

## Services Agreement

This Services Agreement, dated as of \_\_\_\_\_ (this "Agreement"), is entered into between Koloni, Inc., an Iowa corporation, located at 325 N. Main St. Pocahontas, IA 50574 ("Koloni"), and the City of Aurora, Illinois, a home rule municipal corporation ("Customer"), and together, the "Parties", and each, a "Party".

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

1. Services. During the term of this Agreement Koloni shall provide to Customer the following services:

1.1 Access to pedal bikes, electric bikes, electric cargo bikes ("Goods"), and bike racks as paid by the Customer to Koloni for use by bike riders ("Users") during the deployment period (herein defined).

1.2 The deployment of Goods as stated in Section 8.

1.3 The access to Koloni management software as governed by Exhibit 1.

1.4 Maintenance as stated in Section 8.

1.5 Customer service as stated in Section 8.

1.6 Any specific requirements as defined in and set out in one or more Order Form(s) to be issued by Koloni and accepted by Customer as attached in Exhibit 2.

2. Software License Agreement. Customer agrees to the Software License Agreement as attached in Exhibit 1.

3. Term of Agreement, Exclusivity. The Term of this Agreement begins on the date as stated on the above and terminates on December 31, 2021 ("Termination Date"). Customer may extend this Agreement for a period not to exceed 12 months from the Termination Date with written notice to Koloni. If Customer extends this Agreement, then Koloni shall provide updated fees for the Goods and the parties will work together to update this Agreement as necessary.

4. Fees. In consideration of this Agreement and during the Term, Customer shall pay Koloni as attached on the Order Form and Koloni shall provide the number and type of Goods as stated on the Order Form. The following fees are set for the Term:

(a) \$1,500 per pedal bike annually

- (b) \$1,800 per electric bike annually
- (c) \$2,500 per electric cargo annually
- (d) \$200 per bike rack (1 bike slot, installation not included) annually

4.2 Customer shall pay Koloni 10% of the total invoiced price as stated on the Order Form due upon execution of this Agreement with the remainder of the price due prior May 15, 2020. For the 2021 year all payments shall be due to Koloni by April 1, 2021. If Customer fails to pay the invoice to Koloni according to this Section 4, then Koloni may in its option, stop the system launch or placement of the Goods, remove Goods from active service, and charge the Customer interest in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et. seq.*).

## 5. Transactional/User Fees.

5.1 Customer shall charge the User the following amounts to rent the Goods:

- (a) Pedal Bikes. \$4 for the first hour and \$5 per each additional hour.
- (b) Electric Bikes. \$9 for the first hour and \$10 per each additional hour.
- (c) With long term rates of:
  - (i) 12 Months: \$50
  - (ii) Per Month: \$10
  - (iii) Daily: \$7
  - (iv) College/university student Yearly: \$40
- (d) Out of zone penalty of \$10, where said penalty will be assessed to the User when the User returns a Good outside the predetermined geofenced areas.

## 6. Transactional Revenue.

6.1 Koloni shall, by the 15<sup>th</sup> of each month, provide Customer with a revenue payment equaling the total of transactional revenue plus membership fees plus in app advertising fees (“Monthly Payment Report”) along with a transactional report stating; a) the number of short term rentals, b) the number of memberships, and c) the in application advertising split for the previous month.

- (a) Transactional revenue is distributed by the following calculation:
  - (i) Deducting any refunds issued by the Customer or Koloni. Removing 5% plus .25 cents of each transaction equals the total amount due to Customer. Transactional revenue is calculated per each unique bike

identification number assigned to the Customer, irrespective of the location rented or returned.

(b) Membership fees revenue is distributed by the following calculation:

(i) Deducting any refunds issued by the Customer or Koloni. Subtracting 20% of the total amount equals the total amount due to the Customer. Membership fees are calculated on a per bike basis, with each Customer apportioned a pro rata share based on the number of unique bikes assigned to the Customer.

(c) In app advertising. Koloni shall retain 50% of all in app advertising fees. In the event Koloni determines that in app advertising no longer produces revenue, it may in its sole discretion terminate the service without notice. All payments owed will be included on the next months Monthly Payment Report.

## 7. Sponsorship and Advertisement.

7.1 The Customer owns all rights and title to sell or lease advertising space on the fenders of the Goods. Koloni retains the right to place its logo or name on the downtube of each bike, QR code plate and on signage next to each rack or geofenced location to assist in the User of each bike.

7.2 Koloni will, in its best efforts, assist Customer in the recruitment and retention of sponsorship opportunities, including but not limited to, grant writing, presentations, marketing, assisting in sponsorship payment structure, and/or graphic design assistance.

7.3 Koloni will, in its best efforts, attend community engagement events with advanced notice from the Customer.

## 8. Operations.

### 8.1 Season Dates.

(a) Koloni shall launch each Customer system as early as May 15<sup>th</sup> but no later than June 1. In the event the Customer fails to execute this agreement by March 1, 2020 then Koloni, may in its own discretion, launch the system as necessary with notice to the Customer. Koloni shall, within 72 hours of the first snow event causing public works to operate snowplows, remove all Customer Goods and place them in storage. But in no event will Koloni pull all Customer Goods later than December 1 of each year.

### 8.2 Storage.

(a) Koloni will store all Goods in an appropriate storage facility during the off season at Koloni's expense. During this time Koloni will perform routine maintenance and checks on the Goods.

### 8.3 Locations.

(a) The Customer will provide Koloni with a details of geofenced locations by March 15 of the initial contract year and March 1 of each year thereafter. Failure to do so may delay the launch. Koloni and the Customer will work together to ensure the proper geofenced locations and number.

(b) Customer will arrange installation and placement of all bike racks and ensure all proper permit and permissions are in place prior to installation. Koloni will assist each Customer to ensure proper installation and placement.

### 8.4 Maintenance.

(a) Koloni will partner with a local bike shop to perform routine maintenance and repairs to the Goods. The parties will work together to find a mutually acceptable bike shop. Koloni is responsible for the maintenance of each Good, however, in the event of repeated theft and damage, the Customer will work with and assist Koloni in preventing future damage, if Koloni determines a specific geofenced location has repeated damage and/or theft it may remove Goods from that area and deploy them to a new location within the Customer service area.

### 8.5 Customer Service.

(a) Koloni will respond to all customer service requests from a user within 2 hours of receipt. All user refunds must be approved or denied by Koloni by the end of the following business day they are requested.

(b) Any Customer requests relating to bike maintenance will be addressed within 48 business hours by Koloni.

### 8.6 Bike Rebalancing.

(a) Koloni will return all bikes to the Customer within 48 hours of notice that the bike rental has ended outside the Customers service area. If a bike that has left a service area due to theft or damage, then Koloni will use its best efforts to replace or return the bike as soon as practical.

### 8.7 Geofence.

(a) Koloni will grant access to no more than 3 representatives from each Customer, with a preference of 1 contact person per Customer. Each Customer may adjust geofenced locations with 48 hour notice to Koloni and Koloni will rebalance the bikes no later than 48 hours after the location change. Koloni and the Customer will work together to ensure the best practices in the number and location of geofence locations.

(b) If an advertising partner or Customer requests a temporary geofence location, Koloni will state an additional fee amount for the service. The fee will be

based on the number of bikes, timing, and location of the request. Said fee must be paid 50% prior to the temporary location start and 50% at the end of the temporary location.

8.8     Penalties.

(a)     If Koloni fails to respond to a customer service response in the time as stated in Section 8.5 or rebalance bikes in the time as stated in Section 8.6, and Customer gives 2 or more written warning of such failure in a calendar month then Customer may asses the following penalties:

- (i)     First Failure: \$50
- (ii)    Second Failure: \$200
- (iii)   Third Failure: \$500
- (iv)    Fourth Failure: \$750

8.9     Theft.

(a)     In the event of a stolen bike, the parties shall work together to notify the local authorities of the event, including the bike identification number and its last known location. In the event that the bike is not recovered within 7 days, Koloni will replace the bike with a similar or like kind.

9.     Koloni will use reasonable efforts to develop an adaptive bike program to launch on a mutually agreed upon date between the Parties.

10.    Limitation of Liability.

10.1    IN NO EVENT SHALL KOLONI BE LIABLE TO CUSTOMER FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT KOLONI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10.2    IN NO EVENT SHALL KOLONI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO KOLONI PURSUANT TO THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Warranties.

11.1 KOLONI MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

11.2 Products manufactured by a third party, including but not limited to the locking hardware and system, ("Third-Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. KOLONI MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

12. Confidential Information. Unless otherwise required by law, including the Illinois Freedom of Information Act (5 ILCS 140/1, *et. seq.*), all non-public, confidential or proprietary information of Koloni that does not constitute public records under Illinois law, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Koloni to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by Koloni in writing. To the extent permitted by the Illinois Local Records Act (50 ILCS 205/1, *et. seq.*), upon Koloni's request, Customer shall promptly return all documents and other materials received from Koloni. Koloni shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

13. Intellectual Property Rights.

13.1 Ownership. Subject to the express rights and licenses granted by Koloni in this Agreement, Customer acknowledges and agrees that:

(a) any and all Koloni's rights in and to copyrights, trade secrets, data, trademarks (and related goodwill), mask works, patents, and other intellectual property rights therein arising in any jurisdiction throughout the world and all related rights of priority under international conventions with respect thereto, including all pending and future applications and registrations therefor, and continuations, divisions, continuations-in-part, reissues, extensions, and renewals thereof ("Intellectual Property Rights") are the sole and exclusive property of Koloni or its licensors;

- (b) Customer shall not acquire any ownership interest in any of Koloni's Intellectual Property Rights under this Agreement;
- (c) any goodwill derived from the use by Customer of Koloni's Intellectual Property Rights inures to the benefit of Koloni or its licensors, as the case may be;
- (d) if Customer acquires any Intellectual Property Rights in or relating to any Product purchased under this Agreement including any rights in any Trademarks, derivative works or patent improvements relating thereto, by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to Koloni or its licensors, as the case may be, without further action by either Party; and
- (e) Customer shall use Koloni's Intellectual Property Rights solely for the purposes of performing its obligations under this Agreement and only in accordance with this Agreement and the instructions of Koloni.

14. **Trademark License Grant.** This Agreement does not grant either Party the right to use the other Party's or their Affiliates' Trademarks except as set out under this Section. The terms and conditions of this Agreement, each Party hereby grants to the other Party a non-exclusive, non-transferable, and non-sublicensable license to use the Party's Trademarks in the United States during the Term solely on or in connection with the promotion, advertising, and resale of the Products in accordance with the terms and conditions of this Agreement. The Party will promptly discontinue the display or use of any Trademark to change the manner in which a Trademark is displayed or used with regard to the Products when requested by the other Party. Other than the express licenses granted by this Agreement, the Parties grant no right or license to the other Party, by implication, estoppel, or otherwise, to the Products or any Intellectual Property Rights of the Party.

15. **Trademark Prohibited Acts.**

15.1 The Parties shall not:

- (a) take any action that may interfere with any of other Parties rights in or to the other Parties Intellectual Property Rights, including ownership or exercise thereof;
- (b) challenge any right, title, or interest of other Parties in or to other Parties Intellectual Property Rights;
- (c) make any claim or take any action adverse to other Parties ownership of Intellectual Property Rights;
- (d) register or apply for registrations, anywhere in the world, for other Parties Trademarks or any other Trademark that is similar to other Parties Trademarks or that incorporates other Parties Trademarks in whole or in confusingly similar part;
- (e) use any mark, anywhere, that is confusingly similar to other Parties Trademarks;

(f) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Products) or any other Parties Trademark;

(g) misappropriate any of other Parties Trademarks for use as a domain name without prior written consent from the other Party; and

(h) alter, obscure, or remove any of other Parties Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under this Agreement (including Products), marketing materials, or other materials that other Party may provide.

16. **Koloni's Trademark Notices.** Customer shall ensure that all Products used by Customer and all related quotations, specifications, and descriptive literature, and all other materials carrying Koloni's Trademark, are marked with the appropriate trademark notices in accordance with Koloni's instructions. Customer shall not alter, remove, or deface or allow to be altered, removed, or defaced any Trademark or Tradename of the Koloni on the Goods.

17. **Insurance.** During the term of this Agreement the parties shall, at their own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to, commercial general liability in a sum no less than \$2,000,000 with financially sound and reputable insurers.

18. **Entire Agreement.** This Agreement, including and together with any related Order Form, Software License Service Agreement, exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Order Form or Software License Service Agreement, the terms and conditions of this Agreement shall supersede and control.

19. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**", and with the correlative meaning "**Notify**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section **19**.

Notice to Koloni:

325 N. Main St.

Pocahontas, IA 50574

Attention: Kate Lyon, COO

Notice to Customer:

77 S Broadway

Aurora, IL 60505

Attention: Kenneth Schroth

Director – Public Works

20. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to/the court may modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

21. Amendments. No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

22. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

23. Assignment. Neither party shall not assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other. Any purported assignment or delegation in violation of this Section 23 shall be null and void. No assignment or delegation shall relieve the Parties of any of its obligations under this Agreement.

24. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

25. Relationship of the Parties. The relationship between the parties is that of independent contractors. The details of the method and manner for performance of the services by Koloni shall be under its own control, Customer interested only in the results thereof. Koloni shall be solely responsible for supervising, controlling and directing the details and manner of the completion of the services. Nothing in this Agreement shall give the Customer the right to instruct, supervise, control, or direct the details and manner of the completion of the services. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint

venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

26. Choice of Law. This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Illinois, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Illinois.

27. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement, and all contemplated transactions, in any forum other than the Circuit Court of Kane County, Illinois. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

28. Force Majeure. Koloni shall not be liable or responsible to Customer nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Koloni including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of 30 days.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized officers.

Koloni, Inc.

By \_\_\_\_\_

Name:

Title:

City of Aurora, IL

By \_\_\_\_\_

Name:

Title:

**EXHIBITS ATTACHED**

## EXHIBIT 1

Dated: November 01, 2019

### Software License and Services Agreement

**This Software License and Services Agreement** ("Software and Services Agreement") between Koloni, Inc. an Iowa corporation ("Vendor," "us" or "we") and the City of Aurora, Illinois, a home rule municipal corporation ("Company" or "you") governs your licenses and subscriptions to software and services provided by us ("Vendor Software and Services") from and through the Vendor website (<http://kolonishare.com/partner> or other URLs designated by us) ("Website"). The Software and Services Agreement was updated as of the date above, and supersedes all previous versions, if any.

We may revise the terms of the Software and Services Agreement, which will be effective as of the date a new version of the Software and Services Agreement is posted on the Website at a location accessible by you. The current version of the Software and Services Agreement may be viewed at <http://kolonishare.com/partner>.

**BY CLICKING THE ICON BELOW INDICATING THAT YOU AGREE TO THESE TERMS AND CONDITIONS, OR BY REGISTERING, LOGGING IN, INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS SOFTWARE AND SERVICES AGREEMENT, INCLUDING THE WARRANTY DISCLAIMERS, LIMITATIONS OF LIABILITY, TERMINATION PROVISIONS AND EXHIBITS BELOW. IF YOU DO NOT AGREE TO THE TERMS OF THIS SOFTWARE AND SERVICES AGREEMENT, DO NOT CLICK THE ICON BELOW, DO NOT REGISTER, LOG IN, USE OR INSTALL THE SOFTWARE PRODUCT AND EXIT NOW.**

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**1. Participant Rights and Licenses.** As a subscriber, you will have a non-exclusive, non-transferable, royalty-free right and license during the term of your subscription for Vendor Software and Services to:

(i) register, access and use Vendor Software and Services on your computer equipment as described in this Agreement.

You acknowledge that Vendor software is intended and licensed only for integrated use with Vendor Software and Services during the term of your subscription. As such, you are licensed to register and use or install and use the Vendor software only on computer equipment that has data communication with Vendor computer equipment enabled and operational at all times.

**2. Accounts.** You will create and maintain an account registration for each person within your Company that you have authorized to access Vendor Services ("Authorized User"). You will take reasonable steps to ensure all user names and passwords are kept confidential, and you will be responsible for all activities, damages and losses that occur or are caused in significant part under any of these accounts, even if access or use of such accounts is not known to or authorized

by you. If you suspect there is any loss or disclosure of any password or unauthorized use of any accounts of an Authorized User, you will immediately change the password for such accounts and promptly notify Vendor by contacting [kate@kolonishare.com](mailto:kate@kolonishare.com).

### **3. Subscription and Other Fees; Quarterly True-Up; Taxes.**

3.1. We may charge and collect from you sales, use, value-added, property and other taxes that we determine should be collected and remitted by us to government authorities for software and services licensed or subscribed by you under the Agreement. Except for taxes that we charge and collect from you, you will be solely responsible to report and remit payment of all applicable taxes to the relevant government authorities for software and services licensed or subscribed by you under the Agreement. If a government authority notifies us that additional taxes (other than income taxes) should be collected from you and/or remitted by us for Vendor Software and Services ordered by you, we may invoice you, and you will immediately remit payment to us, for all additional taxes claimed by the government authority, so that the net amount retained by us after paying the additional taxes will be equal to the amount that we would have been entitled to receive from you if the additional taxes had not been claimed or applicable to the Vendor Software and Services ordered by you.

### **4. Collected Information.**

4.1. You acknowledge and agree that Vendor may access, collect, store and use the following information (“Collected Information”) in connection with your use of the Website and Vendor Software and Services:

- (a) Website and Vendor Software and Services access and activity data (“Website Services Data”);
- (b) Personal and non-personal information about Authorized Users and other Company representatives which is included in account registrations for Company and its Authorized Users, and;
- (c) Inventory and usage information about your computer equipment and software (“Inventory/Usage Information”) that you have collected and stored in Active Directory, which includes limited personal and non-personal information about Company personnel and other users of Company’s computer equipment.

4.2. You further agree that:

- (a) We may store any Collected Information on computer equipment used by Vendor to operate the Website and provide Vendor Software and Services,
- (b) We may collect and use personal and non-personal Collected Information for the following reasons:
  - (1) to contact you about your rights, obligations, updates, feedback, or performance under this Software and Services Agreement,
  - (2) to perform Vendor Software and Services, and to verify Authorized Users and devices in connection with your software licenses and subscribed services,
  - (3) to meet regulatory requirements,
  - (4) to notify you through Company representatives about other Vendor products or services, and

(5) to sell and service products and services created by the Vendor using Collected Information,

(c) We may use any Collected Information other than personal information about Company personnel and other users of Company computer equipment separately or in combination with data from other users of Vendor Services to develop, analyze, market manage and deliver products and services of benefit to you, including performance analysis, benchmarking, product improvement, marketing and other legitimate business purposes, so long as personal identities are not disclosed and are not readily discernible, and

(d) We may disclose any Collected Information in accordance with applicable law as may be required by the United States or other national governments and their respective instrumentalities, including federal, state and local courts, law enforcement and regulatory agencies.

4.3. We are accountable for the protection of personal information under our control as described in our privacy policy. All questions, complaints and inquiries concerning our privacy policy should be directed to our Chief Operations Officer, who may be reached at the address indicated in the privacy policy Software and Services Agreement.

**5. Restrictions.** You shall not use the Vendor Services for any purposes beyond the scope of the access granted in this Software and Services Agreement. You shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Vendor Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Vendor Services, in whole or in part; (iv) remove any proprietary notices from the Vendor Services or Documentation; or (v) use the Vendor Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

## **6. Representations and Indemnifications.**

6.1. We represent and warrant that (i) we are a company organized under the laws of the State of Iowa, and (ii) we have the right, power and authority necessary to enter into and perform this Software and Services Agreement in accordance with its terms.

6.2. You represent and warrant that (i) any individual who accepts and/or executes the Software and Services Agreement is authorized to act on your behalf, (ii) you have the right, power and authority necessary to enter into and perform this Software and Services Agreement in accordance with its terms, including without limitation, to authorize us to access, transfer, store and use any Collected Information as described in Section 4, and (iii) All of your representatives will comply with the terms of this Software and Services Agreement.

**7. Warranty Disclaimers.** EXCEPT FOR THE LIMITED WARRANTIES DESCRIBED IN THIS SOFTWARE AND SERVICES AGREEMENT, YOUR ACCESS AND USE OF THE WEBSITE, VENDOR SOFTWARE AND SERVICES AND/OR ANY RELATED SOFTWARE, SERVICES, COLLATERAL MATERIALS OR OTHER CONTENT PROVIDED BY US IN CONNECTION WITH THIS SOFTWARE AND SERVICES AGREEMENT ARE ENTIRELY AT YOUR OWN RISK, AND THE WEBSITE, VENDOR SOFTWARE AND SERVICES AND ALL SOFTWARE, SERVICES, COLLATERAL MATERIALS AND OTHER CONTENT AVAILABLE FROM OR IN CONNECTION WITH THE WEBSITE OR VENDOR SOFTWARE AND SERVICES OR UNDER THIS SOFTWARE AND SERVICES AGREEMENT ARE PROVIDED "AS IS," "AS AVAILABLE" AND "WITH ALL FAULTS." TO THE GREATEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, WE DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. YOU ALSO ACKNOWLEDGE AND AGREE THAT VENDOR SOFTWARE AND SERVICES MAY DEPEND ON INFORMATION AND FUNCTIONALITIES PROVIDED BY THIRD PARTY PRODUCTS AND SERVICES, AND WE ARE NOT RESPONSIBLE TO VERIFY THE ACCURACY, COMPLETENESS, RELIABILITY, CURRENCY, TIMELINESS OR QUALITY OF SUCH INFORMATION OR FUNCTIONALITIES. WE DO NOT REPRESENT OR WARRANT THAT SOFTWARE OR CONTENT PROVIDED IN CONNECTION WITH VENDOR SOFTWARE AND SERVICES IS ACCURATE, COMPLETE, OR RELIABLE.

**8. Limitation of Liability.** IN NO EVENT WILL VENDOR OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR ECONOMIC LOSS OR DAMAGES (E.G., DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF ACCOUNT INFORMATION OR PERSONAL INFORMATION OF REGISTRANTS, ETC.) OR ANY SPECIAL, EXEMPLARY OR PUNITIVE DAMAGE ARISING FROM OR RELATING TO THE WEBSITE OR VENDOR SOFTWARE AND SERVICES, INCLUDING WITHOUT LIMITATION, YOUR ABILITY OR INABILITY TO ACCESS OR USE THE WEBSITE OR VENDOR SOFTWARE AND SERVICES, EVEN IF WE ARE AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. FURTHER, IN NO EVENT WILL OUR TOTAL CUMULATIVE LIABILITY TO YOU AND ALL THIRD PARTIES ARISING FROM OR RELATING TO THE WEBSITE OR VENDOR SOFTWARE AND SERVICES EXCEED THE AMOUNT WE HAVE ACTUALLY RECEIVED FOR YOUR ACCESS OR USE OF THE WEBSITE OR PERFORMANCE OF VENDOR SOFTWARE AND SERVICES DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM, OR TWENTY-FIVE DOLLARS (US\$25.00), WHICHEVER IS GREATER.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR

INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH EVENT; SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

**9. Term, Automatic Renewal; Suspension, Termination, Survival.** This Software License and Services Agreement will begin as of the date the Services Agreement is entered into, and will continue until the end of the Term as stated in the Services Agreement.

We may suspend, limit or terminate your account or Vendor Software and Services at any time if you are in default of this Software License and Services Agreement or Services Agreement.

Upon termination of this Software License and Services Agreement, all of your rights and licenses under this Software License and Services Agreement will terminate, and your ability to access or use the Website or Vendor Software and Services may be limited or blocked, and except as otherwise authorized by us, you must return or destroy all software and all materials with confidential information provided or disclosed by us in connection with this Software License and Services Agreement or Vendor Software and Services.

**10. Reserved.**

**11. Confidential Information.**

11.1. Except as otherwise required by the Illinois Freedom of Information Act (5 ILCS 140/1, *et seq.*), or if authorized by the relevant party in writing, Vendor and Company will keep confidential other non-public information reasonably disclosed by or on behalf of, and belonging to, the other party in connection with transactions contemplated by this Software and Services Agreement, provided however, Vendor is permitted to use and disclose Collected Information to the extent permitted by Section 4 (Collected Information).

11.2. The receiving party will protect the other party's confidential information with the same degree of care as it uses to protect its own confidential information, and may share the confidential information with its advisors and consultants who are bound by confidentiality obligations consistent with the receiving party's obligations. If the receiving party receives a request pursuant to a court order, governmental body request or other legal process to disclose the other party's confidential information, the receiving party will promptly notify the other party and provide reasonable assistance to maintain the confidentiality of such information. The receiving party will not be subject to confidentiality obligations for confidential information that (a) at the time of receipt was already known to it without confidentiality obligations; (b) becomes publicly known through no wrongful act of the receiving party; (c) was received from a third party without confidentiality obligations or knowledge that the information was subject to confidentiality obligations; (d) was disclosed to third parties by the other party without confidentiality obligations; (e) is independently developed by the receiving party without use of the confidential information of the other party, or (f) was released pursuant to prior written authorization by the other party.

**12. Intellectual Property.** The subscription rights and licenses granted herein are limited to the specific rights and duration listed in this Software and Services Agreement. We reserve all rights not expressly granted, nothing in this Software and Services Agreement grants, by implication, waiver, estoppel, or otherwise to you or any third party intellectual property rights or other right, title, or interest in or to the our intellectual property.

You may not disassemble, decompile or otherwise reverse engineer or attempt to reconstruct or discover any source code, or underlying ideas or algorithms for Vendor Software and Services or associated software, You also may not (i) reverse engineer, decompile, disassemble, or reconfigure any software used or made available in connection with the Vendor Software and Services, or (ii) use such software to provide functionality or data for use by third party software or services, except as expressly authorized by us and applicable law which cannot be waived by this provision or as expressly authorized in writing by Vendor.

Vendor Software and Services and all content that appears on or in connection with the Website are copyrighted works of Vendor and/or our suppliers, and may not be used, copied, stored or distributed in any manner in whole or significant part except as provided by the Software and Services Agreement or with prior written permission of Vendor.

This Software and Services Agreement, and all related licenses, Software and Services Agreements, policies and guidelines, if any, are copyrighted works of Vendor and the Third party Software Owner and may not be used, copied, stored, or distributed in any manner in whole or significant part except with the prior written permission of the applicable copyright holder(s).

You may not use, display, alter or remove Vendor trademarks except with our prior written permission on any Software or hardware goods. Third party trademarks belong to and are subject to policies and use restrictions of their respective owners.

Notwithstanding anything to the contrary in this Agreement, we may temporarily suspend your and any authorized end user's access to any portion or all of the Vendor Services if: (i) we reasonably determines that (A) there is a threat or attack on any of the our IP; (B) You or any end user's use of the our IP disrupts or poses a security risk to the our IP; (C) You, or any end user, is using the our IP for fraudulent or illegal activities; (D) subject to applicable law, you have ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Our provision of the Vendor Services to you or any end user is prohibited by applicable law; (ii) any of our providers have suspended or terminated our access to or use of any third-party services or products required to enable you to access the Vendor Services. We shall use commercially reasonable efforts to provide written notice of any Service Suspension to you and to provide updates regarding resumption of access to the Vendor Services following any Service Suspension. We shall use commercially reasonable efforts to resume providing access to the Vendor Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. We will have no liability for any

damage, liabilities, losses (including any loss of data or profits), or any other consequences that you or any other user may incur as a result of a Service Suspension.

Aggregated Statistics. Notwithstanding anything to the contrary in this Software Services Agreement, we may monitor your use of the Vendor Services and collect and compile aggregated Statistics. As between us and you, all right, title, and interest in aggregated statistics, and all intellectual property rights therein, belong to and are retained solely by us. You acknowledges that we may compile aggregated statistics based on your data input into the Vendor Services. You agree that we may (i) make aggregated statistics publicly available in compliance with applicable law, (ii) use aggregated statistics to the extent and in the manner permitted under applicable law, and (iii) use aggregated statistics for any lawful purpose.

Information. You acknowledge and agree that we may access, collect, store and use the following information (“Information”) in connection with your use of the Website and Our Vendor Software and Services:

Application, Website and Vendor Software and Services access and activity data (“Services Data”),

Personal and non-personal information about you and your representatives which is included in account registrations for you and your users, and

Inventory and usage information about your computer equipment and software (“Inventory/Usage Information”) which includes limited personal and non-personal information about your personnel and other users of your computer equipment.

You further agree that:

We may collect and store any Information and Collected Information on computer equipment used by us to operate the Application, Website and provide Our Vendor Software and Services,

We may use any Information and Collected Information other than personal information about your personnel and other users of your computer equipment separately or in combination with data from other users of our Vendor Services to develop, analyze, market manage and deliver any products and services of benefit to you, including performance analysis, benchmarking, product improvement, marketing and other legitimate business purposes, so long as personal identities are not disclosed, and

We may disclose any Information and Collected Information in accordance with applicable law as may be required by the United States or other national governments and their respective instrumentalities, including federal, state and local courts, law enforcement and regulatory agencies.

We are accountable for the protection of personal information under our control as described in our privacy policy. All questions, complaints and inquiries concerning our privacy policy should be directed to our Chief Operating Officer, who may be reached at the address indicated in the privacy policy Software and Services Agreement.

**13. Notices.** Notices to Vendor may be sent in written form to following address: 325 N. Main St. Pocahontas, IA 50574, by email to [support@kolonishare.com](mailto:support@kolonishare.com), or by web form provided on the Website.

Notices to you may be sent to the physical or email address indicated in the primary account registration for you.

Properly addressed notices will be deemed to have been delivered to the intended recipient (i) five (5) business days after depositing into the U.S. mail for international delivery, (ii) three (3) business days after being sent by express courier for international delivery or deposited into the U.S. mail for domestic delivery, and (iii) one (1) business day after being sent by express courier for domestic delivery or after being sent by electronic means for international or domestic delivery.

**14. Feedback.** Your feedback is important to us. We highly encourage you to provide comments, suggestions, proposed technology solutions and other feedback about Vendor Software and Services or anything related to your experience in using the these services by contacting [support@kolonishare.com](mailto:support@kolonishare.com). Please note: You hereby assign to us on your behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and we are free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the feedback, for any purpose whatsoever, although We are not required to use any feedback

## **15. Miscellaneous.**

15.1 You may not assign or delegate your rights or obligations under the Software and Services Agreement, in whole or in part, by operation of law or otherwise, to any other person or entity, except with our prior written permission. Any attempted assignment or delegation otherwise by you is void.

15.2. The terms of the Software and Services Agreement do not create a partnership, joint venture, agency or franchise relationship between us and you.

15.3. Vendor Software and Services and related software provided to you under the Software and Services Agreement may be subject to United States export control restrictions. You agree to not transfer, export or re-export software, services or other technology delivered in connection with Vendor Software and Services to any country, person, entity or individual in violation of United States export control restrictions. Without limiting the generality of the previous sentence, you may not transfer, export, re-export or permit access to software, services or other technology to a country which is embargoed by the United States, to a national or resident of an embargoed country, or to any person or entity designated by the United States government as restricted or prohibited from engaging in United States export transactions.

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

15.5. No waiver of any breach of any provision of the Software and Services Agreement will constitute a waiver of any prior, concurrent or later breach, and no waiver will be effective unless made in a writing signed by an authorized representative of the waiving party.

15.6. In no event shall we be liable to you, or be deemed to have breached this Software and Services Agreement, for any failure or delay in performing its obligations under this Software and Services Agreement, if and to the extent such failure or delay is caused by any circumstances beyond our reasonable control, including but not limited to acts of God, weather, regulatory prohibitions, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

15.7. This Software License and Services Agreement, which may include referenced agreements of the Leases, Sales Agreement, Service Agreements, End User Application Agreement, and policies and guidelines, constitutes the entire Software and Services Agreement between us and you for your access and use of the Website and Vendor Software and Services.

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## **EXHIBIT 2**

### **Order Form**

Koloni, Inc.  
325 N. Main St.  
Pocahontas, IA 50574  
brian@koloni.me

Customer: City of Aurora (44 E Downer Place, Aurora, IL 60505)

Type of Good	Number	Annual Fee Per Good	Total Cost
Pedal Bikes	Ten (10)	\$1,500.00	\$15,000.00

Total Annual Amount Owed to Koloni: \$15,000.00

#### **Custom Terms**

1. In case of temporary event(s) within the City requiring bike(s) relocation and creating a temporary geo-fenced area around the event location with or without bike racks shall be the responsibility of Koloni in addition to the services stated in the Master's Agreement. Koloni shall make such arrangements with City's approval and/or request.
2. Koloni shall respond to and make arrangements for bikes and geo-fenced area to any sponsor company or organizations or other entity requesting for a short term rental. Koloni shall do so after the request is approved by the City of Aurora.
3. If/when any public or private agencies consider investing in bike sharing stations within the City's jurisdiction the City of Aurora must be consulted prior to their placement to ensure proper spacing between existing stations and comply with City's standard practice. Permission for use of City's right-of-way for stations must also be secured before placement.
4. Per the Master's agreement Koloni shall return the bikes to the City that are placed outside the City limits within 48 hours, in addition, City prefers the bikes be returned to the hub stations within the City limits for bikes docked outside the City limits and also for bikes docked outside the hub stations but within the City limits. Bikes docked within the City limits outside the hub stations shall be returned to the hub stations after 24 hours but within 48 hours after the 24 hour mark.

Customer Contact Information: Robert Greene, City Traffic Engineer

Email: RGreene@aurora-il.org Phone: 630-256-3200

Dated:

City of Aurora, IL

By \_\_\_\_\_

Name:

Title:

Koloni, Inc.

By \_\_\_\_\_

Name:

Title:

With Invoice Attached.