



COF CONTRACT No. 2018-0253  
**MASTER SERVICES AGREEMENT**

This Master Services Agreement ("Agreement") and the attached Exhibits and appendix is entered into by and between Hytch, LLC, located at 615 Main Street, Suite B2, Nashville, TN 37206 ("Company"), and City of Franklin, Tennessee ("Client"), located at 109 3rd Avenue South Franklin, TN 37064. This Agreement shall be effective upon signature and date ("Effective Date") below. The term length of this agreement is twelve months. This agreement may be terminated at any time, for any reason, by either party with a 30-day written notice.

This Agreement governs the use of the Hytch Rewards, a hosted mobility reward and incentive program software platform and accompanying services.

**1. 1. Attached Exhibit and Appendix:**

- a. **Exhibit A: Services and Fees**
- b. **Exhibit B: Payment Authorization Form**
- c. **Appendix I: Definitions**

**2. Term and Termination**

- a. **Term.** The initial term of this Agreement shall be for twelve months ("Initial Term"), following the execution of the Agreement.
- b. **Termination.** This Agreement shall terminate prior to expiration of the Term at any time, (i) by either Party upon written notice of the other Party's material breach of the Agreement, provided such breach is not cured within thirty (30) days from the date of receipt of written notice of the breach, or (ii) by Either Party upon sixty (60) days prior written notice to the Other Party for any reason at any time during the initial term or any future renewal term. However, section 5 and section 6 will survive termination.

**3. Marketing**

- a. Hytch may market and promote the services, results and technology related to or described in this Agreement, provided that Notwithstanding the foregoing, neither Party will issue or release any announcement, statement, press release or other publicity or marketing materials relating to this agreement, or otherwise use the other Party's trademarks, service marks, trade names, logos, copyrights, symbols or brand names, in each case, without the prior consent of the other Party. The client may market and promote the services, results and technology related to or described in this agreement to the extent it deems appropriate, in its sole discretion, except that it will not issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this agreement, or otherwise use the other Party's trademarks, service marks, trade names, logos, copyrights, symbols or brand names, in each case, without the prior consent of the other Party.

**4. License to Intellectual Property**

- a. Except for a limited license necessary for Client to perform its obligations hereunder, Client shall not have, acquire or claim any right, title or interest in and to Company software, including, but not limited to the Hytch dashboard, mobile app, and rewards systems, trademarks, service marks, logo and trade names worldwide (collectively, the "Intellectual Property"). Client shall use the Intellectual Property only as provided and shall not alter the Intellectual Property in any way, or act or permit action in any way that would impair Company's (or any licensor, affiliate or agent of Company) Intellectual Property. Client acknowledges that Client's use of the Intellectual Property shall not create in Client or any other person any right, title or interest in or to such Intellectual Property.



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- b. Company hereby grants Client a limited, non-exclusive, worldwide, royalty-free, non-transferable license to use the Services and the Application in accordance with this Agreement and any specifications provided by Company or its designees. Client agrees that if this Agreement is terminated, Client may not use the Company software to develop a similar software solution or service directly or indirectly through a third party.
- c. Client shall retain all right, title, and interest in and to Client's name, trademarks, service marks and logo (collectively, "Client Materials"), any website maintained by Client, and any other materials used in its business apart from the Services, Application and Intellectual Property. Client hereby grants to Company a revocable, limited, non-transferable license to use, display, reproduce, distribute, and transmit in digital or printed form the Client Materials and other information provided by Client relating to Client's organization, solely for use by Company or its agents and designees as approved by Client in connection with the implementation and promotion of the Services.
- d. Company shall retain the rights and derivatives to all User Data generated by Client. Any Data, including but not limited to Ride-Share information, that is publicly available shall have no specified ownership. In the event of a material breach of the Agreement by Client that results in Contract Termination, Client User Data shall become the property of Company.

**5. Data Usage**

- a. Client acknowledges that when downloading, installing, or using Hytch software, Hytch may use automatic means (including, for example, cookies and web beacons) to collect information about use of the software. Client and its users also may be required to provide certain information as a condition to downloading, installing, or using the software or certain of its features or functionality, and the associated applications and platforms may provide users opportunities to share information with others.
- b. Certain data is shared by Sponsors to identify groups associated with the Sponsor. When a user enters a group code it must be confirmed against Sponsor supplied data. Sponsors must timely update Hytch on active or inactive status of group members.

**6. Confidentiality**

- a. "Confidential Information" is information disclosed by one party to the other party under this Agreement that is marked as confidential or would normally under the circumstances be considered confidential information of the disclosing party. Confidential Information does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was rightfully given to the recipient by another party.
- b. The Client will not disclose the Confidential Information, except to affiliates, employees, and agents who need to know it and who have agreed in writing to keep it confidential. The Client, its affiliates, employees, and agents may use Confidential Information only to exercise rights and fulfill obligations under this agreement, while using commercially reasonable care to protect it. The Client may also disclose Confidential Information when required by law after giving reasonable notice to Company to disclose such information.

**7. Miscellaneous.**

- a. Notices. All notices of termination or breach must be in writing and addressed to the other party's Legal Department. The address for notices being sent to Hytch is 615 Main Street Suite B2, Nashville TN 3726. The address for Client is 109 Third Avenue South, P.O. Box 305, Franklin, TN 37065.





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- b. Assignment. Neither party may assign any part of this Agreement without written consent of the other.
- c. Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.
- d. No Waiver. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.
- e. No Agency. This Agreement does not create any agency, partnership or joint venture between the parties.
- f. No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third party unless it expressly states that it does.
- g. Counterparts. The parties may execute this Agreement in counterparts, each of which will be deemed to be an original, but all of which together will constitute one agreement.
- h. Amendments. Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.
- i. Entire Agreement. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous Agreements between the parties relating to its subject matter.
- j. Severability. If any term (or part of a term) of this Agreement is invalid, illegal or unenforceable, the rest of the Agreement will continue in force unaffected.
- k. Governing Law. This Agreement is governed by Tennessee law, excluding Tennessee's choice of law rules. ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED HYTCH NETWORK, INC. PROGRAMS WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF WILLIAMSON COUNTY, TENNESSEE, USA AND THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.
- l. Company agrees to indemnify and save the Government of Franklin, the City of Franklin and individual, on or off duty, officers, and employees of the City of Franklin, harmless from any and all losses, damages and expenses, including court costs and reasonable attorneys' fees, by reason of any loss, whatsoever, arising out of or relating to or in consequence of the negligent act, error or omission, only to the extent provided by law, of the Company during work done in connection with this Contract, excepting only such losses as shall be occasioned solely by the negligence of the City of Franklin.**
- m. Client reserves all rights afforded to local governments under law for all general and implied warranties. Client does not waive any rights it may have to all remedies provided by law and therefore any attempt by Company to limit its liability shall be void and unenforceable.**
- n. As a tax-exempt entity, the Client shall not be responsible for sales or use taxes incurred for products or services. The Client shall supply Company with its Sales and Use Tax Exemption Certificate upon Company's request. Company shall bear the burden of providing its suppliers with a copy of the Client's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred. The Client does not agree to pay any interest for late payments, having agreed to pay in a timely manner.**
- o. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.



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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives on the dates first indicated above.

**COMPANY: Hytch, LLC**

Name: Mark Cleveland

Title: Ceo, Hytch Rewards

Signature: 

Date: 12/12/2018

**CLIENT:**

Name: Eric S. Stuckey

Title: City Administrator

Signature: 

Date: 12-19-18

Approved as to form by:



Tiffani M. Pope, Staff Attorney



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## **Exhibit A: Services and Fees**

**Client's Name:** City of Franklin

**Sponsor Commitment:** \$3,000.00

1. **Hytch Overview** Hytch will provide a platform to track, monitor, and motivate ride sharing behavior among travelers in states that Hytch is authorized to conduct business.
  - a. Hytch will deploy client determined rules to further client goals in the areas of peak travel time congestion and parking relief in target geographic destinations, reward use (or nonuse) of certain corridors, incentive carpooling to specific locations, and design creative incentives to motivate defined results.
2. **Hytch Dashboard and Client Implementation**
  - a. Company will provide Client with standard marketing concepts, resources and generic materials to help promote Hytch. Clients are billed separately for customized marketing material, on site training for employees, and launch collateral with production costs billed separately. The Hytch dashboard will include chosen metrics and population information, with the ability included in the system for the Client to change, update, or add rules. Hytch POC are available to help manage changes for the client.
3. **Service Fees**

Hytch will retain a service fee of 25% on sponsor payment.
4. **Zero Balance Limits**
  - a. All rules will suspend if sponsor fund achieves a \$0.01 Balance.
5. **Rules, Limitations and Reward**
  - a. **EMPLOYEE RULE:**
    - i. \$.10 /mile: destination termination within City of Franklin limits
    - ii. Group Code specification. Hytch will supply excel spreadsheet as template for ID upload. Client to user when uploading ID numbers on a monthly basis
    - iii. Available during times/days Monday- Friday, 5 AM - 10 AM
    - iv. 40 Mile cap
    - v. Monthly "scrub" of data for active and inactive employees.
    - vi. Reward start date seven (7) days after payment received
  - b. Hytch recommends Client dedicate (5) parking spaces to install Hytch branded parking signs
    - i. Hytch will supply the Hytch Parking Lots signs, Client to provide installation
6. **Sponsor Commitment**
  - a. Total sponsor commitment \$3,000.00
7. **Sponsor Reward Amount**
  - a. Total reward amount \$2,250.00 (after Hytch fee)
8. **Sponsor Payment**
  - a. Payment is accepted by ACH Deposit, Wire Transfer or Check.
  - b. Payment Authorization Form (see Exhibit B)



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## Exhibit B: Payment Authorization Form

Client's Name \_\_\_\_\_

(Mailing Address)

Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Sponsor Payment:**

Sponsor amount \$ \_\_\_\_\_ Replenishment amount \$ \_\_\_\_\_ (frequency of replenishment TBD)

**Rewards Amount:**

Total rewards amount: \_\_\_\_\_

**What method would you like to pay your sponsor payment? (Please check)**

☐ ACH Deposit; Hytch routing information:

1. Acct #: 188019007

2. ABA #: 064101398

☐ Wire Transfer; Hytch routing information:

1. Acct #: 188019007

2. ABA #: 084000026

☐ Pay by Check; payable to: Hytch, LLC

615 Main Street, Suite 126

Nashville, TN 37206



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## **Appendix I: Definitions**

### **Hytch Glossary - Descriptions of the most important terms within the Master Services Agreement**

- A. "Client Account" refers to any reference to the client account or sub-accounts
- B. "Sponsor" means any third party providing payment for Hytch services
- C. "Sponsor Fund" refers to the fund that holds the sponsor payment after service fees are deducted
- D. "Sponsor Payment" means the amount of money provided to the company for Hytch services; Amount includes the service fee.
- E. "Service Fee" refers to an amount of money due to the Company for services agreed upon.
- F. "Consumer or End User or User" means an individual who downloads the Hytch app and is eligible to participate in the Hytch rewards program.
- G. "Hytch Platform" means the content, data management, architectural and graphical design elements of the software relating to the Services that are to be displayed and/or utilized on the Site.
- H. "Reward" refers to a cash reward that a Consumer or End User is eligible to receive for their use and experience with the Hytch platform.
- I. "Rules" refers to a set of limitations and rewards defined by the Sponsor for a Consumer or End User.
- J. "Group Code" refers to the code provided by an organization to an employee or associate to be considered as part of an organization's network.