

APPROVAL AS TO FORM OF A CONTRACT BY STANDARD TYPE OF CLASS

AGENCY: **TAXI AND LIMOUSINE COMMISSION**

CONTRACT: **MEMORANDUM OF UNDERSTANDING FOR AUTHORIZATION OF PILOT PROGRAM TESTING OF VEHICLE SAFETY TECHNOLOGY IN TLC LICENSED VEHICLES, REVISED NOVEMBER 12, 2014**

I hereby approve as to form the annexed contract by standard type of class. This approval is valid for a period of one (1) year from the date hereof and for a maximum of twenty (20) contracts. The above approval is made on the express understanding that the substantive language of the subject contracts will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the contracts requiring names, dates, dollar amounts or other similar details may be completed.

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY



ACTING CORPORATION COUNSEL



DATE: NOV 13 2014

2014-040953

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
in-vehicle safety technology.

TERMS AND CONDITIONS FOR TLC AUTHORIZATION (the “Agreement”) effective as of this _____ day of _____, 2014 (“Effective Date”) between the City of New York (the “City”), acting by and through the Taxi and Limousine Commission, located at 33 Beaver Street, 22nd Floor, New York, NY 10004 (the “TLC” or “Commission”), and _____ a _____ corporation having a place of business at _____ (“Vehicle Safety 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 City has launched the “Vision Zero” program, an interdepartmental initiative to rethink practices, incentives, and traffic-as-usual in order to put an end to traffic related deaths and serious injuries;

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 vehicles (the “Test Vehicle(s)”) 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 June 19, 2014 (“Pilot Resolution”), the Commission approved a pilot program (the “Vehicle Safety Technology Pilot” or “Pilot”) to test and evaluate Vehicle Safety Technologies such as back boxes, anti-speeding technologies, driver alert systems, and related analytic software (“Vehicle Safety Technology”), for purposes of furthering the mission of the Vision Zero program;

Whereas, the Vehicle Safety Technology Pilot Participant has filed an application with the Commission to participate in the Vehicle Safety 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 Vehicle Safety 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 Vehicle Safety Technology for use in the Vehicle Safety Technology Pilot, is prepared to authorize Participant’s Vehicle Safety Technology for use in the Pilot.

Now therefore, the TLC and the Vehicle Safety 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.

II. Authorization of Participation and Consequences of Termination

- (a) The Chair hereby authorizes the Vehicle Safety Technology Pilot Participant to install in TLC licensed vehicles the Vehicle Safety Technology 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 Vehicle Safety Technology Pilot, subject to the terms hereof (“Authorization”).
- (b) If the Vehicle Safety Technology Pilot Participant’s Authorization is terminated by either the Commission or the Vehicle Safety Technology Pilot Participant, or if the Vehicle Safety Technology Pilot terminates prior to the expiration of this Agreement, the Vehicle Safety Technology Pilot Participant shall immediately notify each Licensee who is using the Vehicle Safety Technology approved under this Agreement that any Vehicle Safety Technology installed in a TLC licensed vehicle pursuant to this Pilot that contravenes TLC rules must be uninstalled immediately.

III. Duration of the Authorization

- (a) This Authorization shall commence upon the Effective Date of this Agreement, and shall expire in one year or at the termination of the Vehicle Safety Technology Pilot, whichever date is soonest.
- (b) If the Commission approves an extension of the term of the Vehicle Safety Technology Pilot, the Chair of the TLC (“Chair”), in his or her sole discretion, may renew each Participant’s Authorization. The renewal Authorization may be subject to different terms.

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 Vehicle Safety Technology 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 Vehicle Safety Technology 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.

V. Liquidated Damages and Restitution

- (a) **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.
- (b) **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 Vehicle Safety Technology during the Pilot or thereafter until the Vehicle Safety Technology(ies) have been removed from the vehicle.

VI. Duties and Responsibilities of the Vehicle Safety 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 13 of the Pilot Resolution, or otherwise as exempted by TLC.
- (c) **Data Collection:** Participant shall provide the Commission machine-readable data generated by Participant's Vehicle Safety Technology. The type and granularity of data Participant provides must be mutually agreeable to the parties and may include events of speeding, changes in gravitational forces, hard braking, hard acceleration, in-vehicle alerts, timestamps, geographic location information, and vehicle/driver identifiers.
 - 1) Participant must transmit said data to the Commission weekly, with the first transmission of data occurring no more than six weeks after the first vehicle equipped with the Vehicle Safety Technology goes into service. Initial transmission of data must contain records for no less than the first two weeks of operation. Thereafter weekly data transmissions to the Commission must include data records from each subsequent week of service, with a maximum allowable lag of four weeks between the date of the records and the transmission date.

- 2) Participant must maintain all of the above required data for at least three years after the date on which the Participant commences providing Vehicle Safety Technology pursuant to the Vehicle Safety Technology Pilot.
- (d) **Reporting and Evaluation:** Participant must submit a report to the Commission every other month summarizing the data collected and provided pursuant to Section (VI)(b) of this Agreement, including any algorithmic scoring, and a summary of all complaints related to the Vehicle Safety Technology 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 the first five Vehicles in which Participant has installed its approved Vehicle Safety Technology. Each Vehicle inspection must occur prior to operating the Vehicle as a Taxicab or For-Hire Vehicle, as applicable. Following the initial inspections, each of the five Vehicles must return to the TLC's Safety and Emissions facility for re-inspection once every three months. 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 Vehicle Safety Technology. In no case shall any costs be borne by TLC licensed drivers who are not also TLC licensed Vehicle or Medallion Owners.
- (g) **List of Participating Licensees:** Participant must submit an initial list prior to putting their Vehicle Safety Technologies into service and subsequent lists each month of TLC Licensees using Participant's Vehicle Safety Technology permitted through the Pilot, including participating Vehicle Owners, Medallion Owners, SHL permit holders, Drivers, Bases, and garages, and the start and end dates of their participation with the Vehicle Safety Technology in the Pilot.
- (h) **User Agreements with Vehicle Owners:** Prior to the sale, lease, use, or installation of the Participant's Vehicle Safety Technology into a Test Vehicle, Participant must enter into a written agreement with the Vehicle Owner for such sale, lease, use or installation. 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.
- (i) **Driver Consent Agreement:** Participant must ensure that all TLC Licensees driving Test Vehicles sign an agreement acknowledging that Participants may collect and analyze both on-duty and off-duty data from the Vehicle Safety Technology, may provide TLC with ongoing data, and may share the collected data as is necessary. A sample Driver Consent Agreement is attached to this Agreement as **Appendix C**.
- (j) **Modifications of Vehicle Safety Technology:** Participant must notify the TLC before making any material modifications to its TLC-authorized Vehicle Safety Technology and

must not use the modified technology 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. 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) **Commercial General 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) 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.

(4) 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.

(5) 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.

VIII. 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.

IX. 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.

X. 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:

ACKNOWLEDGEMENT BY CORPORATION

STATE OF)

:SS.:

COUNTY OF)

ON THE ____ DAY OF _____ IN THE YEAR 2013, BEFORE ME
PERSONALLY CAME _____ TO ME KNOWN, WHO, BEING BY ME
DULY SWORN, DID DEPOSE AND SAY THAT (S)HE RESIDES IN _____;
THAT (S)HE IS THE _____ OF

_____, THE CORPORATION DESCRIBED IN AND WHICH EXECUTED
THE ABOVE INSTRUMENT; AND THAT (S)HE SIGNED HIS/HER NAME THERETO BY
AUTHORITY OF THE BOARD OF DIRECTORS OF SAID CORPORATION

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

