

BLYNCSY SERVICES AGREEMENT

Terms and Conditions

These are the Terms and Conditions to the Blynscy Services Agreement (“Agreement”) as set forth in the GSA Multiple Award Schedule (MAS) Contract order (Order). As specified herein, Company offers Services using data informatics obtained from connected devices. Client has requested, and the Company is willing to provide, the Services on the terms and conditions of this Agreement.

1. DEFINITIONS

As used herein and throughout this Agreement:

- 1.1 Agreement: means the entire content of these Terms and Conditions.
- 1.2 Authorized Partner: means the GSA MAS Contractor authorized by Blynscy to sell Software licenses and related Professional Services.
- 1.3 Blynscs or Sensors: means Company’s proprietary hardware and each of the units thereof that are relevant to the Neighborhood of Interest.
- 1.4 Client: means the Government Customer (Agency) who, under GSA Schedule Contracts, is the “Ordering Activity” which is defined as “an entity authorized to order under GSA Schedule Contracts” as defined in GSA Order OGP 4800.2I, as may be amended from time to time. The Client shall be identified in the Purchase Order.
- 1.5 Copyrights: means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under U.S. Copyright Law.
- 1.6 Deliverable(s): means the services and work product specified in the Purchase Order to be delivered by the GSA MAS Contractor to Client, in the form and media specified in the Purchase Order.
- 1.7 Company Tools: means all tools developed and/or utilized by Company in performing the Services, including without limitation pre-existing and newly developed software including source code, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as final layout, navigational and functional elements.
- 1.8 Area of Interest: means the territory from which the Services are to be derived as more particularly specified in the Order.
- 1.9 Order: means the Client’s Purchase Order.
- 1.10 Personal Information: means name, address, and/or telephone number.
- 1.11 Project: means the scope and purpose of the Client’s identified usage of the Services as described in the Order.
- 1.12 Services: means all services informatics and work product provided to Client by the Company as described and otherwise further defined in the Order.
- 1.13 Trademarks: means trade names, words, symbols, designs, logos or other devices or designs used in connection with the Services to designate the origin or source of the Services.

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3. RESERVED

4. RESERVED

5. CLIENT RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES

Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:

- (a) The Client will confirm the definition of the “Neighborhood of Interest” as specified in the Order and grant accessibility and access to the Neighborhood of Interest and to 110 volt power and/or wifi, if available and if a part of the Order.
- (b) The Client will work with Company’s Authorized Partner to accommodate reasonable placement of Blynics on property owned or controlled by Client and allow reasonable access to Blynics as specified in the Order. The Client recognizes that limited access to the Blynics may interfere with the accuracy and completeness of the Services.
- (c) The Client will affirmatively give notice to all employees and contractors with a need to know of the existence of the Blynics and shall inform such employees and contractors that the Blynics should not be tampered with or disabled. Furthermore if the Client or any employee or contractor notices any damage or theft of Blynics, it shall inform the Company’s Authorized Partner immediately.
- (d) In the event of theft or damage to any Blynics, the Client will work with Company to provide any evidence (including but not limited to surveillance video) that may aid the Company or authorities in the identification of the perpetrator and the prosecution of the crime.
- (e) The Client warrants that it has the right and authority to place the Blynics on its property.
- (f) The Client understands and affirms that the Blynics, and any data collected by them, are the exclusive property of the Company. Client agrees that the Company will be allowed access at reasonable times to remove, maintain or replace, the Blynics and all accompanying attachments during or at the end of the Term.
- (g) Company shall not be liable to Client for any normal wear and tear to its property due to the installation, placement, servicing and removal of the Blynics on Client’s property.
- (h) The Client warrants and represents that it has obtained any and all governmental approval necessary to complete the Project and will cover all related costs and expenses associated therewith.
- (i) The Client agrees to work directly with any government entity, municipality, quasi-governmental entity or utility to obtain permission necessary (i) to install the Blynics; (ii) to perform the Services; and/or (iii) to deliver the Deliverables; including but not limited to required permits.

6. ACCREDITATION/PROMOTIONS

All displays or publications of the Deliverables by the Client shall bear accreditation and/or copyright notice of Company’s name in the form, size and location as incorporated by Company in the Deliverables, or as otherwise directed by Company.

7. LIMITATION ON DATA COLLECTION.

7.1 Completeness of data. The Client recognizes that the accuracy of the data incorporated into the Deliverables and/or Services is completely dependent on the accessibility of mobile devices—a factor completely out of the control of the Company. While the Company represents its ability to

accurately capture limited data concerning all mobile devices with enabled wifi and Bluetooth connectivity, persons without devices, or devices in which these functionalities are not enabled will not be captured. The effect of this is a wide variability in the accuracy of the data. The Client understands this limitation and accepts the variability of the data as sufficient.

7.2 User privacy. Client recognizes that Company does not collect, store, or provide any Personal Information relating to any persons or their mobile devices without explicit permission from an individual owner of a device to collect, store, or provide such information. The information given to the Client in the Deliverables will be presented as aggregated data rather than specific device information. Client agrees that it may not request or access any data or information that is not specifically identified as a Deliverable in the Order. Furthermore, Client agrees that it will not request, re-identify, or access data, MAC addresses or Personal Information gathered or collected by the Company without explicit permission from individuals.

8. CONFIDENTIAL INFORMATION

Each Party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works ("Confidential Information"). Each Party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as necessary for the performance of obligations under the Proposal or except as required by law. Notwithstanding the foregoing, Confidential Information will not include any information that: (i) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of Company or Client; (ii) was known by Company or Client prior to receiving such information from the other party and without restriction as to use or disclosure; (iii) is rightfully acquired by Company or Client from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by Company or Client without access to any Confidential Information.

9. RELATIONSHIP OF THE PARTIES

9.1 Independent Contractor. Company is an independent contractor, not an employee of Client or of any company affiliated with Client. Company shall provide the Services under the general direction of Client, but Company shall determine, in Company's sole discretion, the manner and means by which the Services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. No part of the Services, including, without limitation the Deliverables shall be deemed a work for hire as that term is defined under Copyright Law. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.

9.2 No Exclusivity by Company. The Parties expressly acknowledge that this Agreement does not create any exclusive relationship between the Company and the Client. The Company shall be entitled to offer and provide data services to others, whether or not in the same business or line of work as Client, solicit other clients and otherwise advertise the services offered by Company in any industry and to any business or person.

10. INDEMNIFICATION/LIABILITY

10.1

10.3 By Company. Subject to the terms, conditions, express representations and warranties provided in this Agreement, Company agrees to indemnify, save and hold harmless Client from any and all damages, liabilities, costs, losses or expenses arising out of any finding of fact which is inconsistent with

Company's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of Client provided that (a) Client promptly notifies Company in writing of the claim; (b) Company may participate in the defense of the claim and all related settlement negotiations; and (c) Client shall provide Company with commercially reasonable assistance, information, and authority necessary to perform Company's obligations under this section. Notwithstanding the foregoing, Company shall have no obligation to defend or otherwise indemnify Client for any claim or adverse finding of fact arising out of or due to Client, any unauthorized content, improper or illegal use, or the failure to update or maintain any Deliverables provided by Company.

10.3 Limitation of Liability. THE SERVICES OF COMPANY ARE LICENSED "AS IS." IN ALL CIRCUMSTANCES, AND NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, THE MAXIMUM LIABILITY OF COMPANY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AFFILIATES ("COMPANY PARTIES"), TO CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND CLIENT'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT PAID BY THE CLIENT TO THE COMPANY. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE DELIVERABLES OR THE SERVICES PROVIDED BY COMPANY, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. TERM AND TERMINATION

11.1 This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered as more particularly specified in the Order.

11.2.

12. GENERAL

12.1 Modification/Waiver. This Agreement may only be modified by the GSA Contracting Officer and the GSA MAS Contractor.

12.2 Notices. All notices to be given hereunder shall be transmitted in writing either by facsimile or E-mail with return confirmation of receipt or by certified or registered mail, return receipt requested, and shall be sent to the addresses identified in the Order, unless notification of a change of address is given in writing. Notice shall be effective upon receipt or in the case of fax or email, upon confirmation of receipt.

12.4 Governing Law The formation, construction, performance and enforcement of this Agreement shall be in accordance with the federal laws of the United States.

12.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. .

12.6 Headings. The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of the provisions of this Agreement nor shall such headings otherwise be given any legal effect.

12.7

12.8 Integration. This Agreement comprises the entire understanding of the parties hereto on the

subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Agreement.