

36005

AMENDMENT #1 TO TRAFFIC SIGNAL OPTIMIZATION PILOT AGREEMENT

THIS AMENDMENT is entered into as of the date last signed by the parties (“Amendment Effective Date”) by and between the City of Long Beach, a municipal corporation of the State of California (“City”), Mercedes-Benz Research & Development North America, Inc., a Delaware corporation (“MBRDNA”), and Xtelligent, Inc., a Delaware corporation (“Xtelligent”). Each of City, MBRDNA, and Xtelligent may be referred to from time to time as a “Party” and together as the “Parties.”

WHEREAS, City, MBRDNA, and Xtelligent are Parties to a Traffic Signal Optimization Pilot Agreement having an Effective Date of August 11, 2021 (“Pilot Agreement”);

WHEREAS, the Pilot Agreement governs a pilot project in which MBRDNA test fleet vehicles provide certain data to Xtelligent (“MBRDNA Test Fleet Data”). See Pilot Agreement at Exhibit A (Scope of Pilot), Section 5 (defining “MBRDNA Test Fleet Data”).

WHEREAS, the MBRDNA Test Fleet Data is combined with data collected from physical sensors around the City of Long Beach (“Traffic Signal Data”). See Pilot Agreement at Section 2.A.1 (defining “Traffic Signal Data”).

WHEREAS, the combined MBRDNA Test Fleet Data and City Traffic Signal Data is input to Xtelligent’s algorithms, with the output used to help the City improve future traffic engineering decisions.

WHEREAS, under the Pilot Agreement, Xtelligent is “prohibited from selling or sharing MBRDNA Test Fleet Data to any third parties.” Pilot Agreement at Exhibit A, Section 5.

WHEREAS, the Pilot Agreement also prohibits Xtelligent from providing or selling the City’s raw Traffic Signal Data to any third party “without prior written approval” from the City. See Pilot Agreement at Section 2.

WHEREAS, the parties wish to amend the Pilot Agreement to allow Xtelligent to share anonymized data from the Pilot with specifically-identified third parties.

NOW THEREFORE, the parties agree as follows:

1. AMENDMENT TO THE PILOT AGREEMENT

A new section, i.e., Section 25, is added to the Pilot Agreement:

Section 25.

- (a) Notwithstanding anything to the contrary in this Agreement, for purposes of performance evaluation of the Pilot, Xtelligent may share anonymized data resulting from the Pilot with the University of California, Riverside (“UC, Riverside”), and the National Renewable Energy Laboratory (“NREL”).
- (b) Before sharing anonymized data with UC, Riverside, and NREL, Xtelligent must:
 1. provide City and MBRDNA with advance notice;

2. specifically identify for City and MBRDNA the data to be shared; and
3. obtain written approval from both City and MBRDNA.

For purposes of sharing data with UC, Riverside and/or NREL, the signing of Amendment #1 satisfies the written approval requirement set forth in Section 25(b)(3) above.

- (c) Xtelligent represents and warrants that, to the best of its knowledge:
 1. UC, Riverside and the NREL will not provide or sell the shared data to any third party and will use the data only for the purposes of performance evaluation of the Pilot; and
 2. UC, Riverside and NREL will not use the data for any unlawful purpose.
- (d) Xtelligent will defend, indemnify, and hold harmless City, its Commissions, and Boards, and its officials, employees, and agents and MBRDNA against any third party demands, claims, causes of action, liability, loss, liens, damage, costs and expenses (collectively "Claims") to the extent such Claim arises out of or is in any way connected with UC, Riverside's and/or NREL's use of the data in contravention of this Amendment.
- (e) If the joint, concurring, comparative fault or negligence of City or MBRDNA gives rise to the Claims then the obligation to indemnify City and/or MBRDNA will be proportionally reduced by City's and/or MBRDNA's respective degree of fault or negligence. Xtelligent will not withhold defense and/or indemnification of Claims on the basis of several liability or shared fault. This indemnity provision survives expiration or sooner termination of the Parties' Agreement.

2. NO OTHER AMENDMENT; REAFFIRMATION

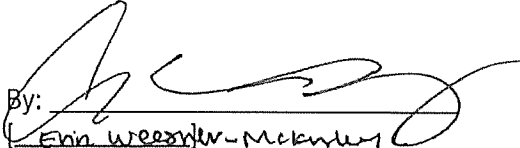
Except as agreed by the parties, the Pilot Agreement shall remain in full force and effect according to its terms and shall be read and construed as if the terms of this Amendment were included therein. The parties hereby acknowledge and agree that each shall be bound and obligated to perform of its respective obligations under the Pilot Agreement as amended hereby. The parties hereby reaffirm and agree to all other representations, warranties, obligations, conditions, and agreements contained in the Pilot Agreement.

3. COUNTERPARTS


This Amendment may be executed in counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, duly authorized representatives of the parties have executed this Amendment as of the Amendment Effective Date.

APPROVED:

By: 
Name: Erin Weender-McKendry
Deputy City Attorney
Date: June 6, 2022

“CITY”
City of Long Beach,
a municipal corporation

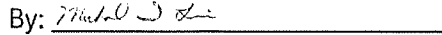
By: 
Name: LINDA F. TATUM
Title: ASST. CITY MANAGER
Date: 6-24-2022

“
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.
”

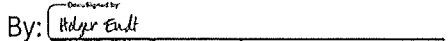
APPROVED:

By: _____
Name: _____
Title: _____
Date: _____


“XTELLIGENT”
Xtelligent, Inc., a Delaware corporation

By: 
Name: Michael Lim
Title: Cofounder
Date: 05/23/2022

APPROVED:

By: 
Name: Holger Endt
Title: Director Data&AI
Date: May 20, 2022 | 12:16 PM PDT

“MBRDNA”
Mercedes-Benz Research & Development North
America, Inc., a Delaware corporation

By: 
Name: Alexander Schaab
Title: VP Connected & Autonomous
Date: May 20, 2022 | 2:23 PM PDT