

## D. FLEX PASS TERMS AND CONDITIONS

The following terms and conditions constitute the Contract:

**1. Definitions:** In this Contract, capitalized terms shall have the meanings ascribed to them in Schedule "A" attached hereto.

**2. Contract Term:** This Contract shall commence as at the effective date noted in this Contract, and shall automatically renew on the last day of each calendar month for successive one (1) month periods until cancelled by Customer in accordance with the provisions of Section 16, or terminated by CPA in accordance with the provisions of Section 15.

**3. Payment of Parking Fees:** Parking Fees for the first Contract Month shall be paid upon execution of the Contract by Customer. Parking Fees for subsequent Contract Months shall be charged or automatically withdrawn, as the case may be, on the first (1<sup>st</sup>) day of each Contract Month that the Contract is automatically renewed. Any outstanding amounts will accrue interest at a rate of two percent (2%) per month. CPA may increase or otherwise change the Parking Fees in its sole discretion by providing Customer with one month's written notice to the email address provided by Customer. GST and any other applicable taxes will be charged in addition to the Parking Fees.

**4. Payment Method:** Parking Fees may be paid through automatic bank withdrawals or through pre-authorized payments made on Customer's credit card. Customer shall be required to complete either the Banking Information section, or the Credit Card Payment Pre-Authorization section, of this Contract and provide accurate information for automatic bank withdrawals or pre-authorized credit card payments. Any invalid or returned payments are subject to an administrative fee of \$25.00, which amount is subject to change by CPA without notice.

**5. Expiry of Parking Sessions:** Parking Sessions may only be used during the Contract Month in which they were purchased and credited to Customer. Any Parking Sessions that remain unused at the end of the Contract Month shall expire at the conclusion of the Contract Month and shall in no event be carried over, claimed or otherwise used by Customer in subsequent Contract Months. The Customer shall not receive any refund or credit of Parking Fees for any unused Parking Sessions.

### **6. Parking Stall:**

**(a)** Provided that this Contract is still in force and Customer is not in breach of its obligations under this Contract, and subject to the requirements set out herein at Section 7, Customer shall be permitted to park one Listed Vehicle per Parking Session per day within the Parking Lot stipulated in the Contract.

**(b)** No Reserved Stall shall be assigned to the Customer pursuant to this Contract. The Customer shall park in a Parking Stall with a green overhead indicator light, or a blue

overhead indicator light if they are entitled to park in an Accessible Parking Stall. If there are no overhead indicator lights in a Parking Lot, then the Customer may park in a Parking Stall that is not a Reserved Stall.

**(c)** Customer must enter into separate contracts with CPA to purchase Parking Sessions in parking facilities that are not the Parking Lot. Customer shall not be entitled to purchase more than one Flex Pass contract at one time for the same Parking Lot.

## **7. Permitted Access and Use:**

**(a)** Customer may register up to three (3) License Plates on a single Contract by accessing the Flex Pass Website (URL for the Flex Pass Website is found in the definitions below). Customer may only designate one License Plate per day as an Active License Plate.

**(b)** Customer shall be solely responsible for ensuring that, prior to starting any Parking Session, the License Plate that will be using said Parking Session has been designated as the Active License Plate on the Flex Pass Website. Failure to do so prior to noon on the day in which the Parking Session is used may result in the ticketing and/or the impounding of any vehicles that are parked in Parking Stalls and that are not Listed Vehicles, at the Customer's sole risk and expense.

**(c)** The Customer must use the Parking Lot for the sole purpose of parking a Listed Vehicle, and for no other purpose whatsoever. For clarity, the Customer must not use the Parking Lot or any Parking Stall for any commercial, recreational, or other non-permitted purposes.

**(d)** The Customer acknowledges and agrees that an administrative fee may be charged to the Customer if the Customer fails to update License Plates listed in the License Plate Details section of this Contract as outlined in Section 7(a) of this Contract. The administrative fee shall not exceed five percent (5%) of the total monthly fee for this Contract.

**(e)** A Motor Vehicle must not be backed into a Parking Stall. If a Motor Vehicle is backed into a Parking Stall, the Motor Vehicle may be ticketed and/or impounded at the Customer's sole risk and expense.

**(f)** The Customer acknowledges and agrees that a Listed Vehicle may be ticketed and/or impounded at the Customer's sole risk and expense if:

- (i) the Customer has parked more than one Listed Vehicle in a Parking Lot at any given time;
- (ii) the Customer has failed to designate the Active License Plate for the Parking Session on the Flex Pass Website as contemplated by Section 7(b);

- (iii) the Motor Vehicle is backed into a Parking Stall or its license plate is not otherwise visible to CPA's automated enforcement devices or enforcement officers, or is otherwise parked in a manner contrary to applicable law;
- (iv) the Customer has, without payment, parked in excess of the number of Parking Sessions available to the Customer as per the Contract, or;
- (iv) the Customer fails to meet any other requirement set out in this Contract, or any posted rules at the Parking Lot.

**(g)** Additional rules of use may be posted at the Parking Lot. In addition to complying with the terms and conditions of this Contract, the Customer shall obey all signs, notices, instructions and rules posted at the Parking Lot. Signs, notices, instructions, and rules may include, but are not limited to: speed restrictions, stop signs, yield signs, height restrictions and parking restrictions.

**8. Access Card:** In conjunction with this Contract, the CPA may, in its discretion, provide the Customer with an Access Card. The Customer understands and acknowledges that the Access Card shall at all times remain the sole and exclusive property of the CPA, and must be returned by the Customer to the CPA upon notice to the Customer.

In addition to the foregoing, the Customer shall be required to return to the CPA, at the Customer's sole expense, any Access Card(s) in the Customer's possession within 7 calendar days of the termination of the Contract. All Access Card(s) must be returned, either in person or by mail or courier, to the CPA's offices at 620 - 9<sup>th</sup> Avenue SW Calgary, AB Canada T2P 1L5.

**9. Lost, Stolen, Damaged or Unreturned Access Cards:** Should a Customer require a new Access Card as a result of it being lost, stolen or damaged, CPA may issue a new Access Card and charge the Customer a replacement fee of **\$10.00**. Customer further agrees that it shall be required to pay the CPA the sum of **\$10.00** for every Access Card not returned to the CPA upon the termination of this Contract.

**10. Prohibited Use:** Motor Vehicles powered by propane are permitted to use surface parking lots and Lot 25, City Centre **only** and are prohibited from entering and using any other enclosed or underground parking lots. The Customer is solely responsible to ensure that a Parking Lot is suitable for the Listed Vehicle. Listed Vehicles which are unregistered, uninsured, pose a hazard or contain hazardous materials are strictly prohibited from entering and using a Parking Lot. Any repair or maintenance of Listed Vehicles in a Parking Lot is also prohibited, with the exception of repair or maintenance undertaken by CPA.

**11. Accessible Parking Stalls:** A Customer shall not park in an Accessible Parking Stall unless a valid and appropriate permit is displayed at the front of the Motor Vehicle or on its license plate. Any Listed Vehicle found parking in an Accessible Parking Stall without

a valid and appropriate permit displayed may be ticketed and/or impounded at the owner's sole risk and expense.

## **12. Motorcycle Parking:**

**(a)** A Customer with a Motorcycle contract shall park in Motorcycle-designated parking areas. In the event that all designated Motorcycle parking areas are occupied, the Customer is permitted to park in a Parking Stall designated for a Motor Vehicle. When parking a Motorcycle in a Parking Stall designated for a Motor Vehicle, the Customer shall park the Motorcycle in such a manner as to permit, at a minimum, a second Motorcycle to utilize such Parking Stall. Motorcycles parked in a Parking Stall designated for a Motor Vehicle in a manner considered by CPA, in its sole discretion, so as not to allow a second Motorcycle to park, may be ticketed and/or impounded at the owner's sole risk and expense.

**13. Personal Injury, Property Damage and Indemnity:** In the case of any personal injury or any damage to the Parking Lot or to property of others, the Customer must immediately report the incident and any injuries or damages to CPA Dispatch at (403) 537-7006 or by email to [cpacontract@calgaryparking.com](mailto:cpacontract@calgaryparking.com), and provide the information requested by the CPA dispatcher.

The Customer is solely responsible for any damage, loss, injury or death caused by the Customer to the Parking Lot, the property of others, other drivers or other users of the Parking Lot. The Customer shall indemnify, defend, and save harmless the CPA and its employees, officials, directors, officers and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, legal fees, costs and expenses of whatsoever kind in any manner directly or indirectly caused or contributed to, in whole or in part, by reason of error, omission, wrongful act, or fault, whether active or passive, of the Customer.

**14. Limitation of Liability:** Any Motor Vehicle or Motorcycle parked or operated in the Parking Lot shall be parked or operated solely at the risk of the Customer.

Furthermore, in certain Parking Lots, EV charging stations may be available for use by electric vehicles. Any use of an EV charging station located in a Parking Lot is done solely at the risk of the Customer. The CPA shall not be responsible in any way for any power outages, power surges or ground faults at EV charging stations, as well as any bodily injury or damage to property that may result from Customer's use of an EV charging station located in a Parking Lot.

The CPA, its employees, officials, directors, officers, agents or contractors, shall not be liable for any damage, loss, injury or death caused to any Motor Vehicle or Motorcycle, the Customer, the Motor Vehicle or Motorcycle operator or any other occupant thereof, or any other person unless such damage has resulted from the gross negligence or willful misconduct of the CPA, its employees, officials, directors, officers, agents or contractors.

The CPA, its employees, officials, directors, officers, agents, and contractors shall not be liable in any way whatsoever in the event that any damage, loss, expense or inconvenience is caused by reason of any Motor Vehicle or Motorcycle being removed, towed or impounded pursuant to the terms and conditions of this Contract.

#### **15. Termination for Customer Breach:**

**(a)** Any of the following actions by the Customer constitutes a breach of the terms and conditions of this Contract, whether one or more of these actions exists:

- (i) violating any terms or conditions of this Contract;
- (ii) defaulting on any payment;
- (iii) failure to update the License Plates listed in the License Plate Details section of this Contract;
- (iv) repeated parking of more than one Listed Vehicle in a Parking Lot at any given time; and
- (v) repeated parking of a Listed Vehicle in a Parking Stall without paying the appropriate posted parking fees.

**(b)** In the event the Customer commits a breach of the terms and conditions of this Contract as contained in Section 15(a)(i) or (ii), the CPA, in its sole and absolute discretion, may immediately and without notice:

- (i) terminate the Customer's Contract and ban the Customer from holding another Parking Contract with the CPA for a period of not less than two (2) years;
- (ii) remove the Customer's Motor Vehicle or Motorcycle from the Parking Lot and ticket and/or impound the Customer's Motor Vehicle or Motorcycle at the Customer's sole risk and expense. Recovery costs associated with the return of the Motor Vehicle or Motorcycle will be the sole responsibility of the Customer; or
- (iii) both (i) and (ii) above.

**(c)** In the event the Customer commits a breach of the terms and conditions of this Contract as contained in Section 15(a)(iii), (iv), or (v), the CPA may with ten (10) days written notice:

- (i) terminate the Customer's Contract and ban the Customer from holding another Parking Contract with the CPA for a period of not less than two (2) years;
- (ii) remove the Customer's Motor Vehicle or Motorcycle from the Parking Lot and ticket and/or impound the Customer's Motor Vehicle or Motorcycle at the Customer's

sole risk and expense. Recovery costs associated with the return of the Motor Vehicle or Motorcycle will be the sole responsibility of the Customer; or

(iii) both (i) and (ii) above.

**(d)** The CPA reserves the right to terminate this Contract with a minimum of thirty (30) days advance written notice to the Customer for any reason whatsoever.

**16. Termination of Contract by Customer:** The Customer may terminate this Contract by providing CPA with one (1) full calendar month's written notice of cancellation in accordance with the "Notice" provisions contained in Section 24. Customer's failure to provide at least one (1) fully calendar month's written notice of termination shall result in the Contract automatically renewing for one (1) additional calendar month prior to termination.

**17. Times of Use/Restrictions:** The Customer may only use a Parking Session pursuant to this Contract between the hours of 6:00 a.m. and 6:00 p.m. on any weekday, but excluding weekends and holidays. Customers may be required to use an Access Card to gain access to the Parking Lot during these times.

The Customer acknowledges that when the CPA displays a "FULL" sign at the Parking Lot entrance, it means Parking Stalls are not available as public Parking Stalls. A Customer with a Parking Contract and a Listed Vehicle may enter the Parking Lot to park in a Parking Stall.

**18. Parkade Closures:** The CPA reserves the right to close a Parking Lot, without notice, in the event of an emergency, civil disturbance, natural disaster, or other such event. No compensation to the Customer will be made for loss of use of the Parking Lot, unless such disruption exceeds 48 hours in duration.

The CPA also reserves the right to close a Parking Lot or a portion thereof, with prior notice, for special events. In such a case, the CPA will provide the Customer with an alternate place to park for the duration of the closure.

**19. FOIP:** By providing information, the Customer consents to CPA using the information to manage this Parking Contract. Personal information is collected and used by the CPA as may be authorized by law, for the purposes of its operating programs and activities and for law enforcement purposes under the authority of Sections 33 (b) and (c) of the *Alberta Freedom of Information and Protection of Privacy Act*, as amended or replaced from time to time (FOIP). It may be also used to survey citizens for the purpose of assessing CPA services over time. Any questions regarding the collection, use or disclosure of personal information should be directed to the CPA FOIP Coordinator at 403-537-7099 or by mail to the address set out in Section 24 of this Contract.

**20. Contract Non-transferable:** This Contract is non-transferable and must not be assigned or transferred by the Customer. Customer cannot re-sell or transfer their rights to park in a Parking Lot or Parking Stall(s) without express written consent from CPA.

**21. Amendments:** No changes, exceptions or amendments can be made to this Contract without the express written permission of CPA. The Calgary Parking Authority can be reached at either [cpacontract@calgaryparking.com](mailto:cpacontract@calgaryparking.com) or by mail to the address set out in Section 24 of this Contract.

**22. Severability:** If any provision of the Contract is found by a court having jurisdiction to be invalid, illegal or unenforceable, the other provisions of the Contract shall not be affected or impaired. The offending provision shall automatically be modified to the least extent necessary in order to be valid, legal and enforceable.

**23. Governing Law:** This Contract shall be governed by and interpreted according to the laws in force in the Province of Alberta and the federal laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the courts in the city of Calgary in respect of all matters arising out of or in connection with this Contract.

**24. Notice:**

(a) Notices to CPA must be given in writing and delivered by personal delivery mail, or email. The address for notice is 620 - 9<sup>th</sup> Avenue SW Calgary, AB Canada T2P 1L5. The email address for notice for CPA is: [cpacontract@calgaryparking.com](mailto:cpacontract@calgaryparking.com).

(b) Where the CPA is required to give written notice to the Customer, notice will be provided to the address or email address listed in the "Contact Information" section of this Contract. The Customer is responsible for notifying CPA of a change in its mailing address and email address listed in the "Contact Information" section of this Contract.

(c) Notwithstanding anything that may be to the contrary in this Contract, the CPA shall not be required to provide any notice whatsoever to the Customer regarding the number of Parking Sessions still available to the Customer, or whether Parking Sessions have been claimed or have otherwise expired, pursuant to the terms of this Contract. Customer may inquire as to the balance of Parking Sessions remaining for the current Contract Month by accessing the Flex Pass Website, or by contacting CPA's customer service.

**25. Notice to Customer:** The CPA may provide notice to the Customer in any of the following ways: (a) mail or email to the address noted in the "Contact Information" section of this Contract, (b) posting notices or signs in the Parking Lot, (c) posting notices on the CPA website at [www.calgaryparking.com](http://www.calgaryparking.com), or (d) any combination of the preceding subsections (a)-(c).

**26. General:**

**(a)** The CPA reserves the right to change the terms and conditions of this Contract without notice to the Customer.

**(b)** The Customer acknowledges that the CPA reserves the right to suspend, modify or terminate the "Flex Pass" program, and may modify these Terms & Conditions, at any time in the CPA's sole and absolute discretion. This right to modify includes cancelling the "Flex Pass" program at any Parking Lot in CPA's sole and absolute discretion. CPA shall provide Customer with thirty (30) days' written notice of its intention to suspend, modify or terminate the "Flex Pass" program, or otherwise modify these Terms & Conditions.

**(c)** The Customer acknowledges having read and understood the Contract and agrees to and accepts all the terms and conditions.

**(d)** If the Customer is a corporation, the individual entering into this Contract with CPA represents and warrants authority to bind the corporation. The corporation acknowledges and agrees it is responsible for the individual parkers using the Parking Lots and Parking Stalls assigned to the corporate Customer by CPA, and that the corporation agrees to and accepts all the terms and conditions of this Contract.



## Schedule A

### DEFINITIONS

In this Contract:

**“Access Card”** means a card, fob or other device provided by the CPA to the Customer to enable the Customer to have access to the Parking Lot specified in the Contract;

**“Accessible Parking Stall”** means a Parking Stall that has been designated for use by a holder of an appropriate permit or placard for persons with disabilities, and that is issued or recognized by the Solicitor General of Alberta;

**“Active License Plate”** means a License Plate on a Listed Vehicle that Customer has designated an "Active License Plate" on the Flex Pass Website;

**“Calgary Parking Authority”** or **“CPA”** means The City of Calgary as represented by its committee of Council, the Calgary Parking Authority;

**“Contract”** means this Parking Contract and any documents referenced herein;

**“Contract Month”** means the calendar month or any portion thereof in which the Parking Sessions have been purchased and credited to the Customer;

**“Customer”** means the individual or corporation referred to in the Contract Details section of this Contract;

**“Flex Pass Website”** means the website located at <https://flexpass.parkplus.ca>.

**“License Plate”** means the license plate or plates listed in the License Plate Details section of this Contract;

**“Listed Vehicle”** means a Motor Vehicle or Motorcycle with a License Plate listed in the License Plate Details section of this Contract;

**“Motorcycle”** means a motor vehicle mounted on 2 or 3 wheels that is propelled by any power other than muscular power (excluding E-Bikes), and that is licensed under the *Traffic Safety Act* (Alberta), as amended or replaced from time to time, and for the purposes of this Contract, includes mopeds and scooters;

**“Motor Vehicle”** means a vehicle propelled by any power other than muscular power, with the exception of Motorcycles;

**“Parking Contract”** means a contract entered into between the Calgary Parking Authority and a Customer for the use by the Customer of a Parking Stall in a particular Parking Lot for a set amount of Parking Sessions;

**“Parking Fees”** means the parking fees payable by Customer to CPA for the specific number of Parking Sessions during a Contract Month within a particular Parking Lot, as specified within this Contract;

**“Parking Lot”** means a parking facility owned by The City of Calgary and operated by the CPA and designated in the CPA Parking Account section of this Contract;

**“Parking Session”** means the use of a Parking Stall to park a Listed Vehicle in the Parking Lot stipulated in the Contract on one calendar day and subject to the times of use/restrictions as set out in Section 17 of this Contract;

**“Parking Sessions”** means the use of a Parking Stall to park a Listed Vehicle in the Parking Lot stipulated in the Contract on multiple calendar days and subject to the times of use/restrictions as set out in Section 17 of this Contract;

**“Parking Stall”** means an area in the Parking Lot designated to accommodate one Listed Vehicle to park, subject to Section 12(a) of this Contract; and,

**“Reserved Stall”** means a particular Parking Stall designated in a Contract for sole use by a particular Customer.