EIGHTH AMENDMENT

TO THE

AMENDED AND RESTATED AGREEMENT FOR THE BIKE SHARE PROGRAM

This Eighth Amendment to the Amended and Restated Agreement for the Bike Share Program (the "8th Amendment") is dated as of the __ day of___________, 2020 (the "Execution Date") and is entered into by and between the City of New York (the "City"), acting by and through its Department of Transportation ("DOT"), and NYC Bike Share, LLC ("NYCBS"). Each of DOT and NYCBS are referred to herein as a "Party" and collectively as the "Parties". Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Program Agreement.

WITNESSETH:

WHEREAS, the City and NYCBS have previously entered into an Amended and Restated Agreement for Bike Share Program, a First Amendment to the Amended and Restated Agreement for Bike Share Program, a Second Amendment to the Amended and Restated Agreement for Bike Share Program, a Third Amendment to the Amended and Restated Agreement for Bike Share Program, a Fourth Amendment to the Amended and Restated Agreement for Bike Share Program, a Fifth Amendment to the Amended and Restated Agreement for Bike Share Program, a Sixth Amendment to the Amended and Restated Agreement for Bike Share Program and a Seventh Amendment to the Amended and Restated Agreement for Bike Share Program (hereinafter together referred to as the "Program Agreement");

WHEREAS, the Parties have agreed to clarify certain provisions of the Program Agreement language; and

WHEREAS, the Parties have agreed to certain modifications to promote the long-term sustainability of the Program;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

(1) Any conflict between the provisions of the 8th Amendment and any other provision in the Program Agreement shall be resolved by giving precedence to the 8th Amendment.

(2) Section 1 of the Program Agreement is amended to delete Section 1.16. and insert the following subsection:

"1.16 "Bicycle" shall mean a device as further described in Appendix F, and, for the avoidance of doubt, as pertains to Section 3.4 of the Program Agreement and Section (4) d. of the Sixth Amendment to the Program Agreement, the term Bicycle shall be inclusive of all bicycles, whether propelled solely by human power or propelled solely by or in part by an electric motor, without regard to locking mechanism, and

without regard to whether any such specific Bicycles are approved for Program use in Appendix F."

(3) Section 1 of the Program Agreement is amended to delete Section 1.116. and insert the following subsection:

"1.116 "Station" shall mean a variable number of Docks and related hardware, and, when applicable, a Kiosk, Street Treatment(s) and Street Markings, subject to Appendix B."

(4) *Section 1 of the Program Agreement is amended to insert the following subsection after Section 1.119 (with subsequent Sections and cross references renumbered as appropriate):*

"1.20. "Station Program Elements" shall mean (i) Wayfinding Elements and (ii) public service announcements, "house ads" to promote the Program and/or public art."

(5) Section 1 of the Program Agreement is amended to delete Section 1.133 (prior to this 8th Amendment, Section 1.132) and insert the following subsection:

"1.133. "Wayfinding Elements" shall mean the maps showing the location of each Station."

(6) Section 4 of the Program Agreement is amended to insert, following Section 4.12, the following subsection:

"4.13. DOT shall use reasonable efforts to identify under-utilized City-owned property that could be made available to NYCBS to improve the efficiency and quality of Program operations."

(7) Section 5 of the Program Agreement is amended to delete Section 5.2.1. and insert the following subsection:

"5.2.1. Liquidated damages accrued pursuant to the Service Delivery SLA categories, as set forth in Appendix A as revised, (the "Service Delivery Funds") shall be placed in an escrow account, with a reputable financial institution that shall monitor and oversee the disbursement of the Service Delivery Funds, which disbursements shall be solely approved by DOT in accordance with Section 5.2.4 (the "SLA Escrow"). Service Delivery Funds accrued following the Execution Date shall be placed in the SLA Escrow no later than forty-five (45) Days after the end of the Contract Year in which NYCBS receives an assessment of the Service Level Agreements. The Parties agree to meet within thirty (30) days of deposit of funds in the SLA Escrow to discuss in good faith a disbursement plan of such funds from the SLA Escrow in accordance with Section 5.2.4."

(8) Section 5 of the Program Agreement is amended to delete Section 5.2.4. and insert the following subsection:

"5.2.4. Upon discussion by the Parties, in good faith, of a disbursement plan and final written approval by DOT, the SLA Escrow funds may be disbursed for any Program enhancement, requirement or innovation including all costs associated with administering or transacting from the SLA Escrow. Examples of such Program enhancements, requirements or innovations include, but are not limited to:

(a) Station research and development;
(b) Recumbent bike development and support;
(c) Membership subsidy;
(d) Deactivation fees and station removal fees;
(e) Contractor fees to support siting process; and
(f) Program innovation during crisis."

(9) Section 5 of the Program Agreement is amended to delete Section 5.2.6. and insert the following subsection:

"5.2.6. Unless otherwise directed by DOT to be disbursed in accordance with Section 5.2.4, all Service Delivery Funds in the SLA Escrow, or any percentage thereof, that have not been disbursed or committed to be disbursed may, no sooner than three (3) months after the deposit of such funds into the SLA Escrow, be instructed by DOT to be wire transferred to the City's general fund. Such transfer shall be made, in accordance with instructions provided by DOT, within five (5) Days of a DOT transfer request made with respect to such funds. All funds in the SLA Escrow, or any percentage thereof, shall be wire transferred to the City's general fund, in accordance with instructions provided by DOT, within five (5) Days of termination of the Agreement."

(10) *Section 5 of the Program Agreement is amended to delete Section 5.2.8(d) (with subsequent subsections and cross references renumbered as appropriate).*

(11) Section 5 of the Program Agreement is amended to delete Section 5.3. and insert the following subsection:

"5.3. NYCBS shall maintain throughout the Term a cash reserve account in amount not less than $2 million dollars (the "Cash Reserve Account") to be used solely for the purpose of funding any temporary cash flow shortfalls in the operation of the Program (i.e., excess of cash needed to fund Program operations over cash revenues available from the operation of the Program). Until the date on which the Program is generating profit adequate to fund the Cash Reserve Account, an undistributed principal reserve held by a Recognized Lender may satisfy, in part or in whole, the requirements of a Cash Reserve Account provided that such principal reserves are available to cover such cash flow shortfalls, if any. At any time during the Term, NYCBS may satisfy, in part or in whole, the requirements of the Cash Reserve Account by delivering to DOT an irrevocable letter of credit in an amount of up to $2 million ("Letter of Credit"). To the extent NYCBS is maintaining the Cash Reserve Account or Letter of Credit and, if in any year NYCBS draws funds from the Cash Reserve account or the Letter of Credit, then on the next anniversary of the Effective

Date, NYCBS shall deposit amounts adequate to restore the balance of the Cash Reserve Account or Letter of Credit (taking into account any amounts backed by a Letter of Credit or held in the undistributed principal reserve described above) to a total of $2 million dollars."

(12) Section 6 of the Program Agreement is amended to insert, following Section 6.9., the following subsection:

"6.10. DOT shall make reasonable efforts to support efforts by NYCBS to implement in-Station charging for Bicycles at Stations, including, for the avoidance of doubt, by waiving any applicable permit fees in accordance with Section 4.8."

(13) Section 7 of the Program Agreement is amended to delete Section 7.5. and insert the following subsection:

"7.5. NYCBS shall install Station Program Elements on up to fifty (50) percent of Stations. Content for Wayfinding Elements shall be provided by DOT to NYCBS."

(14) Section 7 of the Program Agreement is amended to delete Section 7.6. and insert the following subsection:

"7.6. NYCBS shall not make changes to the function or design of the Equipment (not including changes to the graphics appearing on any Equipment or other minor modifications) that may reasonably be expected to affect the safety of the general public or Program users; affect the management and control of the right of way by the City; and/or reduce the useful life or maintenance cycles of the Equipment without the prior approval of DOT, which approval shall not be unreasonably withheld, delayed or conditioned, and without all other necessary approvals, including but not limited to the approval of the Public Design Commission, when applicable."

(15) Section 7 of the Program Agreement is amended to delete Section 7.7. and insert the following subsection:

7.7. NYCBS will operate a call center. Calls shall be answered in person 24 hours per Day, 7 Days per week. In addition to such call center service availability for the public, NYCBS shall have a contact person available to DOT by phone 24 hours per Day, seven Days per week.

(16) Section 7 of the Program Agreement is amended to insert, following Section 7.11., the following subsection:

"7.12. Prior to the introduction of any new Bicycle model in the Program, NYCBS shall certify such Bicycle model, utilizing third-party engineering testing to established standards for making it fit for safe operation. Such engineering certification shall be submitted to DOT prior to obtaining Bicycle approval pursuant to Section 7.6. Such engineering certification requirements may be modified by mutual agreement to incorporate new norms as they become available."

(17) Section 7 of the Program Agreement is amended to insert, following Section 7.12., the following subsection:

"*7.13. For each Contract Year and utilizing third-party engineering testing to established standards for making it fit for safe operation, NYCBS shall certify as fit for operations each model of Bicycle that has been significantly modified for the forthcoming Contract Year. NYCBS will provide DOT with sufficient detail from such third-party engineering certification for DOT to independently assess the conclusions of the certification through examination of random samples of Bicycles in the fleet.*"

(18) Section 8 of the Program Agreement is amended to delete Section 8.8 and insert the following subsection:

"*8.8. For each Kiosk, NYCBS may:*

8.8.1. Install up to two (2) Advertising or Sponsorship acknowledgment placement panels per Station, provided that such panels shall not be larger than two feet by four feet. Notwithstanding the foregoing and upon approval by DOT, one (1) Advertising or Sponsorship acknowledgement panel (2) may substitute for up to fifty (50) percent of the designated Station Program Elements' in the second panel."

(19) Section 8 of the Program Agreement is amended to delete the first Section 8.9.1 and insert the following subsection:

"*8.9.1. Install Advertising and Sponsorship acknowledgment graphics covering any or all of the sides and top of the Dock; and*"

(20) Section 8 of the Program Agreement is amended to delete the second Section 8.9.1 and insert the following subsection:

"8.9.2. *Permit one Advertiser or Sponsor.*"

(21) Section 8 of the Program Agreement is amended to delete Section 8.10 and insert the following subsections:

"*8.10. Subject to Section 8.10.4, unless otherwise approved by DOT, for each Bicycle (including electric Bicycles), NYCBS may:*

8.10.1. Install Advertising and Sponsorship acknowledgment graphics, provided that such graphics may not exceed 3 feet squared;

8.10.2. Install Advertising and Sponsorship acknowledgment graphics on the following elements of the Bicycle;

(a) Baskets;
(b) Back and front mudguards;
(c) Bicycle frame; and

(d) other elements of the Bicycle upon mutual agreement of the Parties.

8.10.3. Permit (a) one (1) Advertiser or Sponsor, (b) one (1) single additional mark of the operator or its ultimate parent on each side of the Bicycle and (c) one (1) single additional mark of the operator or its ultimate parent on either the stem cap or interior of the basket. Notwithstanding the foregoing, from time to time and at the direction of Citi (defined below), NYCBS may include marks of additional partners of limited-time campaigns (e.g., New York Mets).

8.10.4. The Parties acknowledge and agree that as long as Citibank, N.A. or one of its affiliates ("Citi") is the title sponsor of the Program, Citibank, N.A. shall, subject to the terms of any sponsorship agreement between NYCBS and Citi of which NYCBS will notify DOT, be the only Advertiser or Sponsor with acknowledgment graphics on each Bicycle except as otherwise permitted by Section 8.10.3."

(22) Section 8.11. of the Program Agreement is amended to delete Sections 8.11.11. and 8.11.12. and insert, following Section 8.11.10., the following:

"8.11.11. Safety campaigns;

8.11.12. Banners affixed to the solar masts of Kiosks; and

8.11.13 Such other assets as may be approved by DOT."

(23) Section 9 of the Program Agreement is amended to delete Section 9.2. and insert the following subsection:

"9.2 Beginning on the third anniversary of the Effective Date, NYCBS shall reimburse the City for parking meter revenue foregone by the City due to the use for Station locations or for Station site installation of what was, prior to such use or activity, a metered parking space. For each year of the term, NYCBS and the City agree that the full amount of the reimbursement required pursuant to the preceding sentence shall be $1,000,000.00 (One Million Dollars) per year (the "Annual LPMR"). The Annual LPMR shall accrue each year on the anniversary of the Effective Date and placed in the SLA Escrow no later than forty-five (45) Days after the anniversary of the Effective Date."

(24) Section 9 of the Program Agreement is amended to delete Section 9.3.

(25) Section 10 of the Program Agreement is amended to delete Section 10.1.1. and insert the following:

"10.1.1. "Ridership Revenue" shall mean all revenues (from whatever source derived, including, but not limited to, Kiosks, Program app and Lyft app, etc. and without deduction whatsoever for commissions, fees, brokerage, labor charges or other expenses or costs), to the extent actually collected by NYCBS or parent companies as

determined on a cash basis, as Program membership or user payments (including but not limited to annual, weekly and daily membership payments), payments for use of Bicycles extending beyond the Initial Ride Period as defined in Section 11 hereof and any other Program revenue generated through Bicycle ridership, net of sales taxes or other taxes imposed by law which NYCBS is obligated to collect and net of credit card fees netted out of amounts due to NYCBS by the credit company prior to payment to NYCBS and other billing related charges treated by the party imposing such charges in a similar manner. For the avoidance of doubt, Ridership Revenue shall in no event include any disbursements from the SLA Escrow"

(26) Section 10 of the Program Agreement is amended to delete Section 10.1.2. and insert the following:

"10.1.2. "All Other Revenue" shall mean all revenues (from whatever source derived, including, but not limited to, Kiosks, Program app and Lyft app, etc. and without deduction whatsoever for commissions, fees, brokerage, labor charges or other expenses or costs), to the extent actually collected by NYCBS or parent companies as determined on a cash basis as a result of Program advertising and sponsorships, including without limitation revenue generated in connection with (x) naming rights related to the Program and (y) sponsorship or advertising placements on Bicycles (including electric Bicycles), Stations, Equipment, website, mobile applications or other physical or web-based materials, revenue generated through User Data as well as all other Program revenue sources and amounts excluding Ridership Revenue, net of sales taxes or other taxes imposed by law which NYCBS is obligated to collect and net of credit card fees and other billing related charges. For the avoidance of doubt, All Other Revenue shall in no event include any disbursements from the SLA Escrow"

(27) Section 10 of the Program Agreement is amended to delete subsection 10.2.2.(a) and insert, following Section 10.2.2., the following subsection:

"(a) for the first Contract Year, 5% of the excess of Ridership Revenue for the first Contract Year over an amount equal to the product of \$30,000,000 and the ratio of the number of
days during such Contract Year to 365, and for the last Contract Year, the amount equal to the product of the amount determined in accordance with 10.3.2(a) for the final Contract Year and the ratio of the number of days during such Contract Year to 365; plus"

(28) Section 10 of the Program Agreement is amended to delete subsection 10.3.2.(a) and insert, following Section 10.3.2., the following subsection:

"(a) for each Contract Year:
- *(i) 5% of the excess of Ridership Revenue over \$30,000,000 and up to \$40,000,000;*
- *(ii) 4% of the excess of Ridership Revenue over \$40,000,000 and up to \$50,000,000; and*
- *(iii) 2% of the excess of Ridership Revenue over \$50,000,000."*

(29) Section 11 of the Program Agreement is amended to delete Section 11.7. and insert the following:

"11.7. NYCBS shall at all times post on NYCBS' website and app a complete and up-to-date fee description that sets forth each and every current membership and usage fee offered by NYCBS on such platform, the methods of purchasing memberships and paying fees, available discounts on such fees, the applicability and terms of such discounts and, to the extent applicable, how to apply for or qualify for such discounts, and fees associated with damaged, lost, stolen or otherwise unreturned Bicycles. NYCBS shall furnish written copies of such material to the public upon request. NYCBS shall at all times post on all Stations the current fees for rental types available for purchase through the Kiosks, as well as a call to action for annual membership."

(30) Section 11 of the Program Agreement is amended to delete Section 11.8. and insert the following:

"11.8. NYCBS shall accept credit card payments online and at a majority of Stations. NYCBS may employ such other methods of payment as it may determine."

(31) Section 11 of the Program Agreement is amended to insert, following Section 11.13.3., the following section:

"11.14. If the only Bicycle(s) available for use at a Station are one (1) or more electric Bicycles, all Annual Memberships and Affordability Memberships shall be able to check out such electric Bicycle(s) without incurring any additional fees over and above fees charged for use of a Bicycle propelled solely by human power."

(32) Appendix F of the Program Agreement is amended to insert the following language at the end of Appendix F:

"F.1. NYCBS and DOT will meet at least every twelve months to assess the effectiveness of these functional specifications and adjust accordingly, subject to mutual agreement.

F.2. Premium Modality Bicycles, including electric Bicycles, shall compose no more than twenty percent (20%) of the total Bicycle Fleet Level. Notwithstanding the foregoing, by March 1, 2021 NYCBS and DOT will meet in good faith to determine the criteria required to increase the percentage of the total Bicycle Fleet Level that may be composed of Premium Modality Bicycles.

F.3. NYCBS shall develop a condensed-footprint docking mechanism, which will allow for space-saving Stations that accommodate more docked Bicycles per linear foot in a typical Station layout as compared to the current Equipment, by:

F.3.1 Providing a progress update including concepts by January 13, 2021.

F.3.2 Submitting final design drawings to DOT no later than February 28, 2021;

F.3.3. Ensuring the percentage of space saved as compared to a standard Station plate shall be no less than 50%; as an example for clarity and the avoidance of doubt, this means that where the current Equipment accommodates four (4) docked Bicycles oriented in a single direction per 10 feet, a condensed-footprint docking mechanism must accommodate no less than six (6) docked Bicycles oriented in a single direction per 10 feet.

F.3.4 Ensuring that the Equipment is in most instances deployable within typical Station envelopes currently occupied by Stations composed of standard station plates; for clarity, this means that the Station must not be wider (where "wider" is the dimension perpendicular to the curb) than approximately six (6) feet when bicycles are in dock, and must not require electrification or in-ground foundations in situations where current equipment does not;

F.3.5. Utilizing the secure locking mechanism(s) compatible with the "triangle" at front of Bicycle as locking point; and

F.3.6. Deploying into customer service ten (10) months after mutual agreement by DOT and NYCBS on the design solution."

(33) Appendix G of the Program Agreement is amended to insert the following language at the end of Appendix G:

"In addition to the monthly report described above, NYCBS shall notify DOT of any injuries or fatalities no later than twenty-four (24) hours from receipt of information by NYCBS."

(34) Exhibit B of the Program Agreement is amended to delete Exhibit B and insert the attached Exhibit B.

(35) Section (3) of the Sixth Amendment to the Program Agreement is amended to delete Section (3) b. and insert the following:

"(3) b. NYCBS will invest the first $30 million in the Program within twenty-four (24) months of the registration date of the Sixth Amendment. Such investment is guaranteed by the Lyft Guaranty in the form of Exhibit B hereto;"

(36) Section (7) of the Sixth Amendment to the Program Agreement is amended to delete Section (7) a. and insert the following subsection:

"(7) a. NYCBS shall be permitted to charge different rates for premium modalities, including for pedal-assist Bicycles. For pedal-assist Bicycles the different rates may include per-minute pricing. Such premium pricing shall not adversely affect access to the core Program service by annual members;"

(37) Section (8) of the Sixth Amendment to the Program Agreement is amended to delete Section (8) d. and insert the following subsection:

"(8) d. For the avoidance of doubt, NYCBS's exclusive rights within the Exclusivity Zone shall include all bike share programs with any type of bicycle, including, without limitation, Bicycles and electric Bicycles, whether docked or dockless, without regard to whether such bicycle is permitted to operate within the Program under Appendix F."

(38) The remaining terms of the Program Agreement shall remain in full force and effect.

(39) **Governing Law.** This 8th Amendment shall be governed in all respects by the internal laws of the State of New York as applied to agreements entered into among New York residents to be performed entirely within New York, without regard to principles of conflicts of law.

(40) **Severability.** In the event that any provision of this 8th Amendment becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Amendment shall continue in full force and effect without said provision, provided that no such severability shall be effective if it materially changes the economic benefit of this Amendment to any party hereto.

(41) **Counterparts.** This 8th Amendment may be executed in counterparts, each of which shall be declared an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City, by its Commissioner of the New York City Department of Transportation, and NYCBS have caused this 8th Amendment to the Amended and Restated Agreement for Bike Share Program to be duly executed and delivered as of the day and year referenced above.

THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

By: Polly Trottenberg
Name: Polly Trottenberg
Title: Commissioner

NYC BIKE SHARE, LLC

By: David Foster
Name: David Foster
Title: Head of Lyft Bikes and Scooters

Approved as to form and
certified as to legal authority:

Acting Corporation Counsel
12/4/2020