

**MEMORANDUM OF UNDERSTANDING**

**TERMS AND CONDITIONS FOR TAXI AND LIMOUSINE  
COMMISSION AUTHORIZATION**

Between

New York City Taxi and Limousine Commission and  
\_\_\_\_\_ to conduct a pilot program testing  
Alternative Technology systems and GPS meters.

**TERMS AND CONDITIONS FOR TLC AUTHORIZATION** (the “Agreement”) effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”) between the City of New York (the “City”), acting by and through the Taxi and Limousine Commission, located at 33 Beaver Street, 22<sup>nd</sup> Floor, New York, NY 10004 (the “TLC” or “Commission”), and \_\_\_\_\_ a \_\_\_\_\_ corporation having a place of business at \_\_\_\_\_ (“Alternative Technology Pilot Participant” or “Participant”).

**Whereas**, the Commission is authorized by the New York City Charter to license and regulate for-hire transportation in the City;

**Whereas**, the Commission is authorized pursuant to Section 2303(b)(9) of the New York City Charter to approve pilot programs to test innovative and experimental types of equipment in Taxicabs and has adopted pilot program rules, codified in Chapter 52, Subchapter C, of Title 35 of the Rules of the City of New York (“TLC Rules”);

**Whereas**, by resolution adopted on October 15, 2015 (“Pilot Resolution”), the Commission approved a pilot program (the “Alternative Technology Pilot” or “Pilot”) to test and evaluate the feasibility of software-based taximeters that utilize GPS to calculate distance (“GPS Meters”) and taxi technology systems that provide the core services provided by a TPEP – credit card payment, driver authentication, passenger notifications, text messaging, trip data collection and transmission, and vehicle location services – in a manner other than what is prescribed by Chapter 75 of TLC’s Rules (“Alternative Technology Solution” or “ATS”);

**Whereas**, the Alternative Technology Pilot Participant has filed an application with the Commission to participate in the Alternative Technology Pilot and the Commission has determined that the Participant, on the basis of its application, has met the preliminary conditions for participation in the Pilot; and

**Whereas**, the Commission, based on the Alternative Technology Pilot Participant’s agreement and subject to the Participant’s ability to meet and continue to meet all requirements for approval of Participant’s Alternative Technology Solution and/or GPS Meter for use in the Alternative Technology Pilot, is prepared to authorize Participant’s Alternative Technology Solution and/or GPS Meter for use in the Pilot.

**Now therefore**, the TLC and the Alternative Technology Pilot Participant agree as follows:

## **I. Definitions**

All capitalized terms used in this Agreement that are not defined herein shall have the meanings given to such terms in Section 51-03 of the TLC Rules (the “Rules”).

## **II. Authorization of Participation and Consequences of Termination**

- (a) The Chair hereby authorizes the Alternative Technology Pilot Participant to install in Taxicabs the Alternative Technology Solution and/or GPS Meter that was approved as to design and installation by TLC Staff, as described in Appendix A, attached hereto and made a part of this Agreement, in connection with the Alternative Technology Pilot, subject to the terms hereof (“Authorization”).
- (b) If the Pilot Participant’s Authorization is terminated by either the Commission or the Pilot Participant, or if the Alternative Technology Pilot terminates prior to the expiration of this Agreement, the Pilot Participant shall immediately notify each Vehicle Owner who is using the Alternative Technology Solution and/or GPS Meter approved under this Agreement that:
  - i. any Alternative Technology Solution and/or GPS Meter installed in a TLC licensed Taxicab pursuant to this Pilot that contravenes TLC rules must be uninstalled immediately, and
  - ii. the Vehicle Owner has up to thirty (30) days from the date of termination to obtain a TPEP and related services from a TPEP Provider.

## **III. Duration of the Authorization**

The Participant’s Authorization to participate in the Pilot shall commence upon the Effective Date of this Agreement, and shall expire in one year, upon Termination of this Agreement pursuant to Section IV of this Agreement, or upon the termination of the Alternative Technology Pilot, whichever date is soonest.

## **IV. Grounds for Termination of the Agreement**

- (a) Either party to this Agreement may terminate the Agreement without cause on ten days’ prior written notice to the other party.
- (b) The Chair may immediately terminate this Agreement for cause if the Chair determines that the Pilot Participant has failed to comply or is no longer complying with any of the terms of this Agreement.
- (c) The Chair shall terminate the Pilot Participant’s Authorization and this Agreement immediately if, in the sole discretion of the Chair, there is an immediate danger to the City, the Commission, or the public in continuing the Authorization and this Agreement.

- (d) If applicable, the Chair shall terminate the Pilot Participant's Authorization and this Agreement immediately if informed by the New York State Department of Agriculture and Markets' Division of Weights and Measures that the Pilot Participant's GPS Meter is no longer acceptable for use in the Pilot.

**V. Liquidated Damages and Bond Required**

- (a) **Amount of Bond.** Participant shall deposit or have deposited with the Commission a five thousand dollar (\$5,000) bond per Alternative Technology Solution and/or GPS Meter, payable to the City of New York. If the Participant's Alternative Technology Solution incorporates a GPS Meter, the Participant shall only be required to deposit or have deposited with the Commission a single, five-thousand dollar (\$5,000) bond. The bond must be provided by one or more sureties approved by the Chair. The bond must be provided before this Agreement becomes effective and must remain valid and in force until one year after the earlier of the date on which the Pilot terminates or the date on which the Participant's participation is terminated or ends, including any extension(s) that may occur.
- (b) **Bond Guarantees.** The bond must guarantee that the Participant will pay all liquidated damages due to the Commission under this Agreement.
- (c) **Payment of Damages.** The Commission may draw upon the bond for payment of liquidated damages.
- (d) **Liquidated Damages.** The Participant recognizes that its non-compliance with the provisions of this Agreement will have a material adverse impact on the City in that it impacts the Commission and its constituents, and that the loss or damage resulting from such non-compliance is not susceptible of precise determination. The Participant agrees to pay to the City liquidated damages as directed by the Chair of \$100 per day for each occurrence of any non-compliance with the provisions of Sections VI of this Agreement. Such amounts, in view of the difficulty of accurately ascertaining the loss or damage suffered by the City, are fixed as the liquidated damages that the City will suffer by reason of such non-compliance, and not as a penalty.
- (e) **Restitution.** The Participant agrees that it is responsible to pay Drivers, other TLC Licensees, and Passengers, restitution, as applicable, for any harm caused by the use of their Alternative Technology Solution and/or GPS Meter during the Pilot or thereafter until the Alternative Technology Solution(s) and/or GPS Meter(s) have been removed from Taxicabs.

**VI. Duties and Responsibilities of the Alternative Technology Pilot Participant**

- (a) **Compliance with Pilot Resolution:** Participant must comply, and must not cause TLC Licensees to fail to comply, with the requirements of the Pilot Resolution, attached hereto and made a part hereof as Appendix B.

- (b) **Compliance with TLC Rules:** Participant must comply, and must not cause TLC Licensees to fail to comply, with all TLC Rules, except as exempted by Section 12 of the Pilot Resolution and this Agreement, or otherwise as exempted by TLC. By signing this MOU, Participant acknowledges that it is in compliance with all TLC Rules and the terms set forth herein and that participation in the Pilot shall be conditioned upon this representation.
- (c) **Data Collection:** Participant shall provide the Commission machine-readable data generated by Participant's ATS and/or GPS Meter pursuant to the schedules outlines in Section IX(c) of the Agreement.
- (d) **Reporting and Evaluation:** Participant must submit a report to the Commission every month summarizing the data collected and provided pursuant to Section IX(c) of this Agreement and a summary of all complaints related to the Pilot received from TLC Licensees (including Drivers and/or Vehicle Owners) and Passengers. Such reporting must be in a format approved by the Commission.
- (e) **Vehicle Inspections:** Participant must submit for inspection at TLC's Safety and Emissions facility each vehicle in which Participant has installed its approved ATS and/or GPS Meter. Each Taxicab inspection must occur prior to operating the vehicle as a Taxicab. Following the initial inspections, each vehicle must return to the TLC's Safety and Emissions facility for re-inspection once every four months. Participant may also, in the TLC's discretion, be required to present vehicles for inspection upon demand, separate and apart from the inspection and re-inspection schedule set forth above. Nothing herein has any effect upon Vehicle Inspections required elsewhere in the TLC Rules.
- (f) **Fee Schedule:** Participant must keep on file with the Commission a complete and up-to-date schedule of all fees, including the fee structure, charged to Licensees for the use of its ATS and/or GPS Meter. In no case shall any costs be borne by TLC licensed drivers who are not also Taxicab or Medallion Owners. All fee schedules and any subsequent modifications thereto shall be filed with the TLC at least ten (10) days in advance of any such fee schedule or modification to such schedule fee shall take effect.
- (g) **List of Participating Licensees:** Participant must submit an initial list prior to putting its ATS and/or GPS Meter into service and subsequent lists of TLC Licensees using Participant's ATS and/or GPS Meter permitted through the Pilot, including participating Taxicab Owners, Medallion Owners, Drivers, and garages, and the start and end dates of the Licensees' use of the ATS and/or GPS Meter anytime the list changes.
- (h) **Notification to TPEP Providers:** If the use or installation of Participant's ATS and/or GPS Meter necessitates the termination of an existing contract with a TPEP Provider, Participant must ensure that any TLC Licensee using or installing Participant's ATS and/or GPS Meter provides the Licensee's existing TPEP Provider with proper notice of termination pursuant to the contract terms required by §75-05(h)(6)(x).

- (i) **User Agreements with Vehicle Owners:** Prior to the sale, lease, use, or installation of the Participant’s ATS and/or GPS Meter into a Vehicle, Participant must enter into a written agreement with the Vehicle Owner for such sale, lease, use or installation. Such agreement must obligate the Vehicle Owner to make the ATS and/or GPS Meter installed in the Taxicab available to the TLC for inspection upon demand by the TLC and may not exceed the Participant’s Authorization term. The terms of such agreements must be consistent with the Pilot Resolution, this Agreement, and TLC Rules, and must be approved as to form by the TLC.
- (j) **Modifications of ATS and/or GPS Meter:** Participant must notify the TLC before making any modifications to the manner in which its TLC-authorized GPS Meter complies with Section VIII of this Agreement and/or its ATS provides the core services listed in Section IX of this Agreement and must not use the modified ATS and/or GPS Meter in the Pilot until such modification has been approved by the TLC.
- (k) **Security and Privacy Policies:** Participant must follow the practices outlined in the Security and Privacy policies submitted as part of its application to participate in the Pilot. Participant must notify the TLC before making any material modifications to its Security or Privacy policies and must not implement such modifications until such modifications have been approved by the TLC.

**VII. Participating Vehicles**

Participant is authorized to install its ATS and/or GPS Meter in up to two-hundred fifty (250) Taxicabs subject to the following conditions:

- (a) Participant may install its ATS and/or GPS Meter in ten (10) Taxicabs upon written approval of its ATS and/or GPS Meter.
- (b) Following the completion of four thousand (4,000) trips total in Taxicabs in which Participant installed its ATS, Participant must submit a Report to the TLC containing a summary of:
  - i. Hardware and software malfunctions and repairs
  - ii. System outages
  - iii. GPS tracking errors including failure to acquire GPS signal, “canyon effect” or other errors
  - iv. Fare calculation errors
  - v. Complaints received from passengers, drivers, and/or owners
  - vi. GPS Meter and/or ATS installations and de-installations
  - vii. Driver trainings provided by the Participant and a list of Drivers who have participated in such training
  - viii. Troubleshooting inquiries received by Participant
- (c) After review of the Report and TLC analysis of electronic trip sheet data to confirm that Participant’s ATS and/or GPS Meter adheres to the specifications and tolerances required by the Resolution and the MOU, Participant may install its GPS Meter and/or ATS

equipment in up to ninety (90) more Vehicles upon written approval by the TLC. TLC may withhold approval for further Vehicle installations if the TLC finds, in its sole discretion, that the content of the Report or an analysis of electronic trip sheet data indicates that Participant's ATS and/or GPS Meter does not meet acceptable levels of accuracy, service, security, or usability.

- (d) Following the completion of an additional eighty thousand (80,000) trips total in Taxicabs in which Participant installed its GPS Meter and/or ATS, Participant must submit a report containing the information described in paragraph (b) above.
- (e) After review of the Report and TLC analysis of electronic trip sheet data to confirm that Participant's ATS and/or GPS Meter adheres to the specifications and tolerances required by the Resolution and the MOU, Participant may install its GPS Meter and/or ATS equipment in up to one-hundred fifty (150) more Taxicabs. TLC may withhold approval for further Vehicle installations if the TLC finds, in its sole discretion, that the content of the Report or an analysis of electronic trip sheet data indicates that Participant's ATS and/or GPS Meter does not meet acceptable levels of accuracy, service, security, or usability.
- (f) Each Taxicab equipped with an ATS solution must be equipped with a sign provided by the Commission, placed in the interior of the Taxicab in a location approved by the Commission, outlining the Taxicab's participation in the Pilot and any other information provided by the Commission.

**VIII. Specification for GPS Meters**

If the Participant submits a GPS Meter for use in the Pilot, the GPS Meter must adhere to the following specifications and Participant must provide documentation to the TLC demonstrating how the GPS Meter complies with the following specifications prior to installing its GPS Meter in Taxicabs:

(a)	The GPS Meter must use GPS or Enhanced GPS technology in calculating distance.
(a)(1)	The GPS Meter must be able to calculate distance in the event that the GPS Meter loses signal.
(b)	Dedicated Device
(b)(1)	If the GPS Meter operates independently from an ATS approved for use pursuant to this Pilot, the GPS Meter must operate off of a dedicated device that is locked-down from any uses other than running the GPS Meter or other uses approved by the TLC. Such device's hardware and software may only be altered or modified by the Participant and only upon written TLC approval consistent with this Agreement.

(b)(2)	If the GPS Meter operates in conjunction with an ATS approved for use by pursuant to this Pilot, the GPS Meter must operate off of a dedicated device that is locked-down from any uses other than running the GPS Meter and the ATS or other uses approved by the TLC. Such device's hardware and software may only be altered or modified by the Participant and only upon written TLC approval consistent with this Agreement.
(c)	The GPS Meter must record and continuously display the fare and all applicable extras in font large enough to be seen from the back seat of the Taxicab and in accordance with Subdivision S.1 of NIST Handbook 44.
(d)	The GPS Meter must meet the tolerance values contained in Subdivision T.1 of Section 5.54 of NIST's Handbook 44.
(e)	The GPS Meter must be able to generate a printed receipt.
(f)	The GPS Meter must collect and transmit On-Duty Location Positioning at the same frequency at which the GPS Meter collects On-Duty Location Positioning information to calculate distance.

**IX. Specifications for Alternative Technology Solutions**

If the Participant submits an ATS for use in the Pilot, participant must submit a detailed description and documentation demonstrating the manner in which it provides:

- (1) Credit, debit, and prepaid card payment in accordance with applicable PCI standards,
- (2) Driver/vehicle authentication (using TLC published lists) and text messaging,
- (3) Trip data collection and transmission in accordance with industry best privacy and security practices,
- (4) Passenger notifications, including visual accessibility features,
- (5) Automatic Vehicle Location Systems and location services, and
- (6) Driver, Medallion Owner, and Agent reporting.

Such documentation must include a description of how the manner in which the ATS provides these core services departs from the requirements contained in Chapter 75 of TLC's Rules and why such departures are necessary for Participant's ATS to provide the above core services. However, in no circumstance may the manner in which the ATS provides these core services depart from the requirements contained in §75-25(a)(2)(v), §75-25(a)(2)(xii), §75-25(a)(2)(xiii), §75-25(c)(2), §75-25(f), or §75-25(r) of TLC's Rules.

**X. Driver Payments**

- (a) Participant must ensure that when Passengers pay through an ATS by credit, debit, or prepaid card, or an E-Hail App that provides for E-Payment, the Medallion Owner receives deposit of funds within forty-eight (48) business hours, excluding banking holidays, of transmission of a batch close transaction from the ATS, except for incidents when there is a fraud investigation

- (b) Participant may offer to pay a Driver directly for fares processed via or passed through the ATS. The Driver can receive funds directly from the Participant if both the Driver and the Medallion Owner elect to have the Driver paid directly by the Participant.
- (1) If the Participant pays the Driver directly and the Participant is the merchant for the transaction processing, any fees withheld by the Participant for processing the credit/debit/prepaid card or E-Payment transaction must not exceed five percent (5%). Participant may not withhold any fees for processing a transaction from a Driver who has paid a Credit Card Processing Surcharge assessed pursuant to §58-21(c)(5)(xi) of TLC's Rules.
  - (2) If the Participant pays the Driver directly and the Participant is not the merchant, the Participant must not withhold any fees from the Driver for processing the transaction.
  - (3) If the Participant pays the Driver directly using a method other than payment in cash (i.e. via an electronic debit to an account set up for the Driver), funds must be available in accordance with §58-21(f)(1) and (2) of TLC Rules and either
    - (i) there must be no cost to the Driver to access or withdraw their funds, and the Driver must be able to withdraw funds at a location that is within 0.5 miles of the fleet's garage, or
    - (ii) there must be no cost to the Driver for the set-up and use of the account, the Driver must be able to transfer their funds to a different bank account at least once a week at no cost, and the Driver must be able to use a debit card associated with the account as a credit card with no fee for use of the card, or
    - (iii) there must be no cost to the Driver for the set-up and use of the account, the Driver must be able to transfer their funds to a different bank account or access their funds at an ATM at a reduced fee of \$1.50 per transaction, and the Driver must be able to use a debit card associated with the account as a credit card with no fee for use of the card.

## **XI. Driver and Passenger Focus Groups**

Participant must organize and conduct six (6) focus groups for the purpose of assessing and incorporating ATS user feedback. The focus groups are to be subject to the following conditions and scheduled as follows:

- (a) Participant must organize and conduct a focus group of at least ten (10) passengers that have used Participant's ATS and/or GPS Meter after Participant's third, sixth, and ninth month of participation in the Pilot

- (b) Participant must organize and conduct a focus group of at least ten (10) drivers that have used Participant's ATS and/or GPS Meter after Participant's third, sixth, and ninth month of participation in the Pilot.
- (c) The TLC must be permitted to observe and record each focus group.
- (d) The recruitment process for drivers and passengers that participate in the focus group must be approved by the TLC.
- (e) The agendas for the focus group must approved by the TLC.

**XII. Insurance and Indemnification**

- (a) **Required Insurance.** The Participant has submitted to the Chair proof of the insurance required in this subdivision when the Commission requested it. The Participant shall submit further proof at any time required by the Chair. The Participant agrees that it will notify the Chair of any change, cancellation or modification affecting the insurance required herein for which proof has been submitted. The Participant understands that Authorization will be terminated unless the Chair has acceptable proof of required coverage at all times.

(1) Liability Insurance.

- (i) The Participant shall maintain Commercial General Liability (“CGL”) Insurance covering the Participant as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Participant from claims for property damage and/or bodily injury, including death that may arise from any of the operations performed or to be performed by or on behalf of the Participant in connection with any of the activities authorized under this Agreement. Coverage under this insurance will be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”
- (ii) If the Participant’s subcontractor(s) is/are performing or will perform operations in connection with any of the activities authorized under this Agreement, either the Participant’s CGL Insurance under subparagraph (i) of this paragraph shall cover the subcontractor(s) or such subcontractor(s) shall maintain its/their own CGL Insurance subject to all other requirements herein.
- (iii) Such CGL Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

(2) Professional Liability Insurance.

- (i) In the Commission’s discretion, if professional services will be performed by the Participant in connection with any of the activities authorized under this Agreement, the Participant shall maintain and submit evidence of Professional Liability (“PL”) Insurance appropriate to the type(s) of services performed by the Participant in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Participant under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Participant or anyone employed by the Participant.
- (ii) If the Participant’s subcontractor(s) is/are performing or will perform professional services in connection with any of the activities authorized under this Agreement for which PL Insurance is reasonably commercially available, either the Participant’s PL Insurance under subparagraph (i) of this paragraph shall cover the subcontractor(s) or such subcontractor(s)

shall maintain its/their own PL Insurance subject to all other requirements herein.

- (iii) Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Participant shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.
- (3) Crime Insurance.
- (i) The Participant shall maintain crime insurance to protect against employee dishonesty, covering tangible property or moneys against loss, damage or destruction resulting from larceny, theft, embezzlement, forgery, robbery, misappropriation, willful misapplication or other fraudulent or dishonest acts committed by the Participant's employees or agents. The liability limits under the policy shall be at least One Million Dollars (\$1,000,000) per occurrence.
  - (ii) If the Participant's subcontractor(s) is/are performing or will perform operations in connection with any of the activities authorized under this Agreement, either the Participant's crime insurance under item (i) above shall cover the subcontractor(s) employees or agents or such subcontractor(s) shall maintain its/their own crime insurance subject to all other requirements herein.
- (4) General Requirements for Insurance Coverage and Policies.
- (i) All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Commission.
  - (ii) All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.
  - (iii) The Participant shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.
  - (iv) There shall be no self-insurance program with regard to any insurance required under this subdivision unless approved in writing by the Commission. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required

under this subdivision, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

- (v) The City's limits of coverage for all types of insurance required under this subdivision shall be the greater of:
  - (A) the minimum limits set forth in this subdivision; or
  - (B) the limits provided to the Participant as Named Insured under all primary, excess, and umbrella policies of that type of coverage.
- (5) Proof of Insurance.
  - (i) For each policy required under this subdivision, the Participant shall file a Declarations Page issued by the Insurer with the Commission. All Declarations Pages shall be:
    - (A) in a form acceptable to the Commission and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits;
    - (B) accompanied by the endorsement in the Participant's Commercial General Liability Insurance policy by which the City has been made an Additional Insured pursuant to subparagraph (iii) of paragraph (1) of this subdivision; and
    - (C) accompanied by either a duly executed Certification by Insurer in the form provided by the Commission or copies of all policies referenced in the Declarations Page. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies will be submitted.
  - (ii) The Participant shall provide the Commission with a copy of any policy required under this subdivision upon demand by the Commission or the New York City Law Department.
  - (iii) Acceptance by the Commission of a Declarations Page or a policy does not excuse the Participant from maintaining policies consistent with all provisions of this subdivision (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.
  - (iv) If the Participant receives notice, from an insurance company or other person, that any insurance policy required under this subdivision will expire, be cancelled, or terminated for any reason, the Participant shall immediately forward a copy of the notice to the Commission and the New York City Comptroller at:

NYC Taxi and Limousine Commission  
Attn: General Counsel  
33 Beaver Street 22nd Floor  
New York, New York 10004

New York City Comptroller  
Attn: Office of Contract Administration  
Municipal Building, One Centre Street, Room 1005  
New York, New York 10007.

(6) Miscellaneous Insurance Provisions.

- (i) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a Commercial General Liability policy maintained in accordance with this subdivision, the Participant shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Participant may not have coverage under such policy (for example, where one of the Participant's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information:
- the number of the insurance policy;
  - the name of the named insured;
  - the date and location of the damage, occurrence, or accident;
  - the identity of the persons or things injured, damaged, or lost; and
  - the title of the claim or suit, if applicable.

The Participant shall simultaneously send a copy of such notice to:

The City of New York c/o Insurance Claims Specialist  
Affirmative Litigation Division  
New York City Law Department,  
100 Church Street, New York, New York 10007.

If the Participant fails to comply with the requirements of this subparagraph, the Participant shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

- (ii) Insurance coverage in the minimum amounts required in this subdivision shall not relieve the Participant of any liability for indemnification under this Agreement.

- (iii) The Participant waives all rights against the City, including its officers and employees, for any damages or losses that are covered under any insurance required under this subdivision (whether or not such insurance is actually procured or claims are paid under such insurance) or any other insurance applicable to the activities of the Participant and/or its subcontractors required to be authorized under this Agreement.

If the Participant requires any subcontractor to procure insurance in connection with any of the activities authorized under this Agreement and requires the subcontractor to name the Participant as an additional insured under such insurance, the Participant shall ensure that such entity also names the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

- (b) **General Indemnification.** The Participant shall defend, indemnify and hold the City, its officers and employees harmless from any and all third-party claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses (including reasonable attorneys' fees) to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of any operations of the Participant and/or its employees, agents or subcontractors in connection with any of the activities authorized under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with any of the provisions of this Agreement. Insofar as the facts or law relating to any third-party claim would preclude the City from being completely indemnified by the Participant, the City shall be partially indemnified by the Participant to the fullest extent permitted by law.
- (c) **Infringement Indemnification.** The Participant shall defend, indemnify and hold the City harmless from any and all third-party claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses (including reasonable attorneys' fees) to which the City may be subjected or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Participant, its agents or subcontractors of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party in the conduct of the authorized activities. Insofar as the facts or law relating to any third-party claim would preclude the City from being completely indemnified by the Participant, the City shall be partially indemnified by the Participant to the fullest extent permitted by law.
- (d) **Not Limited by Insurance.** The indemnification obligations set forth in this section shall not be limited in any way by the Participant's obligations to obtain and maintain insurance as provided in this Agreement.

### **XIII. Choice of Law**

- (a) The parties agree that this Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the parties, and shall be governed by and construed

in accordance with the laws of the State of New York (without regard to conflict of law principles) and the laws of the United States, where applicable.

- (b) The parties agree that any and all claims asserted by or against either party arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City of New York or in the Courts of the State of New York located in the City and County of New York.

**XIV. Third Party Beneficiary**

Except as expressly set forth in this Agreement, the parties do not intend the benefits of this Agreement to inure to any third party, and nothing contained herein shall be construed as creating any right, claim or cause of action in favor of any such third party, against either of the parties hereto.

**XV. Counterparts**

This Agreement may be executed in counterparts, each of which when delivered is an original but all of which taken together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date above first written

City of New York  
Taxi and Limousine Commission

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Christopher Wilson  
Title: General Counsel/  
Deputy Commissioner for Legal Affairs

By: \_\_\_\_\_  
Name:  
Title:

