customer by Company. For the avoidance of doubt, Customer acknowledges and agrees that the Usage fees provided in the Order Form are subject to change by the Company, in its sole discretion. If invoiced, all fees are due and owing within forty five (45) days of Company sending such invoice to Customer. Customer shall pay interest computed at the rate equal to the maximum rate permitted by Florida Statutes, on any amounts due hereunder that are remitted more than thirty (30) days late. Customer shall be responsible for all costs and expenses, including court costs and attorneys fees, incurred by Company in collecting any fees owed to it under this Section 4.1 or enforcing its rights under this Agreement. Failure to pay invoices and amounts owing when due is a material breach of this Agreement. Company shall have the right to interrupt service with no warning if any payments are considered late under this Agreement.

4.2 Taxes. Customer shall be responsible for all taxes applicable to Customer and arising as a result of this Agreement, other than taxes based on BPE's income.



The prices provided to Customer from BPE do not include any taxes associated with the Deliverables, however designated.

4.3 Minimum Monthly Usage Fees. Customer acknowledges and agrees that certain Customer Programs contain or require minimum monthly usage fees, which fees will be set forth in the applicable Order Form provided to Customer by the Company. Customer is responsible for the timely payment of any Minimum Monthly Usage Fees regardless of actual usage in any particular month.

4.4 Surcharges. Customer acknowledges and agrees that certain Customer Programs contain or require additional surcharges for fines collected on behalf of Customer that are over a certain threshold. All such surcharge fees shall be as provided in the Order Form applicable to the Customer Program

4.5 Replacement Fees. Certain Customer Programs require Customer to pay fees in regards to lost or damaged Products. Customer acknowledges and agrees that it understands its obligations under Section 8.10 herein regarding damaged, stolen, or lost Products and that the amount of such fees for damaged, stolen, or lost Products, may be amended from time to time by giving notice to Customer or or posting for Customer's access with other BPE Policies in accordance with Section 7 herein.

4.6 Disputes of Collected Fees of Invoiced Amounts. To the extent Customer disputes any fines collected on behalf of Customer or the amounts due and owing on any invoice provided to Customer, or in regards to any fees charged to Customer as part of Company providing the Services, Customer shall dispute such amounts within thirty (30) days of the invoice date or the date when the fee was collected by the Company (whichever is shorter) and Customer shall be required to provide reasonable detail and support for any dispute. To the extent Customer does not meet such deadline date to dispute any charges or fees, or Customer does not provide appropriate support, Customer shall have waived all rights to contest such fees and charges.

4.7 Payment Processing or Dispute Covenant. Customer acknowledges and agrees that BPE shall have a right to the Usage Fee for each transaction processed by BPE, including for transactions that are denied, returned or charged back as a result of a third-party denying such payment or refusing to honor such payment to Customer. Therefore, Customer covenants and agrees that BPE shall have the right to collect all fees and costs relating to each use of the Product, whether or not Customer ultimately receives payment for the fine and shall have the right to offset "bad charges" or refunded charges against future amounts due and owing to Customer from the Company as part of using the Company's Products and Services.

## **5. Term; Termination**

5.1 The term of this Agreement shall commence upon execution by both parties (the “Effective Date”) and the term of the contract shall be for one (1) year. This agreement may be renewed, with City Commission approval, by additional one (1) year periods through written consent from both parties. This Agreement may be terminated by Customer or BPE upon thirty (30) days prior written notice unless terminated sooner as permitted below.

5.2 BPE may terminate this Agreement with respect to the Deliverables and its obligations hereunder and Customer’s rights thereto, upon written notice to the Customer of a material breach of this Agreement, including any Schedules attached hereto. Such termination shall become effective immediately, unless such material breach is capable of being cured in BPE’s sole discretion, in which case termination shall be effective if such breach is not cured within seven (7) days after receipt of such written notice. Upon termination, Customer shall be required to, at its own expense and within 7 business days, return all BPEDs to the Company that were provided to Customer. All returned BPEDs shall be in good working order and condition.

5.3 Except as specifically provided for in this Agreement or the Customer Program’s Policies, as of the effective date of such termination, all of Customer’s rights to use the Deliverables (including without limitation, the BPEDs) shall terminate immediately and Customer shall at its own expense and within 7 business days return all Products (including without limitation, the BPEDs) to the Company that were provided to Customer. All returned Products (including without limitation, the BPEDs) shall be in good working order and condition.

## **6. Customer Data**

6.1 BPE has no obligation to retain any of Customer's data that has been provided by Customer to BPE or generated through Customer’s use of the Deliverables (“Customer Data”) after the termination of this Agreement, for whatever reason. Customer shall be entitled to irretrievably delete Customer Data at any time after thirty (30) days following the termination of this Agreement, and BPE shall have no obligation to notify Customer of its intention to delete or its deletion of any or all of Customer Data. Customer can request a copy of any Customer Data at any point during the term of this Agreement or within 30 days following Termination.

6.2 Any Customer Data generated by Customer’s use of the Deliverables shall be deemed non-confidential to Customer. Customer hereby grants and assigns to BPE, a worldwide, royalty-free, irrevocable, and non-exclusive license, with the

right to sublicense, the rights to use and disclose the Customer Data on an anonymous basis in any manner BPE chooses, and to display, perform, copy, make, have made, use, sell, and otherwise dispose of any BPE's products embodying the Customer Data in any manner without obligation to Customer.

6.3 Customer specifically acknowledges and agrees that Company has no obligation to retain or collect any Customer Data as part of Customer's use of the Products and Services.

## **7. Reserved**

## **8. Customer Representations and Warranties and Covenants**

Customer represents, warrants, and covenants (each as applicable) to the Company that:

8.1 Customer it is duly organized and validly existing under the laws of its state of incorporation or formation, has the necessary authority, licenses and other permissions to conduct the business in which it is currently engaged and is in compliance with all applicable laws. Customer further represents and warrants that it has the legal capacity to agree to the terms of this Agreement, perform its obligations hereunder, has obtained and shall maintain all necessary authorizations or registrations from appropriate authorities to carry out the activities contemplated in this Agreement, and entering into this Agreement will not violate any applicable law or regulation.

8.2 This Agreement and performance by Customer of its obligations hereunder shall not (i) violate any law, rule or regulation applicable to Customer or (ii) be in breach of, or constitute a default under, the provisions of any agreement, instrument or undertaking by which Customer is bound.

8.3 Customer's use of the Deliverables shall at all times be in compliance with any law, rule or regulation applicable to Customer and Customer shall undertake to diligently review any changes to such laws, rules or regulations.

8.4 Customer shall provide the Company with all necessary cooperation in relation to this Agreement and all necessary access to such information as may be required by Company in order to render the Services or to provide the Deliverables.

8.5 Customer shall carry out all of Customer's responsibilities set out in this Agreement in a timely and efficient manner, and in the event of any delays in the Customer's provision of such assistance as agreed by the Parties, Company may adjust any agreed level of Deliverables as may be reasonably necessary.

8.6 Customer shall be solely responsible for the results obtained from its use of the Deliverables.

## **9. Reserved**

### **10. Limited Warranty; Disclaimers; Limitation of Liability; Remedies**

10.1 Company warrants to Customer, as the original purchaser (which warranty is not transferable), that its Products shall be free from material defects in the material and workmanship under normal use and service, in accordance with the Company's Policies and this Agreement, for a period of twelve (12) months from the date of original sale or transfer from Company to Customer. This warranty shall not apply if Customer uses the Product in violation of this Agreement or any Policy or if the Products have been subject to accident, negligence, abuse, misuse, or criminal acts. This limited warranty shall only apply to Products purchased pursuant to The Barnacle Premier Partner Program and The Barnacle Hardware Purchase Partner Program.

10.2 EXCEPT FOR THE SPECIFIC REPRESENTATIONS OF BPE CONTAINED HEREIN, THE DELIVERABLES ARE PROVIDED TO CUSTOMER "AS IS" AND NEITHER BPE, NOR ITS AFFILIATES MAKE ANY REPRESENTATION OR WARRANTY OF ANY OTHER KIND EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DELIVERABLES, OR THE ACCURACY OR COMPLETENESS THEREOF, OR THE RESULTS TO BE OBTAINED BY THE USE THEREOF OR ANY OTHER MATTER. BPE EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, SECURITY, COMPATIBILITY, NON-INFRINGEMENT MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BPE DOES NOT WARRANT THAT THE DELIVERABLES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE DELIVERABLES WILL OPERATE IN COMBINATION WITH OTHER SOFTWARE OR APPLICATIONS.

10.3 IN NO EVENT SHALL BPE OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR REVENUES OR OTHER ECONOMIC LOSS OF CUSTOMER OR ANY THIRD PARTY), WHETHER IN TORT, CONTRACT OR OTHERWISE, AND WHETHER OR NOT BPE OR ANY OF ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR ANY CLAIM OR ACTION ARISING OUT OF OR RELATING TO BPE'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN ITS PERFORMANCE OF THE SERVICES OR RESULTING FROM ANY DELIVERABLE UNDER THIS AGREEMENT, BPE'S TOTAL LIABILITY HEREUNDER UNDER ANY OTHER THEORY OF LIABILITY IS LIMITED TO \$5,000

PER INCIDENT AND \$100,000 IN THE AGGREGATE. TO THE EXTENT A CLAIM ARISES OUT OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN BPE'S PERFORMANCE OF THE SERVICES OR RESULTS FROM ANY DELIVERABLE UNDER THIS AGREEMENT, BPE'S TOTAL LIABILITY HEREUNDER UNDER ANY OTHER THEORY OF LIABILITY IS LIMITED TO \$10,000 PER INCIDENCE AND \$1,000,000 IN THE AGGREGATE.

10.4 BPE DOES NOT GUARANTEE, AND SPECIFICALLY DISCLAIMS ANY WARRANTY, THAT ANY APPLICATION OR SERVICE WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT BPE WILL CORRECT ALL SERVICES ERRORS. CUSTOMER ACKNOWLEDGES THAT BPE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. BPE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

10.5 Equitable Relief. Customer acknowledges and agrees that a breach of this Agreement may cause other irreparable harm on the Company without an adequate remedy at law and hereby agrees that the Company may seek equitable relief, including without limitation, temporary or permanent injunctions and other relief to limit the effect of any breach.

## **11. Assignment**

This Agreement shall not be assigned or transferred by Customer without prior written consent of BPE, and any attempt by Customer to so assign or transfer this Agreement without such written consent shall be null and void. This Agreement shall be valid and binding on the parties hereto and their successors and permitted assigns.

## **12. Governing Law; Submission to Jurisdiction**

All claims, actions, or proceedings of any nature or type, arising from or related to (i) this Agreement or any matter related to this Agreement, (ii) the use of any Deliverables hereunder, or (iii) any relationships (whether by written contractor otherwise) relating to the Deliverables (whether such relationships are directly with BPE or through a third-party) shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to its conflict or choice of laws principles. Any claim, action, lawsuit, etc. brought in connection with, arising out of, or related to (i) this Agreement (including its terms or the enforcement thereof), (ii) the use of any Deliverables hereunder, or (iii) any relationships (whether by written contractor otherwise) relating to the

Deliverables (whether such relationships are directly with BPE or through a third-party) shall be brought solely and exclusively in the Federal or State courts located in the County of Broward and each Party consents to the personal jurisdiction and venue therein. The terms and conditions contained in is Governing Law provision shall inure to the benefit of, and be binding upon, the parents, subsidiaries, related entities, successors, assigns, heirs, survivors, and personal representatives of the Parties.

### **13. Notices**

All notices given under this Agreement must be in writing, sent to:

ITSA Solutions LLC  
300 Greenwood Avenue  
Suite 2  
Midland Park, NJ 07432  
Attn: General Counsel  
chrisd@barnacelparking.com

If to Customer, to the address provided under the Order Form; or to such other address as a Party may designate in writing to the other Party, by certified mail (return receipt requested), overnight courier, personal delivery, or email to the other parties hereto.

### **14. Survival and Severability**

Any provision of this Agreement which, by its nature, would survive termination of this Agreement shall survive any such termination of this Agreement, including, without limitation, Articles 2, 3 and 4 through 13.

Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

### **15. Force Majeure**

BPE shall not be responsible for any delay or failure in performance of its obligations under this Agreement resulting from acts beyond the control of BPE, including but not limited to, any act of God, act of governmental authority, act of public enemy, computer or system failure, or due to war, terrorism, riot, fire, flood, civil commotion, insurrection, labor difficulty (including, without limitation any strike, or other work stoppage or slowdown), or severe or adverse weather conditions.

## **16. Sovereign Immunity**

Nothing in this Agreement shall constitute a waiver by the Customer of its sovereign immunity limits as set forth in section 768.28, Florida Statutes. Nothing herein shall be construed as consent from either party to be sued by third parties.

## **17. Absence of Conflicts of Interest**

Both parties represent they presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with their performance under this Agreement and that no person having any conflicting interest shall be employed or engaged by either party in their performance hereunder.

## **18. Miscellaneous**

Except for the Terms and Conditions attached and included in the sale of each Barnacle® Parking Enforcement Device (“BPED”) purchased by Customer, which form part of this Agreement, this Agreement, together with the Order Form, any pricing sheets, and any other Deliverables provided to Customer pursuant to the terms of this Agreement or as part of the Company providing the Services, supersedes all prior agreements and understandings, and constitutes the complete agreement and understanding between the Parties with respect to the subject matter hereof. No amendment or other modification to this Agreement shall be valid or binding with respect to Company unless acknowledged and agreed to in writing and signed by a duly authorized officer of Company, provided however, it is specifically agreed by Customer that the Company may alter or amend the terms of this Agreement and Customer has an affirmative obligation to review all updated terms and comply at all times with such terms and conditions herein. The Parties are independent contractors, and nothing in this Agreement will be construed to constitute or appoint any party as the agent, partner, joint venture or representative of the other Party for any purpose whatsoever, or to grant to any party any right or authority to assume or create any obligation, express or implied, for or on behalf of any other, or to bind any other in any way or manner whatsoever. Any forbearance or delay on the part of a Party in enforcing any provision of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or of a right to enforce same for such occurrence or any future occurrence. No other party is intended, or shall be deemed, to be a beneficiary of any provision of this Agreement.

Exhibit A

**Replacement fees.** Certain Customer Programs require Customer to pay fees in regard to lost or damaged Products in instances where Customer has not followed the standard operating procedures that are provided by Company to Customer during training. Such procedures shall include the following:

- Capturing all required motorist information to complete a deployment in the BEMS, including vehicle make, model, license plate and appropriate photos of the vehicle;
- Maintaining a reasonable practice of monitoring alerts and notices that are sent by the BEMS to allow an opportunity to deal with any tampering; and
- Undertaking reasonable efforts to recover devices, where possible, by utilizing the GPS positioning reports.

Provided the above procedures are followed, there will be no costs to Customer for the replacement of lost or damaged devices other than standard shipping and handling fees for such new devices.

If Customer has not followed the above procedures and is obligated to pay for a replacement device, the cost shall be \$500 per device, plus shipping and handling.

Customer acknowledges and agrees it understands its obligations under this section regarding damaged, stolen, or lost Products and that such fees for lost, stolen, or damaged Products may be given to Customer or posted for Customer's access with other BPE Policies in accordance with Section 7 herein.

**Deposits.** The Company may, in most instances, collect deposits from a motorist for the safe return of devices. In the event a device is not returned or is returned damaged, the Company may capture the deposit and shall retain that deposit to offset the cost of replacement device.

**Employment Eligibility.** By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the



Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.

**THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

**CITY OF POMPANO BEACH**

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

By: \_\_\_\_\_  
REX HARDIN, MAYOR

APPROVED AS TO FORM:

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

(SEAL)

"BPE"

ITSA Solutions, LLC

Witnesses:

Mitch King

Nicole Gonzalez  
(Print or Type Name)

Jon Napoli

Jon Napoli  
(Print or Type Name)

By: [Signature]

Print Name: Chris Santoro

Title: COO

STATE OF New Jersey

COUNTY OF Bergen

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this 18<sup>th</sup> day of May, 2021, by Christopher D'Antuono as Chief Operating Officer of ITSA Solutions, LLC, a Delaware limited liability company on behalf of the company. He/She is personally known to me or who has produced driver's license (type of identification) as identification.

NOTARY'S SEAL:

[Signature]  
NOTARY PUBLIC, STATE OF New Jersey

Sharon Novelli  
(Name of Acknowledger Typed, Printed or Stamped)

50116011  
Commission Number



**SHARON NOVELLI**  
NOTARY PUBLIC OF NEW JERSEY  
Commission # 50116011  
My Commission Expires 10/31/2024