

## **BIKI RIDER RELEASE: USER AGREEMENT, LIABILITY WAIVER AND RELEASE, VERSION 1.3**

**USER IS ADVISED TO REVIEW THIS DOCUMENT CAREFULLY BEFORE ENTERING INTO THIS AGREEMENT AS IT IS A BINDING LEGAL AGREEMENT.**

THIS BIKI USER AGREEMENT, LIABILITY WAIVER AND RELEASE (this "Agreement") is made by and between the participant executing this Agreement ("You" or "User"), Bikeshare Hawaii ("BSH") and Secure Bike Share Hawaii LLC ("SBSH") as of the date User first participates in the Program (defined below) or uses any of the Program Equipment (defined below). By participating in the Program and using the Program Equipment, User hereby agrees to the terms and conditions of this Agreement.

### RECITALS

1. Biki is a self-service bicycle rental system within the City and County of Honolulu, Hawaii (the "Program") managed by SBSH.
2. Bikesharing Stations (each, a "Station" or "Biki Stop" and collectively, the "Stations") are or will be located at various locations in the City and County of Honolulu, and such Stations will park bicycles available for check out (each, a "Bicycle" and collectively, the "Bicycles") in accordance with the terms and conditions of this Agreement. The Stations and Bicycles, and any other items or equipment associated therewith, are collectively referred to herein as the "Program Equipment".
3. User intends to participate in the Program and use the Program Equipment and, therefore, agrees to the terms and conditions of this Agreement, with the understanding that User's acceptance and agreement of the terms and conditions of this Agreement is a material requirement and condition precedent to User's participation in the Program and use of the Program Equipment. BSH and SBSH reserve the right to refuse service to any User or potential User.

### AGREEMENT

1. Acceptance of Agreement; Parties. By acknowledging or accepting the terms and conditions of this Agreement, whether by electronic means or otherwise, User agrees to all of the terms and conditions contained herein. Except as provided in this Agreement, User expressly agrees to use a Bicycle subject to the terms and conditions of this Agreement. User is the sole lessee of a Bicycle and is solely responsible for compliance with all terms and conditions contained herein.
2. User is 18 or Older and a Competent Bicycle Rider. User hereby swears, affirms and represents that he or she is 18 years old or older, or User is the parent or legal guardian of a rider who is at least 16 years old. For purposes of this Agreement, if User is the parent or legal guardian of a rider who is at least 16 years old, User agrees that (i) the terms and conditions of this Agreement shall govern use of a Bicycle by such rider; (ii) User shall be responsible for such rider's compliance with the terms of this Agreement and any applicable rules, regulations and laws with respect to rider's use of the Bicycle; (iii) and the term "User" as used herein shall mean such rider together with the parent or legal guardian of such rider. User further swears, affirms and represents that User is a competent bicycle operator; that User is physically fit to ride a Bicycle and also that User is familiar with the operation of a Bicycle and is reasonably competent to ride a Bicycle. **If User intentionally or unintentionally misrepresents User's age or ability to operate a Bicycle, User accepts full responsibility and is liable for any consequence, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to any such intentional or unintentional misrepresentation.**
3. Multiple Riders. For purposes of this Agreement, if User permits any third party to use the Program Equipment where User unlocks Bicycle for any such third party, User agrees that (i) the terms and

conditions of this Agreement shall govern use of a Bicycle by such third party rider; (ii) User shall be responsible for such third party rider's compliance with the terms of this Agreement and any applicable rules, regulations and laws with respect to rider's use of the Bicycle; (iii) and the term "User" as used herein shall mean both the User and the third party rider. User further swears, affirms and represents that each of User and any such third-party rider is a competent bicycle operator; that each of User and such third-party rider is physically fit to ride a Bicycle and also that each of User and such third-party rider is familiar with the operation of a Bicycle and is reasonably competent to ride a Bicycle.

4. Changes to Terms. SBSH may modify this Agreement from time to time, and such modification will be effective upon its posting at the Stations or on gobiki.org (the "Website"). User agrees to be bound by any modification to this Agreement when using the Program Equipment or gobiki.org after any such modification is posted; it is therefore important that User reviews this Agreement regularly.
5. Bicycle Check Out. Provided that User fully complies with the terms and conditions of this Agreement and pays the fees described herein, User shall have the right to use a Bicycle for the allotted check out period.
6. Program Equipment: Use of Bicycles. User agrees that the Program Equipment, including the Stations and Bicycles, are the property of SBSH, BSH, and/or the City and County of Honolulu and User's right to use the Program Equipment arises solely from the terms and conditions of this Agreement. User shall not modify, alter, deface or intentionally damage the Program Equipment and shall not use the Program Equipment for any illegal, reckless or grossly negligent purpose or a purpose for which such equipment is not intended. User will not use the Bicycle in violation of any law, ordinance or regulation. User shall never use or operate a Bicycle while under the influence of alcohol or drugs. **User agrees that the front basket of the Bicycle is intended to carry light goods only, and that User shall not attempt to carry additional people, including infants or children, or animals on the Bicycle including in the basket.** It is strongly recommended that User wear a safe and appropriate helmet when operating a Bicycle. User shall also fully comply with the Program Rules and Regulations attached hereto as Exhibit A, as amended from time to time (the "Rules and Regulations").
7. Accidents; Damage; Stolen or Lost Bicycles. User agrees to immediately report to SBSH and the police any accident involving a Bicycle. User agrees to pay for any damage, including replacement parts, and/or destruction or loss of the Bicycle (even if caused by someone else) while the Bicycle is checked out to User. User will ensure that the Bicycle is always locked and secured when unattended. All repairs needed as a result of any such loss, destruction or damage, will be performed at prevailing labor rates. In the event the Bicycle is lost, destroyed or damaged beyond repair, regardless of fault or cause, User agrees to pay SBSH the full replacement value of the equipment. **If the Bicycle is not returned within 24 hours, the Bicycle will be considered stolen or lost, and User will be charged the current fee for replacement of a lost, stolen, unreturned or totaled Bicycle, as specified in the "Plan and Fee Schedule" attached hereto as Exhibit C.** User expressly agrees that such amount is a reasonable fee for each stolen or lost Bicycle while Bicycle is checked out to User. User understands and agrees that he or she is responsible and liable for any misuse, consequences, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to a stolen or lost Bicycle, whether or not the fault of User.
8. Return of Bicycle. User agrees to return the Bicycle to a Station in the same condition received, ordinary wear and tear expected. User must secure the Bicycle to the Station dock, in accordance with any posted guidelines or rules.
9. Bicycle Fees; Plan Fees, Extra Time Fees and Other Fees. For the check-out or use of a Bicycle, User agrees to pay SBSH the applicable fees ("Fees") as set forth in Exhibit C. The Fees include a "Plan Price" and "Extra Time Fees" and other Fees, if applicable. User understands that the Plan Price will be charged to the User's credit card at the time of sign-up. Extra Time Fees, incurred only for usage exceeding the time period established in the plan, will be charged at the time duration and rates specified in Exhibit C and posted on gobiki.org, as the same may be revised or updated from time to time at the discretion of SBSH.

Commented [J1]: This section does not address when other fees will be charged.

SBSH Fee Policies and Procedures are described on Exhibit B attached hereto and User shall comply with such Policies and Procedures, as the same may be updated from time to time by SBSH. **If the Bicycle is not returned within 24 hours, the Bicycle will be considered stolen or lost, and User will be liable for all Plan Prices and Extra Time fees and other fees incurred if applicable while the Bicycle was checked out to User.** Other fees may be charged for each fee occurrence. For example, if a request for a replacement key is requested, the fee for the replacement key may be assessed at the time of issuance. SBSH reserves the right to collect the security hold if the Extra Time fee cannot be processed.

10. Maximum Check Out Period, Operating Hours and Bicycle Availability. User agrees and acknowledges that the check-out of a Bicycle is subject to the Program's operating hours, seasonal closures, minimum and maximum check out periods and other limitations as determined by SBSH, in its sole discretion. Bicycles are limited and Stations may not have available Bicycles for check out at all times. Bicycles are intended to be used for short, point-to-point transportation or short recreational rides. The maximum check-out time before a Bicycle is considered lost or stolen is 24 hours. User agrees to return the Bicycle to a designated Station within no more than 24 hours from the time the check-out began. User is solely responsible for being aware of any elapsed time related to timely return.
11. Credit Card Authorization. User shall provide a credit or signature debit card before using any Program Equipment and agrees that such credit or signature debit card will be charged any Fees or other amounts owed hereunder including, without limitation, any amounts for damage to, or replacement of, a Bicycle. A security hold may be placed on User's Credit Card for each Bicycle rented. The security hold amount is specified in "Plan and Fee Schedule". The amount of the security hold may remain on User's credit card account for a period of time to be determined by User's bank's policies regarding holds. User represents and warrants that User is authorized to use the credit or signature debit card or credit or signature debit card number provided to SBSH and hereby authorizes SBSH to charge such credit or signature debit card any amounts owed hereunder. User understands that the transaction may incur overdraft fees, foreign transactions fees or any other fees that are subject to the card issuer's policy, and User accepts that these additional fees are his or her responsibility. The user will not refute the charge for any reason. Any change to the User's Credit Card shall constitute as a non-revocable charge. Any dispute or discussion over the charges incurred will be handled in good faith between SBSH and the user and will not involve the user's credit card company or financial institution.
12. Waiver and Release of Liability. For and in consideration of check out and use of a Bicycle, to the maximum extent permitted by law, User hereby forever releases and relinquishes and discharges SBSH, BSH, PBSC Urban Solutions Inc., the State of Hawaii, the City and County of Honolulu, all Program sponsors and advertisers, and directors, as well as owners of property upon which Stations are located (collectively, the "Released Parties") from any and all claims, liabilities, causes of action, judgments, costs, expenses, damages or wrongful death, injury to others and/or third parties, which arise out of, result from or relate to this Agreement, the check out or use of a Bicycle, the participation in the Program, and/or the maintenance, design, use and/or operation of the Bicycle, including any and all claims, liabilities, causes of action and/or damages related to the sole or partial negligence of Released Parties and/or the negligence of others. By this Agreement any such claims, rights, and causes of action that User (and User's legal guardian(s), if applicable) may have are hereby waived, released and relinquished, and User (and guardian(s), if applicable) does(do) so on behalf of User's heirs, executors, administrators and assigns. User knowingly and voluntarily agrees, understands and recognizes that User will have no right to make a claim or file a lawsuit against the Released Parties arising out of this Agreement, the check out, maintenance, design, use and/or operation of the Bicycle, the Program, and/or gobiki.org. **USER ACKNOWLEDGES AND AGREES THAT NONE OF THE RELEASED PARTIES ARE RESPONSIBLE OR LIABLE FOR ANY CLAIM, INCLUDING THOSE THAT ARISE OUT OF OR RELATE TO (A) ANY RISK, DANGER, OR HAZARD DESCRIBED IN THIS AGREEMENT, (B) THE USE OF, OR INABILITY TO USE, ANY OF THE PROGRAM EQUIPMENT, (C) THE BREACH OF THIS AGREEMENT OR USER'S VIOLATION OF ANY LAW, (D) ANY NEGLIGENCE, MISCONDUCT, OR OTHER ACTION OR INACTION BY USER, (E) THE FAILURE TO WEAR A BICYCLE HELMET WHILE USING A BICYCLE, OR (F) ANY NEGLIGENCE, MISCONDUCT, OR OTHER ACTION OR INACTION OF ANY THIRD PARTY. THE TOTAL LIABILITY OF THE RELEASED PARTIES FOR ALL CLAIMS BY YOU, INCLUDING THOSE BASED IN CONTRACT, TORT**

**(INCLUDING NEGLIGENCE), STATUTORY, OR OTHER GROUNDS, SHALL NOT EXCEED THE FEES PAID TO SBSH. THE TERMS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

13. **Assumption of Risk.** User agrees that riding a Bicycle involves many obvious and not-so-obvious risks, dangers, and hazards, which may result in injury or death to User or others, as well as damage to property, and that such risks, dangers, and hazards cannot always be predicted or avoided. User agrees that User understands and takes responsibility for such risks, dangers, and hazards. User agrees that if User's use of any of the Program Equipment causes injury or damage to another person or property, then User shall be liable for all resulting injuries, damages, and related costs. **By choosing to ride a Bicycle provided through the Program, User assumes all responsibility for all related risks, dangers, and hazards, and User agrees that SBSH and the other Released Parties are not responsible for any injury, damage, or cost caused by User with respect to any person or property, including the Bicycle itself.** User is solely and fully responsible for the safe operation of the Bicycle at all times. User understands and agrees that a Bicycle is a machine that may malfunction even if properly maintained, that such malfunction may cause injury and that the Released Parties shall not be responsible for the malfunction of any Program Equipment including the Bicycles. User understands and agrees that neither SBSH nor any of the Released Parties is a common carrier, and that the opportunity to check out a Bicycle is for convenience and/or transportation only, and such opportunity is intended for those persons who are able and qualified to operate a Bicycle. SBSH is to do its best to avoid and correct technical glitches. User accepts it is possible and will not demand more than the amount incorrectly charged, if any. Both parties agree to use best efforts to resolve disputed amounts resulting from technical glitch(s) before escalating. The terms of this Section shall survive termination of this Agreement.
14. **Indemnification.** To the maximum extent permitted by law, User expressly agrees to indemnify, release and hold harmless the Released Parties (including Released Parties' employees, agents, representatives, attorneys, members, directors, principals and affiliates) from all claims, damages, liabilities, actions and/or judgments (including property loss or damage, personal injury or loss of life), whether caused by the sole or partial negligence of the Released Parties and/or the negligence of others, whether based upon breach of contract, breach of warranty, active or passive negligence or any other legal theory, arising from, or related to, this Agreement, User's check out of a Bicycle, User's use of the Program Equipment and/or User's participation in the Program. The terms of this Section shall survive termination of this Agreement.
15. **Term of Agreement.** This Agreement shall be effective upon User's acceptance of this Agreement or User's use of the Program Equipment and shall terminate ten (10) years hereafter. Notwithstanding the foregoing, SBSH may amend or terminate this Agreement for any reason (or no reason) at any time without User's consent.
16. **Governing Law.** This Agreement will be governed by the laws of the State of Hawaii, excluding the choice of law rules thereof.
17. **Waiver.** No waiver of any default or breach of any provision of this Agreement is a waiver of any other default or breach of any other provision of this Agreement. The terms of this Agreement may be waived or amended only in writing and only by the party that is entitled to the benefits of the term being waived or amended.
18. **Final Agreement; Modification.** This Agreement contains the complete, final, and exclusive integrated agreement between the parties with respect to its subject matter, except that if User accepts this Agreement through gobiki.org, the Privacy Policy shall be included in this Agreement. This Agreement supersedes all other prior agreements, written or oral, relating to such subject matter. At any time and from time to time, and without User's consent, SBSH may unilaterally amend, modify, or change this Agreement, in its sole discretion and without any notice or cause. By continuing to use the Program after any amendment, modification, or change, User has agreed to be bound by all such amendments, modifications, and changes.

19. Contract Interpretation; Survival. The headings in this Agreement do not affect the interpretation of this Agreement. Unless the context otherwise requires, words in the singular number or in the plural number shall each include the singular number or the plural number. All pronouns include the masculine, feminine, and neuter pronoun forms. All User acknowledgements and indemnities including, without limitation, those contained in Sections 12, 13, 14, 23 and 24 hereof, shall survive the expiration or earlier termination of this Agreement.
20. Trademarks and Logos. "BIKI," and any names, marks, logos, symbols, tag lines, graphics, intellectual property related to the brand and marketing materials associated with the Program (the "Program Marks") are the exclusive property of BSH. User has no right, title or interest in or to the Program Marks and use of the Program Marks without the prior written consent of BSH and/or SBSH is strictly prohibited.
21. Notice. Any and all notices or other communications required or permitted by this Agreement shall be in writing and will be deemed delivered when personally delivered to the party to whom it is addressed, or in lieu of such personal services, two (2) business days after deposit with an internationally-recognized express courier service with instructions to deliver on the following business day, postage pre-paid, addressed to such party. Notices and other communications may also be properly given by facsimile or electronic mail but shall be deemed to be received upon mechanical or electronic confirmation of receipt thereof. Either party may change its address for the purpose of this provision by giving written notice of such change to the other.
22. Attorneys' Fees and Acceptance of Agreement and Terms and Conditions by User. Notwithstanding anything to the contrary contained in this Agreement, if either party institutes legal proceedings against the other in any manner related to this Agreement or the check out or use of a Bicycle, SBSH will not be responsible for any legal fees involved with prosecuting or defending against such legal proceedings. User expressly acknowledges that he or she has carefully read this entire Agreement and understands this Agreement and expressly agrees to be bound by this Agreement. After careful deliberation, User voluntarily gives his or her consent and expressly agrees to all the conditions included in this Agreement as set forth above. SBSH will not be responsible for any legal fees involved with prosecuting or defending against such legal proceedings and User agrees to reimburse SBSH an amount equal to all attorney's fees, disbursements, and all other costs and expense incurred in the connection herewith. **USER ACKNOWLEDGES, UNDERSTANDS AND AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND FURTHER UNDERSTANDS THAT THIS AGREEMENT CONTAINS PROVISIONS WHICH RELEASE AND INDEMNIFY BSH, SBSH, AND THE OTHER RELEASED PARTIES FROM ANY COSTS, LIABILITIES OR INJURIES ASSOCIATED WITH USE OF A BICYCLE BY USER. USER FURTHER UNDERSTANDS THAT THE TERMS OF THIS AGREEMENT REQUIRE USER TO PAY FOR ANY LOST, STOLEN OR DAMAGED BICYCLE OR PROGRAM EQUIPMENT, WHETHER OR NOT CAUSED BY THE FAULT OF THE USER.**
- ~~24.~~23. Disclaimer. **USER ACKNOWLEDGES AND AGREES THAT THE USE OF ANY OF THE PROGRAM EQUIPMENT IS AT USER'S SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, SBSH, BSH AND THE OTHER RELEASED PARTIES DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROGRAM AND ANY OF THE PROGRAM EQUIPMENT, WHICH ARE ALL PROVIDED "AS IS" AND "AS AVAILABLE" (AND USER RELIES ON THEM SOLELY AT USER'S OWN RISK). NONE OF THE RELEASED PARTIES REPRESENT OR WARRANT THAT ANY OF THE PROGRAM EQUIPMENT WILL BE IN GOOD REPAIR OR DEFECT-FREE. USER ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS FOR USING ANY OF THE PROGRAM EQUIPMENT, AND NONE OF THE RELEASED PARTIES ARE LIABLE FOR ANY CLAIM ATTRIBUTABLE TO ANY OF THE FOREGOING. USER ASSUMES FULL RESPONSIBILITY AND LIABILITY FOR ALL CONSEQUENCES, CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, LIABILITIES, DAMAGES, INJURIES, COSTS, EXPENSES, PENALTIES, ATTORNEYS' FEES, JUDGMENTS, SUITS, OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER RELATED TO A STOLEN OR LOST BICYCLE.**

## EXHIBIT A

### **Program Rules and Regulations**

In addition to the terms and conditions contained in the Agreement, participation in the Program and use of the Program Equipment by User shall at all times be subject to the following rules and regulations, as the same may be amended from time to time in the sole discretion of SBSH:

1. User shall be fully liable to the owner of the Program Equipment for any theft, loss, damage or alteration of the Program Equipment;
2. User will not use a Bicycle for racing, mountain Bicycle riding, stunt or trick riding, riding down stairs;
3. User shall use the Bicycle in accordance with all laws and regulations pertaining to safe bicycling as posted by the City and County of Honolulu including not riding on sidewalks or pedestrian malls;
4. User will not operate and/or use the Bicycle on unpaved roads, through water, or in any location that is prohibited, illegal and/or a nuisance to others;
5. User will not fill the front basket with heavy items as they may create an unsafe condition and affect User's balance and/or steering control;
6. User agrees that the front basket of the Bicycle is intended to carry light goods only, and User will not carry, or attempt to carry, additional people or animals in the basket or anywhere else on the Bicycle;
7. Bicycles may be used and/or operated only in the current service area as defined by 1 mile from the farthest Biki station in the current service area.
8. Bicycles may not be transported between the Program and any other Bicycle sharing or similar program located in other cities;
9. User will not transport Bicycles by any vehicle, private or public, including transit authority buses;
10. User will not, under any circumstances, use, ride and/or operate a Bicycle if he/she has consumed, ingested and/or used alcohol or drugs and/or has a blood concentration above the jurisdictional limit prescribed;
11. User will not use a cellular phone, text messaging device, portable music player or other device that may distract User from safely operating a Bicycle;
12. User understands that wearing a properly sized, fitted and fastened Snell, CPSC, ANSI or ASTM approved helmet when riding a Bicycle greatly reduces (but does not eliminate) the risk of injury and SBSH strongly recommends that User wear a helmet properly while riding a Bicycle;
13. User shall not dock a Bicycle in any station or dock other than a Program Station;
14. User shall not use any lock other than the locking mechanism provided by or through the Program;
15. Except as stipulated in the Agreement, User shall not allow any other person to use, ride or operate a Bicycle rented by User;
16. User shall have a valid, active phone number on their account at all times.
17. User shall not operate a Bicycle in extreme weather conditions, such as hail or electrical storms, which would make it more dangerous to operate a Bicycle.
18. User shall not allow a second person or more on the Bicycle at all times.

## EXHIBIT B

### **Fee Policies and Procedures**

#### **Availability**

SBSH undertakes to maintain the Program 7 days a week, 24-hours a day. There will be periods where the Program is unavailable due to technical problems, required service or software updates, requirements of the City or other authorities, or circumstances beyond SBSH's control.

SBSH crews will periodically move Bicycles from overfull to less full Stations and will periodically perform maintenance on the Stations and Bicycles. However, SBSH does not guarantee that you will find an available Bicycle or an empty Bicycle Dock at any particular Station at any particular time or that Stations or Bicycles will be in working order at all times. SBSH is not responsible for any transportation fees associated with the availability of working bicycles and docks.

### Activation of Biki Pass

Users who are residents of the island of Oahu who sign up for a Price Plan on gobiki.org can receive their Biki Pass via the US Mail. Alternatively, they may pick up a Biki Pass at the offices of Biki during normal business hours. Biki Passes must be activated upon receipt by visiting gobiki.org.

Commented [J2]: When a valid residential Hawaii address is provided.

Users who use a Station to purchase a Biki pricing plan will not receive a Biki Pass. Instead, Users will use the same credit or debit card used to purchase their plan to access Bicycles. The credit or debit card will be inserted into the Station kiosk each time the User wishes to release a Bicycle and a new 5-digit ride code will be provided to release a Bicycle each time.

### Payment Confirmation and Receipt of Biki Pass

Users who purchase a Biki Pass online should receive payment confirmation via e-mail. SBSH will mail Biki Passes within three business days of purchase if applicable but does not guarantee delivery time. If Users do not receive a payment confirmation or their Biki Pass within this time period, contact SBSH support at 1-888-340-2454.

### Credit Card Transactions

Biki accepts Visa, MasterCard, AMEX, Diners Club, JCB and Discover credit cards. If the credit card User provided with a User's Biki pricing plan is terminated or is unable to process Biki transactions, User's plan access will be terminated.

You agree to report any changes in your relationship with your credit card issuer, which could affect the execution of charges. SBSH is authorized by you to contact your credit card issuer to update information required to execute charges. If your credit card expires and you do not submit a new one, your account may be suspended or terminated. SBSH reserves the right to collect any unpaid or outstanding balances from the User directly or by the use of a Collection Agency of SBSH's choosing.

### Charges to Your Credit Card Account and Statements

Upon signing up for a Biki pricing plan via the Station, on gobiki.org, or the Biki app, your credit or debit card will be charged immediately for the applicable amount as outlined in the "Plan and Fee Schedule". A hold for a security deposit, of which the amount is also specified in the "Plan and Fee Schedule", may be placed on your card. The hold on your card will be automatically released within a few days after the return of the Bicycle and applicable charges have been charged. SBSH is not responsible for any banking or credit card fees associated with a transaction.

If you signed up on gobiki.org, you can review your charges after logging in to your account. If your purchase was made at a Station, you may request a receipt by calling out customer service at 1-888-340-2454 and providing an email address.

### Responsibility of Returning Biki Bicycle

To return a Bicycle, User must secure it into an available Bicycle dock at a Station (a "Bicycle Dock"). A light signal that turns yellow then green, is the only confirmation that the Bicycle has been returned and locked. A red-light signal indicates that the Bicycle is not properly secured. A Bicycle that is not properly secured remains User's responsibility.

**Bicycle Docking:** If the light on the Bicycle Dock does not light up or flashes red, the Bicycle cannot be returned. A user must return the Bicycle into another available Bicycle Dock.

**Unavailability of Bicycle Docks:** Users can initiate the Pause Time feature and get an additional block of time for up to 15 minutes to travel to the nearest open dock when no Bicycle Dock is available at the Station of User's choice. User must enter User's Biki Pass or the credit card used at the kiosk of the same Bicycle Station where no bicycle dock is available to access the Pause Time. A User can only use the Pause Time feature twice during a single ride. Users on a One-Way Plan fare do not have this option. Once a User has entered Extra Time, a User will no longer have the option to use the Pause Time feature. User acknowledges that riding

Commented [J3]: Call center can not pause time.

outside of the service area may cause the User and Bicycle to be stranded and that it is still the User's responsibility to return the Bicycle to a station dock.

#### **Lost or Damaged Bicycles**

Bicycles not returned within 24 hours are considered lost or stolen.

If User does not return a Bicycle as required by this Agreement or causes damage to a Bicycle, User agrees to pay an amount not to exceed the fee for replacement of a Bicycle, listed in "Plan and Fee Schedule."

If User believes a Bicycle checked out to User has been stolen, contact 1-888-340-2454 immediately and file a police report within 24 hours.

In the event that a Bicycle checked out to User is lost or damaged, SBSH may charge User's credit card for any excess amount owed.

In the event that a lost Bicycle is recovered, User must return it to SBSH. SBSH may refund lost Bicycle charges in excess of SBSH's actual recovery and repair costs and administrative costs it incurred upon a User's request. In no event may any User take permanent possession of, or sell, a Biki Bicycle.

#### **Recovered Bicycles**

Bicycles that are recovered by SBSH or its affiliates may be subject to a Bike Recovery fee as outlined in the "Plan and Fee Schedule". A recovered bicycle is defined as a bicycle that is found unattended, locked up or otherwise not in the possession of the User or someone the User has identified as an authorized user. Bike Recovery Fees are assessed at the sole discretion of SBSH. This fee does not exempt a User from Extra Time Fees or other fees.

#### **Lost or Damaged Biki Pass**

User is responsible for any Bicycle accessed with User's Biki Pass. If a Biki Pass is lost or stolen, please call 1-888-340-2454 immediately to report the loss. SBSH will immediately disable the Biki Pass and issue User a replacement for a lost/stolen fee. The Biki Pass replacement fee amount is specified in "Plan and Fee Schedule." Use of a lost or stolen card is the User's sole responsibility. User agrees and acknowledges the Biki Pass is their responsibility and User will still be liable for any unauthorized use by it and will not seek relief, reimbursement, or refunds from SBSH as a result of lost, stolen, or misplaced Biki Passes.

A Biki Pass that has become unusable may be replaced. A Biki Pass replacement fee, of which the amount is specified in "Plan and Fee Schedule," will apply and the original Biki Pass will be disabled.

Disabled Biki Passes cannot be used again.

#### **Gift Certificates**

Biki gift certificates are non-refundable and have no cash value. Gift certificates are non-transferrable and will expire per the expiration date printed on the gift certificate, pursuant to the local laws.

#### **Google Maps**

The map data that Biki may provide to you in our App is based on the current map information available to us which may be provided by a third party such as through the incorporation of the Google Maps API, and may be inaccurate or incomplete. If you utilize map functionality we make available through our App, You acknowledge and agree to be bound by Google, Inc.'s Google Maps/Google Earth Additional Terms of Service, available at [https://maps.google.com/help/terms\\_maps.html](https://maps.google.com/help/terms_maps.html). SBSH is not responsible for any information that may be misleading, incomplete, or in any other way incorrect. Should you choose to use the navigation service provided, SBSH is not responsible for any damages to property or person that may result from use of this third-party application.

#### **Refund Policy**

Biki pricing plans are non-refundable and have no cash value. User's Plan Price will not be refunded if User relocates, is no longer able to participate in program or if User's plan access is terminated due to breach of



this Agreement. Remaining minutes or time period on any Biki pricing plan have no cash value and may not be transferred to another Plan.

Users are not entitled to any refund of Extra Time Fees or Plan Price. Partial or full refunds are at the sole discretion of SBSH; Administrative fees may apply.

Commented [MOU4]: What are service fees?

#### EXHIBIT C

#### **Plan and Fee Schedule, Version 1.3**

##### **Plan Price:**

One-Way:	\$4.00
Explorer Plan:	\$25.00
Multi-Stop Plan:	\$25.00
Free Spirit Plan:	\$20.00
Commuter Plan:	\$15.00
Voyager Plan:	\$25.00

##### **Fees:**

Extra Time Fees: \$4.50 per 30 Minutes

##### **Other Fees:**

Bike Replacement Fee:	\$1200.00
Security Hold:	\$50.00 per bike
Biki Pass Replacement Fee:	\$5.00
Bike Recovery Fee:	\$50.00 per bike
Administrative Fee:	\$5 or 20% of the total transaction, whichever is greater
Replacement Bicycle Parts:	Retail Value plus Labor

Commented [J5]: Names need to be updated

The data generated by the Biki system shall be proof of the duration of each Trip.

SBSH reserves the right to charge any outstanding plan fees, extra time fees, and other fees up to 120 days from the last use by User and in any fraction of total outstanding balance.

#### **Biki General Pricing Plans**

For all plan types, at the end of each ride, you can review your ride history by visiting the Station and inserting either your Biki Pass, or credit/debit card if you are not a Biki Pass holder. If you signed up on gobiki.org or the Biki App, you can also review your ride history after logging in to gobiki.org.

#### **Visitors and Residents**

##### One-Way Plan

\$4.00 for the first 30 minutes of use per bike. May rent up to 4 bikes per credit card at a time. Plan must be used within 5 minutes of purchase. A Security Hold will be applied to each bike that is rented. Extra Time fees for each additional 30 minutes of use or fraction thereof. A One-Way Plan fare begins when a Bicycle is unlocked from a Biki Stop and ends when that Bicycle is redocked at any Biki Stop. Leftover time from a One-Way Plan fare is not carried over to future One-Way Plan rides. For example, if your first One-Way Plan ride is 40 minutes, you will be charged the One-Way Plan fare plus the Extra Time fee, for a total of \$8.50. If you unlock a Bicycle for another One-Way Plan ride, no time from your first One-Way Plan ride will be applied to your second One-Way Plan ride, etc.

Extra Time fees may be charged within 2 business days of the end of the trip.

##### Multi-Stop Plan

\$25.00 for a prepaid bank of 300 minutes (5 hours) to be used in any increments for rides of any duration over any period of time. Can unlock only one (1) bike per plan at a time. Minutes are deducted as usage occurs, starting when a Bicycle is unlocked from any Station and stopping when a Bicycle is docked at any Station.

If you exceed the time remaining on your Multi-Stop Plan, you will be charged an Extra Time fee of \$4.50 for each 30 minutes or fraction of 30 minutes of Extra Time used. Extra Time fees will continue until a reload is authorized and will not be deducted from the cost of a reload.

Extra Time fees may be charged within 2 business days of the end of the trip. Unused minutes have no cash value and remaining minutes will not be refunded nor can their value be transferred to another Price Plan. The Multi-Stop Plan is designed to be used over a longer period of time, however SBSH reserves the right to deactivate your Multi-Stop after 1 year.

#### Explorer Plan

\$25.00 for a prepaid bank of 300 minutes (5 hours) to be used in any increments for rides of any duration over any period of time. Can unlock only one (1) bike per plan at a time. Minutes are deducted as usage occurs, starting when a Bicycle is unlocked from any Station and stopping when a Bicycle is docked at any Station.

If you exceed the time remaining on your Explorer Plan, you will be charged an Extra Time fee of \$4.50 for each 30 minutes or fraction of 30 minutes of Extra Time used. Extra Time fees will continue until a reload is authorized and will not be deducted from the cost of a reload.

Extra Time fees may be charged within 2 business days of the end of the trip. Unused minutes have no cash value and remaining minutes will not be refunded nor can their value be transferred to another Price Plan. The Explorer Plan is designed to be used over a longer period of time, however SBSH reserves the right to deactivate your Explorer Plan after 1 year.

#### **Resident Only Plans**

All Resident Only Plans are reserved for residents of the State of Hawaii only. A State of Hawaii mailing address is required to receive a mailed Biki Pass (exclusive of hotels/hostels) and a State of Hawaii issued ID will be required for in office pick up. For users that do not request a Biki pass, verification may be requested. SBSH has the right to terminate if user does not provide documentation within 14 days of a request made either by E-mail or phone. All Resident Only Plans have the option to enable auto-renew. Users acknowledge that Users who sign up for Resident Only Plans on gobiki.org or Biki App will authorize auto-renewal, unless they opt out during the sign-up process. This authorizes SBSH to charge your credit or debit card for the plan price and add another month to the subscription when each monthly plan month ends **or** add 330 minutes to your Free Spirit Plan when zero minute of prepaid time remains on Users' accounts. You may cancel your auto-renew option at any time on the Biki App, gobiki.org or by contacting 1-888-340-2454. Resident Only Plans will only unlock one (1) bike per plan at a time.

#### **Billing for Extra Time on Resident Only Plans**

##### Monthly Plans:

Multiple Extra Time fees may be assessed each month.

Extra Time fees during a given month are aggregated and charged as a single payment during each billing cycle at a date determined by SBSH for all monthly subscription.

##### Free Spirit Plan:

If you have auto-reload enabled on your account, your extra time will continue to be assessed and be deducted from the new plan until your bike has been returned. There is no maximum to the number of reloads that can be incurred by a single trip.

Extra Time fees may be charged within 2 business days of the end of the trip.

#### Commuter Plan (Residents Only)

A monthly plan that is \$15.00 for one month of an unlimited number of rides up to 30 minutes.

An individual 30-minute ride begins when a Bicycle is unlocked from a Biki Stop and ends when that Bicycle is redocked at any Biki Stop. Leftover time from one 30-minute ride cannot be carried over to future 30-minute rides. For example, if a 30-minute ride is only 20 minutes, you are within your 30-minute time limit window for that ride. However, the 10 minutes remaining from that ride cannot be carried over to a future 30-minute ride to allow for a 40-minute ride to avoid Extra Time fees.

If you exceed 30 minutes of ride time on any and all individual 30-minute rides, you will incur Extra Time charges. Each 30-minutes of overage or fraction of 30-minutes triggers an Extra Time fee of \$4.50. For example, if your ride is 40 minutes, you will be assessed an Extra Time fee of \$4.50. If your ride is 67 minutes, you may be assessed the Extra Time fee twice, for a total of \$9.00. You will incur Extra Time fees each time you exceed your 30-minute time limit.

You may ride as many individual 30-minute rides as you desire within the month you have purchased. However, there is a 5-minute period in which, once a user has ended a ride, they will not be able to take out another bike.

#### Voyager Plan (Residents Only)

A monthly plan that is \$25.00 for one month of an unlimited number of rides up to 60 minutes.

An individual 60-minute ride begins when a Bicycle is unlocked from a Biki Stop and ends when that Bicycle is redocked at any Biki Stop. Remnants of time from one 60-minute ride cannot be carried over to future 60-minute rides. For example, if a 60-minute ride is only 50 minutes, you are within your 60-minute time limit window for that ride. However, the 10 minutes remaining from that ride cannot be carried over to a future 60-minute ride to allow for a 70-minute ride to avoid Extra Time fees.

If you exceed 60 minutes of ride time on any and all individual 60-minute rides, you will incur Extra Time charges. Each 30-minutes of overage or fraction of 30-minutes triggers an Extra Time fee of \$4.50. For example, if your ride is 70 minutes, you will be assessed an Extra Time fee of \$4.50. If your ride is 97 minutes, you will be assessed the Extra Time fee twice, for a total of \$9.00. You will incur Extra Time fees each time you exceed your 60-minute time limit.

You may ride as many individual 60-minute rides as you desire within the month you have purchased. However, there is a 5-minute period in which, once a user has ended a ride, they will not be able to take out another bike.

#### Free Spirit Plan (Residents Only)

A prepaid plan that is \$20.00 for a bank of 300 minutes (5 hours) to be used in any increments for rides of any duration over any period of time. Minutes are deducted as usage occurs, starting when a Bicycle is unlocked from any Station and stopping when a Bicycle is docked at any Station.

If you exceed the time remaining on your Free Spirit Plan, you will be charged an Extra Time fee of \$4.50 for each 30 minutes or fraction of 30 minutes of Extra Time use. Extra Time fees will continue until a reload is authorized and will not be deducted from the cost of a reload.

Unused minutes have no cash value and remaining minutes will not be refunded nor can their value be transferred to another Price Plan. The Free Spirit Plan is designed to be used over long periods of time, however SBSH reserves the right to deactivate your Free Spirit Plan after 1 year of the anniversary of purchase.

#### Variations of Plans

Variations of plans may be offered publicly or to specific qualifying groups. All variations of these plans unless otherwise indicated, are subject to the terms herein. The availability of these variations are at the sole discretion of SBSH and may be rescinded or altered at any time, without notice. Users that sign up for these plans may be required to provide documentation of eligibility and will be contacted either by phone or email. SBSH reserves the right to terminate a User's account and charge the User the difference between the discounted rate and the regular rate if a discount is found to be applied to a non-qualifying user.

#### Cancellation of an Account

Users may request a cancellation of their account at any time by calling our Customer Service at 1-888-340-2454. Accounts cannot be cancelled by any person other than the account holder. Requests for cancellations will be processed at the time of request and user will be responsible for all charges through the request of cancellation. Cancellations will not be eligible for proration or refunds for unused time. Users may cancel an account while they have an open trip or outstanding balance but will be responsible for all charges from trips that originated while the account was open. Accounts without auto-renew enabled will be automatically cancelled at the end of their prepaid month or minute balance, dependent on their plan type. If User cancels their credit card while they still have outstanding charges, users will be responsible for all outstanding fees and may be responsible for any fees associated with the recovery of outstanding fees.

**Taxes**

Hawaii General Excise Tax (GET) will be charged on all Fees and Plans except for the security deposit and Missing Bike Fee. Any donations or gifts received in conjunction with any plans will be used at the sole discretion of SBSH. All donations, gifts or contributions will not be tax deductible.

Commented [MOU6]: + other fees, Biki Key?