

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Taxi and Limousine Commission is considering changing its rules. The change would amend the TLC's Rules to create rules to accommodate electronic hailing (e-hail) of taxicabs.

When and where is the Hearing? The Commission will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 a.m. on Thursday, November 29, 2012. The hearing will be in the Commission hearing room at 33 Beaver Street, New York, New York, on the 19th Floor.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Mail.** You can mail written comments to the Taxi and Limousine Commission, Office of Legal Affairs, 33 Beaver Street – 22nd Floor, New York, New York 10014.
- **Fax.** You can fax written comments to the Taxi and Limousine Commission, Office of Legal Affairs, at 212-676-1102.
- **Email.** You can email written comments to tlcrules@tlc.nyc.gov.
- **Website.** You can submit comments to the Taxi and Limousine Commission through the NYC rules Web site at www.nyc.gov/nycrules.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-676-1135. You can also sign up in the hearing room before the hearing begins on November 29, 2012. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by November 29, 2012.

Do you need assistance to participate in the Hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-676-1135. You must tell us by Thursday, November 22, 2012.

Can I review the comments made on the proposed rules? A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

What authorizes the Commission to make this rule? Sections 1043 and 2303 of the City Charter and sections 19-503 and 19-511 of the City Administrative Code authorize the Commission to make this proposed rule. This proposed rule was not included in the Commission's regulatory agenda for this Fiscal Year because it was not contemplated when the Commission published the agenda.

Where can I find the Commission's rules? The Commission's rules are in title 35 of the Rules of the City of New York.

What rules govern the rulemaking process? The Commission must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

A number of companies have approached the TLC about introducing services that would allow taxicab passengers within the City to arrange on demand taxi service through an electronic hail (E-Hail) application sent from a smartphone or other electronic device. Passenger survey data obtained by the TLC indicates that more than 50% of those questioned were interested in both the ability to E-Hail a taxicab (57%), and the ability to pay for their fare (55%) using an electronic device (E-Payment). TLC's current governing regulations, many of which predate E-Hail technology, do not authorize such services.

As E-Hail applications have emerged, TLC has undertaken serious diligence in exploring options that will encourage innovation and provide new and desired services to taxi passengers. To expand such passenger amenities, TLC and the City wish to permit E-Hails. These proposed rules, which apply to medallion owners, application developers and taxicab drivers who may engage in E-Hails, will modify TLC's current regulations to allow passengers to E-Hail New York taxicabs.

The proposed rule changes include:

- Additions to Definitions (Chapter 51) to include terms related to E-Hail.
- Amendments to prohibit a Driver from charging a Passenger any fee above TLC-approved rates for an E-Hail trip, describing the payment process through T-PEP for E-Hail, establishing restrictions on the use of E-Hail Applications by a Driver including prohibited locations, and requiring Drivers to utilize only E-Hail Applications licensed and approved by TLC. (Chapter 54). Amendments regarding Owner payments to Drivers for E-Hail trips, the requirement that the Taximeter be used to calculate the time and distance charges for all E-Hail trips and that E-Hail Applications that also provide E-Payment must operate through the T-PEP system (Chapter 58).
- Amendments that require that all Taxicabs be equipped with a T-PEP system that includes the collection and transmission of data on all trips including E-Hail trips (Chapter 67).

Purpose of Proposed Rules

These proposed rules will modify TLC's current regulations to accommodate electronic hailing (E-Hail) of taxicabs with the aim of improving the City's taxicab and for-hire services for Passengers and Drivers.

The proposed rules:

- Modify requirements for Drivers for E-Hail Application and E-Payment use.
- Require E-Hail Applications that also provide E-Payment to integrate with T-PEP and that Trip Record information be collected by T-PEP for E-Hail trips.
- Clarify when and where a Driver may use an E-Hail Application.
- Modify T-PEP requirements to require integration between T-PEP and E-Hail Applications.

In addition, these proposed rules provide for the licensing of the providers of E-Hail applications and establish standards for usage, security and other features to ensure that application usage does not interfere with the ability of the T-PEP technology to collect and accurately record trip data. Accordingly, the Commission proposes rules (in the form of a new Chapter 78) to license E-hail applications.

Specifically, these rules:

- Establish licensing standards and requirements for E-Hail application providers
- Establish a one year license term
- Require applications that also provide E-Hail Payment to integrate with T-PEP
- Set forth technical requirements for E-Hail applications
- Set forth security standards for E-Hail applications that process payments

The Commission's authority for these rules is found in section 2303 of the New York City Charter and sections 19-503 and 19-511 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 51-03 of Title 35 of the Rules of the City of New York is amended by including additional definitions as follows:

E-Hail Application. A Software program licensed by TLC under Chapter 78 residing on a smartphone or other electronic device and integrated with the TPEP system which performs one or more of the following functions:

- 1) allows a passenger to identify the location(s) of available Taxicabs in a given area and allows a Driver to identify the location of a passenger who is currently ready to travel;
- 2) allows a passenger to Hail a Taxicab via the electronic device;
- 3) allows a Driver to receive a Hail request from such a passenger if the application provides for connecting a passenger to a Driver; or
- 4) E-Hail Payment.

E-Hail Payment. A feature of a licensed E-Hail Application that

- 1) Allows a passengers to pay through the E-Hail Application;
- 2) Is limited to taxi fare and tip; and
- 3) Integrates with TPEP and meets all security standards as established in §75-25 and §78-21 of these Rules.

In accordance with the Rules of the Commission, a portion of each payment may be required to be remitted to the TPEP Provider as set forth in §78-21(b)(3) of these Rules.

Hail. A request, either through a verbal (audio) action such as calling out, yelling, or whistling, and/or a visible physical action such as raising one’s hand or arm, or through an electronic method, for on-demand taxicab service by a person who is currently ready to travel.

§2. Paragraph (1) of subdivision (a) of section 54-17 of Title 35 of the Rules of the City of New York is amended to read as follows:

(a) *No Overcharges.*

- (1) A Driver must not charge or attempt to charge a fare above the Commission-approved rates. This includes a fare in a Street Hail Livery for a Hail Trip or a fare for any trip initiated or accepted through an E-Hail Application.

§3. Section 54-17 of Title 35 of the Rules of the City of New York is amended by adding a new subdivision (k) to read as follows:

(k) E-Hail Payments.

- (1) The fare must be calculated as required by these rules and the Taximeter must be used for all trips, including trips paid for by E-Hail Payment. The time and distance portion of any fare paid for by E-Hail Payment must be calculated by the Taximeter and not by any other method.
- (2) The fare amount charged to the Passenger must be automatically transmitted to the E-Hail Application from the TPEP, and the payment must be transmitted from the E-Hail Application to the TPEP for confirmation. No portion of the E-Hail Payment process may be completed through manual input of the fare by the Driver or any other person into the E-Hail Application.
- (3) A violation of these provisions is an overcharge under sections 54-17(a)(1) and 54-17(i) and a Driver can be subject to the penalties for an overcharge under Section 54-02

§54-17(k)(1)-(3)	Mandatory penalties as set forth in §54-02	Appearance NOT REQUIRED
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- (4) A Driver must not accept payment from a Passenger by any electronic application other than an E-Hail Payment through a licensed E-Hail Application.

§54-17(k)(4)	Fine: \$500	Appearance NOT REQUIRED
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- (5) A Driver must not accept payment for a trip from an E-Hail Application or Owner that exceeds the fare for the trip, plus tolls and tip if any.

§54-17(k)(5)	Fine: \$500	Appearance NOT REQUIRED
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§4. Paragraph (1) of subdivision (a) of section 54-19 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (1) A Driver of a Taxicab must not use a person, other than a dispatcher at an authorized Group Ride taxi line, or an Accessible Taxicab dispatcher, to solicit Passengers, however a Driver can use a licensed E-Hail Application. Use of an E-Hail Application by the Driver is optional.

§5. Paragraph (4) of subdivision (a) of section 54-19 of Title 35 of the Rules of the City of New York is amended by adding a new subparagraph (v), to read as follows:

(v) A Driver must not accept a Passenger for transportation with the use of an E-Hail Application at any location identified in (i) or (ii) above.

§6. Subdivision (b) of section 54-20 of Title 35 of the Rules of the City of New York is amended by adding a new paragraph (15) to read as follows:

(15) The Driver has affirmatively accepted a Hail through an E-Hail Application.

§7. Subdivision (f) of section 54-22 of Title 35 of the Rules of the City of New York is amended to read as follows:

(f) *No Unauthorized Equipment.* A Driver must not operate a Taxicab or Street Hail Livery that uses or has installed any equipment or mechanical devices not specifically listed in these rules, unless authorized in writing by the Commission. A Driver can use a device with an E-Hail Application installed that allows the Driver to accept Hails electronically, but the Driver, when using this device, must comply with the Electronic Communication Device requirements set forth in section 54-14(e) of this Chapter. Use of such device by a Driver is optional. Note: A Street Hail Livery is permitted to have the dispatch equipment required by its Street Hail Livery Base.

§54-22(f)	Fine: \$50-\$350 and/or suspension up to 30 days Points: 1	Appearance REQUIRED
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§8. Subparagraph (i) of paragraph (1) of subdivision (b) of section 54-24 of Title 35 of the Rules of the City of New York is amended to read as follows:

(i) A Driver is required to log in and operate T-PEP in order to obtain the Trip Record data for each trip in a Taxicab, including those trips that begin with the use of an E-Hail Application.

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§9. Paragraph (4) of subdivision (d) of section 54-25 of Title 35 of the Rules of the City of New York is renumbered paragraph (5), and a new paragraph (4) is added, to read as follows:

(4) A Driver may only use a licensed E-Hail Application.

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(i)

§10. The heading and paragraphs (1) and (2) of subdivision (f) of section 58-21 of Title 35 of the Rules of the City of New York are amended to read as follows:

(f) [*Credit Card Charges*]*Non-cash Payments.*

- (1) For any lease of a Taxicab (vehicle and Medallion) under paragraph 58-21(c)(1) or 58-21(c)(2), an Owner (or Owner’s Agent) must pay a Driver in cash, on a daily basis, the total amount of all [credit card] non-cash payments and E-Hail Payments through TPEP made during the Driver’s shift, less the \$.06 per trip driver health surcharge described in [subdivision] paragraph 58-21(f)(5);
- (2) For any lease not described in [subparagraph] paragraph (1), an Owner (or Owner’s Agent) must pay the Driver in cash, on no less than a weekly basis, the total amount of all [credit card] non-cash payments and E-Hail Payments through TPEP made during that period, less the \$.06 per trip driver health surcharge described in [subdivision] paragraph 58-21(f)(5).

§58-21(f)(1)& (2)	Fine: \$100	Appearance NOT REQUIRED
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§11. Section 58-26 of Title 35 of the Rules of the City of New York is amended by adding a new subdivision (i) to read as follows:

(i) *E-Hail Payments.*

- (1) The payment for the ride for any trip paid for using an E-Hail Payment must not exceed Commission approved rates.
- (2) The fare must be calculated as required by these rules and the Taximeter must be used for all trips, including trips paid for by E-Hail Payment. The time and distance portion of any fare paid for by E-Hail Payment must be calculated by the Taximeter and not by any other method.
- (3) The fare amount charged to the Passenger must be automatically transmitted to the E-Hail Application from the TPEP, and the payment must be transmitted from the E-Hail Application to the TPEP for confirmation. No portion of the E-Hail Payment process may be completed through manual input of the fare by the Driver or any other person into the E-Hail Application.
- (4) A violation of these provisions is an overcharge under sections 54-17(a)(1) and 54-17(i) and a driver can be subject to the penalties for an overcharge under Section 54-02.

§58-26(i)	Fine: \$500	Appearance NOT REQUIRED
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§12. Section 58-34 of Title 35 of the Rules of the City of New York is amended by adding a new subdivision (f) to read as follows:

(f) E-Hail Application Devices.

(1) A Taxicab can be equipped with or the Driver may utilize a device that permits a Driver to use an E-Hail Application. A Driver's use of an E-Hail Application is subject to the requirements of subdivision 54-14(e) of these Rules. Use of such device by a Driver is optional and an Owner cannot require a Driver to use an E-Hail Application.

(2) An Owner must not permit a Taxicab to be equipped with a device that allows a Driver to accept payment electronically other than:

(i) TPEP, and

(ii) A device that permits a Driver to use a licensed E-Hail Application.

(3) If a device is installed, the device and installation must be approved by the TLC.

<u>§58-34(f)</u>	<u>Fine: \$500</u>	<u>Appearance NOT REQUIRED</u>
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§13. Section 58-40 of Title 35 of the Rules of the City of New York is amended by adding a new subdivision (c) to read as follows:

(c) E-Hail Application . Any licensed E-Hail Application must operate through the T-PEP system. No application can be used to process any payment that is not a licensed E-Hail Application.

<u>§58-40(c)</u>	<u>Fine: \$500</u>	<u>Appearance NOT REQUIRED</u>
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§14. Subdivision (c) of section 67-15 of Title 35 of the Rules of the City of New York is amended to read as follows:

(c) Trip Data Collection and Transmission. Unless exempt under §58-41(c), every Taxicab must be equipped with T-PEP that permits the collection and transmission of data, including data regarding all trips that begin with the use of an E-Hail Application, to the Commission in accordance with the following requirements:

§15. Title 35 of the Rules of the City of New York is amended by adding a new Chapter 78 to read as follows:

Chapter 78

Licensing & Rules for Providers of E-Hail Applications

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§78-01 **Scope of the Chapter**

- (a) To establish a formal procedure for the licensing and supervision of businesses that sell, lease, make available for use, software programs residing on smartphones or other electronic devices which are E-Hail Applications.
- (b) To establish technical requirements for the E-Hail Applications which must be met in order for E-Hail Application Providers to apply for and obtain a license.
- (c) To establish services to be provided by E-Hail Application Providers for the benefit of Licensees and the public.
- (d) To establish appropriate penalties for the violation of these rules.

§78-02 **Penalties**

- (a) Unlicensed Activity.
 - (1) Unlicensed Activity is the act of providing or advertising the provision of any Commission-regulated service by:
 - (i) Any E-Hail Application Provider Licensee whose License is suspended, revoked, or expired and not yet renewed, or
 - (ii) Any person who does not hold a Valid License from the Commission for the E-Hail Application .
 - (2) Unlicensed Activity specifically includes the activities listed in §78-09 of these Rules and can result in License suspension, revocation, and other penalties.
- (b) Specific Penalties. If there are specific penalties for violating a Rule, they will be shown at the end of the Rule. The penalty section will also state whether the violator must attend a Hearing.
- (c) Payment of Fines.
 - (1) Fines are due within thirty (30) days of the day the Respondent is found guilty of the violation.
 - (2) If the Respondent files an appeal of the decision imposing the fines within thirty (30) days of the date of the decision, the payment of the fines will be deferred until a decision on the appeal is made (see §68-14(d) of these Rules).

If the Respondent requests a copy of the Hearing recording (see §68-14(e) of these Rules) within seven (7) calendar days of the hearing, the time for either filing an appeal or paying the fines will be the later to occur of:

- thirty (30) days from the date of the decision, or
- twenty-one (21) days from the date the recording is issued.

(3) If the fine is not paid by the close of business on the date due, the Commission will notify the Respondent in writing that the Respondent's License will be suspended in ten (10) business days of the date of the notification until the fine is paid, unless the Respondent demonstrates to the Commission, in person or in writing, that the fine has been paid.

(d) Non-Renewal of License; Suspension; Revocation.

(1) Non-Renewal of License.

(i) If an E-Hail Application Provider License is not timely renewed, the E-Hail Application Provider must immediately notify each Licensee who is using the E-Hail Application approved under the expired License.

(ii) Upon expiration of the E-Hail Application Provider License, the E-Hail Application Provider must not enter into any new service agreements with Licensees or the public for sale, lease or use of the previously licensed E-Hail Application approved under the expired License, and must not renew the existing service agreements with Licensees who are using the E-Hail Application approved under the expired License.

(iii) Upon expiration of the E-Hail Application Provider License, the E-Hail Application Provider must not offer the E-Hail Application for use to any Licensee or the public in New York City.

(2) Suspension.

(i) If an E-Hail Application Provider's License has been suspended by the Commission, the E-Hail Application Provider must immediately notify each Licensee who is using the E-Hail Application approved under the suspended License:

- Of the dates during which the License is suspended,
- that the Licensee must terminate usage of the E-Hail Application, and

- if the Licensee has a service agreement to use the E-Hail Application which is scheduled to be renewed during the period of suspension, the Licensee can elect not to renew the service agreement.

(ii) While the E-Hail Application Provider’s License is suspended, the Provider must cease offering the E-Hail Application and must not enter into any new service agreements with Licensees or the public in New York City for sale, lease or use of the E-Hail Application approved under the suspended License, but may renew, at the option of both parties, the existing service agreements with Licensees who are using the E-Hail Application approved under the suspended License.

(3) Revocation.

- (i) If an E-Hail Application Provider’s License has been revoked by the Commission, the E-Hail Application Provider must immediately notify each Licensee who is using the E-Hail Application approved under the revoked License that:
 - its service agreement with the E-Hail Application Provider will be deemed terminated as of the date of License revocation, and
 - that the Licensee must not continue to use the E-Hail Application.
- (ii) Upon revocation of the E-Hail Application Provider’s License, the Provider must not enter into any new or renewal service agreements with Licensees or the public in New York City for sale, lease or use of the E-Hail Application approved under the revoked License.
- (iii) An E-Hail Application Provider whose License has been revoked must cease offering use of the E-Hail Application.

<u>§78-02(d)</u>	<u>Penalty: \$1,000 fine</u>	<u>Appearance NOT REQUIRED</u>
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§78-03 Definitions Specific to this Chapter

- (a) Applicant in this Chapter means an Applicant for an original or renewal E-Hail Application Provider License.

- (b) Credit, Debit, and Prepaid Card Services. The portion of the E-Hail Application used to process Passenger payment of fare in a Vehicle by credit, debit, or prepaid card as described in §78-21(a) of these Rules.
- (c) E-Hail Application means the same as the same term in §51-03 of these Rules.
- (d) E-Hail Application Provider is a person or entity licensed by these Rules to offer an E-Hail Application.
- (e) E-Hail Application Provider License. A license issued to a E-Hail Application Provider pursuant to this Chapter.
- (f) E-Hail Application Provider Licensee. The E-Hail Application Provider to whom a E-Hail Application Provider License is issued pursuant to this Chapter.
- (g) E-Hail Payment means the same as the same term in §51-03 of these Rules.
- (h) Hail means the same as the same term in §51-03 of these Rules.
- (i) License. When the term “License” is used by itself in this Chapter—and in this Chapter ONLY—it refers to an E-Hail Application Provider License.
- (j) Licensee. When the term “Licensee” is used by itself, in this Chapter-- and in this Chapter ONLY-- it refers to the holder of a License issued by the Commission that is NOT a License issued under this Chapter
- (k) Modification of E-Hail Application. Any modification to the E-Hail Application or related services after the Commission has issued a License for such E-Hail Application that would materially alter any of the following:
 - (1) functionality, performance characteristics, security measures, or technical environment of the E-Hail Application or related services;
 - (2) interfaces to T-PEP or to the Software, Hardware, network, or other E-Hail Application components;
 - (3) the manner in which the E-Hail Application or related services are provided.

The addition or modification of a component allowing payment through the E-Hail Application constitutes a Modification.

A Modification of E-Hail Application does not include:

- (4) fixes and/or maintenance patches necessary to conform the E-Hail Application or any of its components or related services to the requirements set forth in §78-21 of these Rules; and
- (5) security patches to the extent such fixes or patches are necessary in the E-Hail Application Provider's good faith judgment to maintain the continuity of the E-Hail Application or related services or to correct an event or occurrence that would, if uncorrected, substantially prevent, hinder or delay proper operation of the E-Hail Application or related services.
- (l) PCI Standards. The Payment Card Industry Data Security Standards issued by the Payment Card Industry Security Standards Council as they may change from time to time. See www.pcisecuritystandards.org
- (m) Service Levels. The standards of performance of the E-Hail Application and its components that are described in §§78-17 and 78-21 of these Rules.

§78-04 Licensing – General Requirements

- (a) Licensees. An Applicant for an E-Hail Application Provider License or its renewal may be an individual or a Business Entity.
- (b) License for Each E-Hail Application. An application for a new or renewal E-Hail Application Provider License must be filed for each E-Hail Application for which Commission approval is sought. A separate E-Hail Application Provider License will be issued or renewed for each approved E-Hail Application. All License requirements of this Chapter apply to each License to be issued or renewed. An application for an E-Hail Application License must include (and the License for the E-Hail Application must include) any payment feature linked to the E-Hail Application whether or not the E-Hail Application Provider provides the feature. The E-Hail Application, combined with the feature, must meet all requirements for E-Hail Payment.
- (c) Certification. Any new or renewal application for an E-Hail Application Provider License must be filed on a form approved by the Chairperson. The Applicant must swear (or affirm) that the information in the application is true, under penalty of perjury.
- (d) Proof of Identity. The individual or Business Entity Person submitting the application for an E-Hail Application Provider License must provide to the Commission proof of identity in the form of a valid photo identification issued by the United States, a state or territory of the United States, or any political subdivision of a state or territory of the United States

- (e) Age. The individual or Business Entity Person submitting an application for an E-Hail Application Provider License or its renewal must be at least 18 years of age.
- (f) Fit to Hold a License. An Applicant applying for an E-Hail Application Provider License or its renewal must demonstrate that they are Fit to Hold a License.
- (g) Partnership Filings. When the Applicant is a partnership, it must file with its License application a certified copy of the partnership certificate from the clerk of the county where the principal place of business is located.
- (h) Corporate or LLC Filings. When the Applicant is a corporation, it must file with its License application all of the following:
 - (1) One of the following certificates:
 - (i) A certified copy(ies) of its certificate(s) of incorporation with a filing receipt issued by the secretary of state if the Applicant was incorporated less than one year from the date of the License application
 - (ii) A certificate of good standing if the Applicant was incorporated more than one year from the date of the License application
 - (iii) A copy of the certificate of incorporation, filing receipt, and authority to do business within the State of New York if the Applicant is an out-of-state corporation
 - (2) Limited Liability Companies (LLCs). When the Applicant is a limited liability company, it must file with its application the following:
 - (i) A copy of its articles of organization
- (i) Uniqueness of Name. The Commission has the right to reject the proposed name of any E-Hail Application Provider that the Commission finds to be substantially similar to any name in use by another E-Hail Application Provider Licensee.
- (j) Payment of Fines and Fees.
 - (1) An Applicant, including an applicant for a renewal License, must pay, and provide proof of payment of, any outstanding fines or fees owed by the Applicant to
 - (i) the Commission,
 - (ii) NYC Department of Finance,

- (iii) NYC Department of Consumer Affairs,
 - (iv) NYS DMV's Traffic Violations Bureau, and
 - (v) any of their successor agencies.
- (2) This requirement includes payment of fines and fees owed as of the date of the application by
- (i) any Business Entity Persons of the Applicant
 - (ii) any Business Entity of which the Applicant is a Business Entity Person, and
 - (iii) any Business Entity of which a Business Entity Person of Applicant is also a Business Entity Person.
- (k) Address. An Applicant must give the Commission the Applicant's current Mailing Address and Email Address as required by §78-14 of these Rules.

§78-05 Licensing – Specific Requirements

- (a) E-Hail Application Approval for New License. The Commission will not issue an E-Hail Application Provider License to any Applicant unless the Commission approves the E-Hail Application proposed for sale, lease or use by the Applicant. In determining whether to approve the E-Hail Application, the Commission will consider, in its sole discretion, whether the documentation required to be submitted by the Applicant pursuant to subdivision (b) of this section (as required) adequately demonstrates that the E-Hail Application complies with all of the requirements set forth in §78-21 of these Rules, or as such requirements may be waived or modified by the Commission pursuant to subdivision (f) of this section.
- (b) Documentation for E-Hail Application Approval. The Applicant must submit with its License application the following documentation if the Application includes E-Hail Payment:
- (1) An acceptance test plan that uses information technology industry testing tools, techniques and methodologies designed to comprehensively test whether the E-Hail Application and related services comply with all of the requirements set forth in §78-21 of these Rules, or as such requirements may be waived or modified by the Commission pursuant to subdivision (f) of this section;
 - (2) Documentation demonstrating that an independent third party with relevant expertise, acceptable to the Commission, has performed

acceptance testing consistent with the acceptance test plan, and certification by the independent third party of the successful results of the acceptance testing;

- (3) Documentation demonstrating that an independent third party with relevant expertise, acceptable to the Commission, has performed security testing of the E-Hail Application and related services to determine compliance with the security standards set forth in §78-21 of these Rules, or as such standards may be waived or modified by the Commission pursuant to subdivision (f) of this section, and certification by the independent third party of the successful results of the security testing; and
- (c) *Modification of E-Hail Application.* If after the E-Hail Application Provider License is issued pursuant to this Chapter, the E-Hail Application Provider Licensee wants to implement a Modification, the E-Hail Application Provider Licensee must submit an application for approval of a Modification of E-Hail Application by submitting all documentation required by subdivision (b) of this section (as required) and the fee required in §78-07(c) of these Rules. The Commission will treat the submission as an application for a new E-Hail Application Provider License. If the Commission approves the Modification, the existing E-Hail Application Provider License will apply to the modified E-Hail Application.
- (d) *Required Insurance.* After submission of an application for a new E-Hail Application Provider License, an Applicant must provide to the Commission proof of the insurance required in this subdivision when the Commission requests it. Upon submission of an application to renew an E-Hail Application Provider License, the Licensee must provide to the Commission proof of the insurance required in this subdivision.

- (1) Commercial General Liability Insurance.
 - (i) The Applicant shall maintain Commercial General Liability (“CGL”) Insurance covering the Applicant as Named Insured and the City as an Additional Insured in the amount of at least Five Million Dollars (\$5,000,000) per occurrence. Such insurance must protect the City and the Applicant 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 Applicant in connection with any of the activities licensed under this Chapter. Coverage under this insurance must be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and must be "occurrence" based rather than “claims-made.”
 - (ii) If the Applicant’s subcontractor(s) is/are performing or will perform operations in connection with any of the activities licensed under this Chapter, either the Applicant’s CGL Insurance under subparagraph (i) of this paragraph must cover the subcontractor(s) or such subcontractor(s) must maintain its/their own CGL Insurance subject to all other requirements herein.
 - (iii) Such CGL Insurance must 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 CG20 10.
- (2) Professional Liability Insurance.
 - (i) In the Commission’s discretion, if professional services will be performed by the Applicant in connection with any of the activities licensed under this Chapter, the Applicant must maintain and submit evidence of Professional Liability (“PL”) Insurance appropriate to the type(s) of services performed by the Applicant in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies must include an endorsement to cover the liability assumed by the Applicant under this Chapter arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Applicant or anyone employed by the Applicant.
 - (ii) If the Applicant’s subcontractor(s) is/are performing or will perform professional services in connection with any of the activities licensed under this Chapter for which PL Insurance is reasonably commercially available, either the Applicant’s PL Insurance under subparagraph (i) of this paragraph must cover the subcontractor(s) or such subcontractor(s) must 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 must have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Applicant must 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 Applicant must 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 Applicant's employees or agents. The liability limits under the policy must be at least One Million Dollars (\$1,000,000) per occurrence.
 - (ii) If the Applicant's subcontractor(s) is/are performing or will perform operations in connection with any of the activities licensed under this Chapter, either the Applicant's crime insurance under item (i) above must cover the subcontractor(s) employees or agents or such subcontractor(s) must 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 must 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 must be primary (and non-contributing) to any insurance or self-insurance maintained by the City.
 - (iii) The Applicant must 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 must 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 must 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 must be the greater of:
 - (A) the minimum limits set forth in this subdivision; or
 - (B) the limits provided to the Applicant 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 Applicant must file a Certificate of Insurance with the Commission. All Certificates of Insurance must 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 Applicant'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 Broker" in the form provided by the Commission or copies of all policies referenced in the Certificate of Insurance. 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 must be submitted.

 - (ii) The Applicant must 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 certificate or a policy does not excuse the E-Hail Application Provider 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 E-Hail Application Provider 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 E-Hail Application Provider must

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 E-Hail Application Provider must provide the insurer with timely notice thereof on behalf of the City. Such notice must be given even where the E-Hail Application Provider may not have coverage under such policy (for example, where one of the E-Hail Application Provider's employees was injured). Such notice must 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 E-Hail Application Provider must 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 E-Hail Application Provider fails to comply with the requirements of this subparagraph, the E-Hail Application Provider must 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 E-Hail Application Provider Licensee of any liability for indemnification under this Chapter.
- (iii) The E-Hail Application Provider 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 E-Hail Application Provider and/or its subcontractors required to be licensed under this Chapter.
- (iv) If the E-Hail Application Provider requires any subcontractor to procure insurance in connection with any of the activities licensed under this Chapter and requires the subcontractor to name the E-Hail Application Provider as an additional insured under such insurance, the E-Hail Application Provider must 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.

(e) Renewals of Required Insurance Policies. The E-Hail Application Provider must submit to the Commission Certificates of Insurance confirming renewals of insurance before coverage of insurance policies required under subdivision (d) of this section expires. Certificates of Insurance must comply with the requirements of subparagraph (d)(5)(i) above.

<u>§78-05(e)</u>	<u>Penalty: \$1,500 fine and/or suspension up to 60 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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(f) Waivers or Modifications. Except where expressly prohibited by law, the Commission may, in its discretion, waive or modify any requirements for licensing under this Chapter in the interests of public safety and convenience. Requests for waivers or modifications must be submitted in writing to the Commission.

§78-06 Licensing – Bond Required

(a) Amount of Bond. An Applicant for an E-Hail Application Provider License or renewal must deposit or have deposited with the Commission a fifty thousand dollar (\$50,000) bond per E-Hail Application, payable to the City of New York. The bond must be provided by one or more sureties approved by the Commission.

- (b) Bond Guarantees. The bond must guarantee that the Applicant or licensed E-Hail Application Provider will:
- comply with all applicable provisions of law and rules of the Commission,
 - pay all fines imposed by the Commission, and
 - pay all judgments or settlements arising from any action connected in any way with the E-Hail Application Provider License.
- (c) Fines and Judgments. The E-Hail Application Provider is immediately liable for the payment of any fine or judgment when the amount is determined or upon final determination of an appeal. If the fine is not paid as required by § 78-02(c) of these Rules, the Commission may draw upon the bond.

§78-07 Licensing – Fees and Term of License

- (a) Annual Fee. Every application for a new or renewal E-Hail Application Provider License must be accompanied by a non-refundable application fee of \$500 for each License to be issued or renewed for the term as provided in subdivision (h) of this section. If the License term is for more than six months and less than one year, the fee will be prorated.
- (b) Half-Year Fee. The application fee for any E-Hail Application Provider License to be issued for a term of six months or less will be one-half of the annual fee.
- (c) Modification of E-Hail Application Fee. Every application for approval of a Modification of E-Hail Application must be accompanied by a non-refundable application fee of \$500 for each E-Hail Application for which a Modification of E-Hail Application is sought.
- (d) Form of Payment. All application fees must be paid in the form authorized by §52-40 of these Rules.
- (e) No Refund if Application Denied. The Commission will not refund fees if it denies or disapproves the application.
- (f) License Replacement Fee. The fee to replace any lost, damaged or destroyed License is \$25.
- (g) Late Filing Fee. If the Commission allows a late filing for a renewal application, there will be an additional late filing fee of \$25.
- (h) Term of License. The term of an E-Hail Application Provider License will be one year or less and each License will expire on October 31st.
- (i) When to File for Renewal.

- (1) To avoid a late fee, a renewing Applicant must file a completed application at least sixty (60) days before the expiration date of the License.
 - (2) A renewing Applicant may file a completed application less than sixty (60) days before the expiration date as a “late application”. The fee for the late application will be \$25.
 - (3) The postmark date is the date of filing for an application that is filed by mail. The date of submission is the date of filing for an application that is filed in person.
 - (4) The Commission will not accept a renewal application after the expiration date of the License. If the application is not filed before the expiration date, the License cannot be renewed.
- (j) *Suspended Licenses.*
- (1) If a License is suspended and it is also due to be renewed, the Licensee must apply for renewal as required in subdivision (i) above if the Licensee wants to renew the License. Failure to complete the renewal requirements means that the License cannot be renewed.
 - (2) A License that is suspended is not Valid and cannot be used until the suspension ends. This applies even if the Applicant has filed an application for a renewal.

§78-08 Licensing – Cause for Denial

- (a) *Failure to Continuously Comply.* Whenever the Commission determines that the E-Hail Application Provider no longer meets the requirements for the E-Hail Application Provider License, the Commission may suspend or revoke the License and deny any application for renewal.
- (b) *Summary Suspension.* Nothing in this section limits the authority of the Commission to summarily suspend any E-Hail Application Provider License when a threat to public health, safety, or welfare exists.
- (c) *Failure to Complete Application Requirements*
 - (1) The Chairperson may deny an application for a new License if the Applicant has not completed all the requirements of an application within ninety (90) days of the date the application is filed.
 - (2) The Chairperson may deny an application for a renewal License if the Applicant has not completed all the requirements of an application by the expiration date of the prior License.
- (d) *Additional Consideration of an Application.* If a review of the application leads the Chairperson to believe that the Applicant may not be Fit to Hold a License,

the Chairperson may seek additional information from the Applicant. This request for additional information may be an in-person interview, telephone call, letter, e-mail, or other method of communication. This additional consideration may result in the denial of the application. Failure to provide any requested information within a reasonable period as requested or failure to appear at a scheduled interview will result in a denial of the application.

§78-09 General Requirements – Unlicensed Activity

(a) E-Hail Application Provider License Required. An individual or Business Entity must not sell, lease, or make available for use an E-Hail Application or enter into or renew a service agreement with a Licensee for the sale, lease, or use of an E-Hail Application without a Valid E-Hail Application Provider License.

(b) An E-Hail Application Provider must not permit the use of an electronic payment system unless that system uses

(i) an E-Hail Payment that is contained within a licensed E-Hail Application and that meets all the requirements of this Chapter, or

(ii) an E-Hail Payment that is linked to an E-Hail Application, whether or not provided by the E-Hail Application Provider, that meets all requirements of this Chapter.

<u>§78-09</u>	<u>Penalty: \$10,000</u>	<u>Appearance REQUIRED</u>
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§78-10 General Requirements – Compliance with Applicable Law

(a) Licenses and Permits. An E-Hail Application Provider Licensee must obtain licenses and permits required by applicable local law, state or federal law.

(b) Occupational Safety & Health Administration. An E-Hail Application Provider Licensee must comply with all applicable Occupational Safety and Health Administration (OSHA) standards and requirements at the E-Hail Application Provider Licensee’s place of business, as well as all other federal, state, and local laws governing its business.

(c) Payment of All Fines and Fees. An E-Hail Application Provider Licensee must pay all fines, fees, and taxes it owes to any federal, state, or local governmental jurisdiction when they are due.

(d) Workers’ Compensation Laws. An E-Hail Application Provider Licensee must comply with all laws regarding workers’ compensation and disability benefits, as well as all federal laws regarding the withholding of taxes and payment of FICA and other withholding taxes.

<u>§78-10</u>	<u>Penalty: \$1,000 fine and/or suspension until compliance</u>	<u>Appearance NOT REQUIRED</u>
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§78-11 General Requirements – Indemnification

- (a) General Indemnification. An E-Hail Application Provider Licensee must 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 E-Hail Application Provider Licensee and/or its employees, agents or subcontractors in connection with any of the activities licensed under this Chapter 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 Chapter. Insofar as the facts or law relating to any third-party claim would preclude the City from being completely indemnified by the E-Hail Application Provider Licensee, the City shall be partially indemnified by the E-Hail Application Provider Licensee to the fullest extent permitted by law.

- (b) Infringement Indemnification. An E-Hail Application Provider Licensee must 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 E-Hail Application Provider Licensee, 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 licensed activities. Insofar as the facts or law relating to any third-party claim would preclude the City from being completely indemnified by the E-Hail Application Provider Licensee, the City shall be partially indemnified by the E-Hail Application Provider Licensee to the fullest extent permitted by law.

- (c) Not Limited by Insurance. The indemnification obligations set forth in this section shall not be limited in any way by the E-Hail Application Provider Licensee’s obligations to obtain and maintain insurance as provided in §78-05(d) of these Rules.

§78-11(a)-(b)	Penalty: \$1,000 fine and/or suspension until compliance	Appearance NOT REQUIRED
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§78-12 General Requirements – Unlawful Activities Prohibited

- (a) An E-Hail Application Provider Licensee must not file with the Commission any statement that he or she knows or reasonably should know to be false, misleading, deceptive, or materially incomplete.

<u>§78-12 (a)</u>	<u>Penalty: \$10,000 fine and revocation</u>	<u>Appearance REQUIRED</u>
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§78-13 General Requirements – Notice to TLC

- (a) Material Change in Information. An E-Hail Application Provider Licensee must notify the Commission of any material change in the information contained in its current E-Hail Application Provider License application or renewal.

<u>§78-13(a)</u>	<u>Penalty: \$1,000 fine and/or suspension up to 30 days</u>	<u>Appearance NOT REQUIRED</u>
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- (b) Suspension or Revocation of License. An E-Hail Application Provider Licensee must immediately notify the Commission in writing of any suspension or revocation of any license granted to the E-Hail Application Provider Licensee, or any other person acting on his or her behalf, by any agency of the City or State of New York, or the government of the United States.

<u>§78-13(b)</u>	<u>Penalty: \$1,000 fine and suspension until compliance</u>	<u>Appearance NOT REQUIRED</u>
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- (c) Security Breach: The E-Hail Application Provider Licensee must inform the Commission if it is required to make disclosures under State or Federal law regarding security breaches, including the New York State Information Security Breach and Notification Act (General Business Law §899-aa).

<u>§78-13(c)</u>	<u>Penalty: \$1,000 fine and suspension until compliance</u>	<u>Appearance NOT REQUIRED</u>
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§78-14 Business Requirements – Mailing and Email Address

- (a) Each E-Hail Application Provider must designate and provide the Commission the street address of its primary E-Hail Application Provider location as its Mailing Address.

- (b) An E-Hail Application Provider must have and provide the Commission a working Email Address and telephone number at all times.

- (c) An E-Hail Application Provider must report any change of Mailing Address, Email Address and telephone number to the Commission in person or by mail within ten days.

<u>§78-14(a)-(c)</u>	<u>Fine: \$100</u>	<u>Appearance NOT REQUIRED</u>
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(d) Any communication from the Commission is sufficient if sent to the last Mailing Address provided by the E-Hail Application Provider.

(e) Any communication from the Commission, except notices and summonses for which the manner of service is specified in §68-05 of these Rules, is sufficient if sent by email to the last Email Address provided by the E-Hail Application Provider.

§78-15 Business Requirements – Fees Charged by Licensees

(a) Tips and Gratuities.

(1) An E-Hail Application Provider cannot charge a Passenger a fee for a tip or gratuity unless

(i) The Driver receives the full amount of such tip or gratuity, without any withholding or sharing, and

(ii) The Passenger can elect to change or withhold payment of such tip or gratuity.

(iii) An E-Hail Application Provider cannot charge as a tip or gratuity (or using the words “tip” or “gratuity” or something similar) any fee that the Provider will retain.

<u>§78-15(a)</u>	<u>Penalty: \$200 fine</u>	<u>Appearance NOT REQUIRED</u>
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(b) Fares. An E-Hail Application and an E-Hail Application Provider must NOT charge any Passenger a fare for a trip that exceeds the fare as calculated by the Taximeter, permitted in §58-26 of these Rules.

<u>§78-15(b)</u>	<u>Penalty: \$1000 fine</u>	<u>Appearance NOT REQUIRED</u>
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§78-16 Business Requirements – Use of E-Hail Application

All of the following conditions apply with regard to an E-Hail Application Provider’s making an E-Hail Application available for use:

- (a) The E-Hail Application Provider must not make an E-Hail Application available for use unless the E-Hail Application has been approved by the Commission pursuant to this Chapter and the E-Hail Application to be used is identical to the E-Hail Application that was approved;
- (b) No modification will be made to any Vehicle to install a device on which the E-Hail Application is to be used without the permission of the Chairperson.

<u>§78-16</u>	<u>Penalty: \$500-\$1,500 fine and/or suspension up to 60 days or revocation for each subdivision violated</u>	<u>Appearance REQUIRED</u>
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§78-17 Business Requirements – Compliance with E-Hail Application Requirements and Service Levels

- (a) Credit, Debit, and Prepaid Card Payment.
 - (1) An E-Hail Application Provider must ensure that an E-Hail Application that includes E-Hail Payment provides Credit, Debit, and Prepaid Card Services in compliance with the requirements of §78-21(a) of these Rules.
 - (2) An E-Hail Application Provider must ensure for an E-Hail Application that includes E-Hail Payment that when Passengers pay by credit, debit, or prepaid card, the Licensee receives deposit of funds within forty-eight (48) business hours, excluding banking holidays, of transmission of a batch close transaction from the E-Hail Application, except for incidents when there is a fraud investigation.
 - (3) An E-Hail Application must not provide a Driver compensation for a trip that exceeds the fare for the trip plus tolls and tip if any.

<u>§78-17 (a)</u>	<u>Penalty: \$500 fine and/or suspension up to 60 days or revocation for each subdivision violated</u>	<u>Appearance NOT REQUIRED</u>
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(4) An E-Hail Application can permit Passengers to split a fare.

- (b) Trip Data Collection and Transmission. An E-Hail Application Provider must ensure that an E-Hail Application provides Trip Data collection and transmits such data to T-PEP in compliance with the requirements in §78-21(c) of these Rules.

<u>§78-17(b)</u>	<u>Penalty: \$500 fine and/or suspension up to 60 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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- (c) Fees to T-PEP. An E-Hail Application Provider must ensure that an E-Hail Application provide payment to the T-PEP Provider as provided in §78-21 (b)

<u>§78-17(c)</u>	<u>Penalty: \$500 fine and/or suspension up to 60 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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- (d) Use Restrictions. An E-Hail Application Provider must ensure that an E-Hail Application restricts usage of the Application in compliance with the use restrictions in §78-21(d) of these Rules.

<u>§78-17(d)</u>	<u>Penalty: \$500 fine and/or suspension up to 60 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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- (e) Security. An E-Hail Application Provider must ensure that with respect to an E-Hail Application, the E-Hail Application Provider is in compliance with the security requirements in §78-21(e) of these Rules.

<u>§78-17(e)</u>	<u>Penalty: \$500 fine and/or suspension up to 60 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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- (f) Data Retention. An E-Hail Application Provider must ensure that with respect to an E-Hail Application, all data required to be maintained pursuant to §78-21 of these Rules is maintained for the period required in §78-21(f).

<u>§78-17(f)</u>	<u>Penalty: \$500 fine and/or suspension up to 60 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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- (g) Inspection by TLC. An E-Hail Application Provider must ensure that an E-Hail Application can be inspected and accessed by Commission personnel.

<u>§78-17(g)</u>	<u>Penalty: \$500 fine and/or suspension up to 60 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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- (h) Commission Ordered Testing. In any proceeding where the E-Hail Application Provider has been found guilty of a violation of any of the subdivisions above, the Commission may order the E-Hail Application Provider to provide, within sixty (60) days of the final decision on the violation:

- documentation demonstrating that subsequent to the violation an independent third party with relevant expertise, acceptable to the Commission, has performed testing of the E-Hail Application and related services to determine that the condition giving rise to the violation has been corrected, and
- certification by such third party of the successful results of such testing.

§78-18 Business Requirements – Cooperation with the Commission

- (a) Upon request of the Commission, an E-Hail Application Provider shall provide at no charge a fully operable demonstration of the E-Hail Application and access to the Application.

<u>§78-18(a)</u>	<u>Penalty: \$500 fine and suspension for each subdivision violated</u>	<u>Appearance NOT REQUIRED</u>
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§78-19 Business Requirements – E-Hail Application Provider Liability for Conduct of Employees

- (a) Liability for Employee Conduct. An E-Hail Application Provider must supervise and be responsible for the conduct of all of its employees, contractors, and agents for activities performed to carry out the requirements of this Chapter. For clarity, this subdivision (a) and the following subdivision (b) shall not be applicable to Drivers, or to individuals or business entities performing work for any E-Hail Application Provider or its subcontractor(s) who under applicable law are deemed to be independent contractors and not employees.
- (b) Familiarizing Employees with Rules and Regulations. An E-Hail Application Provider must ensure that all of its employees, contractors, and agents are fully familiar with all relevant regulatory agency rules and regulations.
- (c) Compliance with Laws. An E-Hail Application Provider must ensure that all of its employees, contractors, and agents perform their duties in compliance with all relevant federal, state, and city laws, rules, and regulations.

<u>§78-19(a)-(c)</u>	<u>Penalty: \$500 fine and/or suspension up to 60 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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§78-20 Comply with Laws – Conduct Rules

- (a) Acceptance of Gift or Gratuity. An E-Hail Application Provider Licensee or any person acting on his or her behalf must not accept any gift, gratuity, or thing of value from an owner or driver of any vehicle licensed by the Commission or from anyone acting on behalf of an owner or driver for the purpose of violating any of these rules through acts of commission or omission.
- (b) Reporting Requests for Gift or Gratuity. An E-Hail Application Provider Licensee, any person acting on the E-Hail Application Provider’s behalf, or any of the E-Hail Application Provider’s employees must immediately report to the Commission and the NYC Department of Investigation any request or demand for a gift, gratuity, or thing of value by any employee, representative, or member of the Commission or by any public servant.
- (c) Offer of Gifts and Gratuities. An E-Hail Application Provider Licensee or any person acting on his or her behalf must not offer or give any gift, gratuity, or thing of value to any employee, representative, or member of the Commission or to any other public servant.

<u>§78-20(a)-(c)</u>	<u>Penalty: \$10,000 fine and revocation</u>	<u>Appearance REQUIRED</u>
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- (d) Reporting Offers of Gift or Gratuity. An E-Hail Application Provider Licensee must notify the Commission immediately by telephone and in writing or email within 24 hours after receiving any offer of a gift or gratuity prohibited by subdivision (a) above.
- (e) Fraud, Misrepresentation & Larceny. An E-Hail Application Provider Licensee, while performing his or her duties and responsibilities as an E-Hail Application Provider Licensee, must not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation, or larceny. Examples of fraud, larceny, or misrepresentation include, but are not limited to:
 - calibration of a fare other than that set by the Commission;
 - falsification of Trip Data.

<u>§78-20(d)-(e)</u>	<u>Penalty: \$10,000 fine and revocation</u>	<u>Appearance REQUIRED</u>
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- (f) Willful Acts of Omission and Commission.
 - (1) Omission. While performing the duties and responsibilities of an E-Hail Application Provider Licensee, an E-Hail Application Provider Licensee must not deliberately fail to perform, alone or with another, any act where this failure is against the best interests of the public, although not specifically mentioned in these Rules.
 - (2) Commission. While performing the duties and responsibilities of an E-Hail Application Provider Licensee, a Licensee must not deliberately perform, alone or with

another, any act that is against the best interests of the public, although not specifically mentioned in these Rules.

<u>§78-20(f)</u>	<u>Penalty: \$350 and/or suspension up to 30 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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(g) Notice of Criminal Conviction.

- (1) An E-Hail Application Provider Licensee must notify the Commission in writing within two (2) days after any criminal conviction of the Licensee or any of the E-Hail Application Provider Licensee's Business Entity Persons.
- (2) Notification must be in writing and must be accompanied by a certified copy of the certificate of disposition of the conviction issued by the clerk of the court.

<u>§78-20(g)</u>	<u>Penalty: \$500 and/or suspension up to 30 days</u>	<u>Appearance NOT REQUIRED</u>
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(h) Threats, Harassment, Abuse. An E-Hail Application Provider Licensee must not threaten, harass, or abuse any governmental or Commission representative, public servant, or other person while performing his or her duties and responsibilities as an E-Hail Application Provider Licensee.

<u>§78-20(h)</u>	<u>Penalty: \$500 and/or suspension up to 30 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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(i) Use or Threat of Physical Force. An E-Hail Application Provider Licensee must not use or attempt to use any physical force against a Commission representative, public servant, or other person while performing his or her duties and responsibilities as an E-Hail Application Provider Licensee.

<u>§78-20(i)</u>	<u>Penalty: \$500 and/or suspension up to 60 days or revocation</u>	<u>Appearance NOT REQUIRED</u>
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(j) Failure to Cooperate with Law Enforcement. An E-Hail Application Provider Licensee must cooperate with all law enforcement officers and representatives of the Commission at all times.

<u>§78-20(j)</u>	<u>Penalty: \$250 fine</u>	<u>Appearance NOT REQUIRED</u>
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- (k) Failure to Cooperate with the Commission. An E-Hail Application Provider Licensee must answer and comply as directed with all questions, communications, notices, directives, and summonses from the Commission or its representatives. An E-Hail Application Provider Licensee must produce his or her Commission License and other documents whenever the Commission requires.

<u>§78-20(k)</u>	<u>Penalty: \$250 fine and suspension until compliance</u>	<u>Appearance REQUIRED</u>
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§78-21 Technical Requirements – E-Hail Application

No E-Hail Application will be approved by the Commission pursuant to this Chapter unless it complies with the all of the requirements set forth in this section or as such requirements may be waived or modified by the Commission pursuant to §78-05(f) of these Rules.

(a) Payment

- (1) Credit, Debit, and Prepaid Card Payment. An E-Hail Application can be capable of accepting for payment of fares the following credit, debit, and prepaid cards: Visa, MasterCard, American Express, Discover, and any other cards specified by the Commission. An E-Hail Application that is capable of accepting payment of fares must conform to the following specifications:
- (i) The E-Hail Application must offer the Passenger a receipt in accordance with paragraph (2) below; the receipt can be an electronic receipt.
 - (ii) Payment can be initiated at the beginning or made at the end of the trip, in accordance with §75-25(a)(2)(iv) of these Rules.
 - (iii) An E-Hail Application can offer pre-set payment options, including tip percentages, provided that the Passenger is permitted to change a pre-set tip percentage.
 - (iv) An E-Hail Application cannot require a Passenger to pay a tip to the Driver.
- (2) The E-Hail Application must be able to generate an accurate receipt for payment of fare, regardless of the means of payment, and such receipt must be offered to the Passenger. Upon the Passenger’s request, a receipt either

in hard copy form or in electronic form must be transmitted to the Passenger. The receipt must contain all the following information:

- (i) All items required by §75-25(a)(2)(v) of these Rules; and
 - (ii) Any extra fee paid by the Passenger to the E-Hail Application Provider if paid directly to such Provider. NOTE: §78-15(a) of these Rules limits what can be considered a tip or gratuity
- (3) Any E-Hail Payment technology used with any E-Hail Application must be integrated into the T-PEP used by any Licensee using the E-Hail Application.
- (4) The E-Hail Application which includes E-Hail Payment must comply with all applicable PCI Standards for E-Hail Payments. Credit, debit, and prepaid card magnetic strip information made through the E-Hail Application must not be stored in the E-Hail Application after the Driver has received authorization for use of the card.
- (5) An E-Hail Application which includes E-Hail Payment must be capable of generating the following data, regardless of the means of payment:
- (i) reasonably detailed data of individual and cumulative payment transactions (including sufficient detail to support daily and monthly reconciliations and to perform problem resolution);
 - (ii) if the payment is by credit, debit, or prepaid card, in addition to the information in subparagraph (i) above, the name of the credit, debit, or prepaid card, and the name of the credit card merchant engaged by the E-Hail Application Provider; and
 - (iii) data summarizing the number of fares, the total fare amount, and as applicable, the number of credit, debit and prepaid card transactions and the total fares of such transactions;
- (6) The data described in paragraph (5) above and its component elements must be stored, maintained and accessible to the Commission and any designee as follows:
- (i) in a standardized format and layout prescribed by the Commission that is open and non-proprietary; and
 - (ii) by secure file transfer protocol, transfer according to a format, layout, procedure, and frequency prescribed by the Commission.

- (b) T-PEP Integration. An E-Hail Application which includes E-Hail Payment must integrate with T-PEP.
- (1) The E-Hail Application must provide fare and Trip Data automatically to T-PEP and must not permit a Driver or anybody else to enter any information manually.
 - (2) All fares must be calculated by the Taximeter and in accordance with the Rules of the Commission. An E-Hail Application is NOT permitted to make a fare calculation independent of the Taximeter.
 - (3) An E-Hail Application must provide a fee or pass through payment to the T-PEP Provider for each trip as follows:
 - (i) A fee of not more than 2¢ per trip for any trip for which the E-Hail Application Provider pays the Driver directly; and
 - (ii) A pass through payment of at least 97 percent of the total payment for fare, tolls, tip and extras for all other trips.
 - (4) Any E-Hail Application which includes E-Hail Payment must integrate with all T-PEP and the systems offered by all Authorized T-PEP Providers in use by Licensees using such E-Hail Application. For purposes of §75-24 of these Rules, an E-Hail Application Provider Licensee whose E-Hail Application includes E-Hail Payment is a designee of the Commission.
- (c) Trip Data Collection and Transmission. An E-Hail Application must be capable of automatically collecting and transmitting to the Licensee's T-PEP the Trip Data as described below when E-Hail Payment is used. The E-Hail Application must conform to the following specifications:
- (1) The E-Hail Application must be capable of automatically collecting and transmitting to T-PEP Trip Data as required in paragraph (2) below for all trips using E-Hail Payment made during a shift.
 - (2) The Trip Data to be collected and transmitted must include:
 - (i) E-Hail Application License number;
 - (ii) credit/debit/pre-paid card type;
 - (iii) first two and last four digits of the credit, debit, or prepaid card used for paying fares;
 - (iv) total fare;

- (v) tip amount;
- (vi) the number of Passengers that payment of the fare was split among if the Application permits the fare to be split.

The information specified in subparagraphs (ii) through (v) need only be reported as though there was one passenger if there is a split fare.

(d) Use Restrictions. An E-Hail Application must conform to the following specifications:

- (1) The E-Hail Application must not operate:
 - (i) At John F. Kennedy International Airport;
 - (ii) At LaGuardia Airport;
 - (iii) On the lines at the taxi stands at Penn Station;
 - (iv) On the lines at the taxi stands at Grand Central Terminal;
 - (v) In any other geographic area specified by the Commission; and
 - (vi) Within any parameters (such as radius or distance from a specified point) specified by the Commission.
- (2) The E-Hail Application must not transmit requests for transportation or Hails to any Driver who does not possess a current and Valid Taxicab Driver's License.
- (3) The E-Hail Application must be available to a Licensee ONLY when the Vehicle is standing or stopped.
- (4) The E-Hail Application must NOT disclose to a Driver any information about a potential Passenger except the Passenger's pickup location.

(e) Security.

- (1) All features of the E-Hail Application required by this section, including the collection, transmission and maintenance of data by the E-Hail Application Provider, must conform to Applicable PCI Standards.
- (2) An E-Hail Application must comply with TLC security standards to be promulgated at a later time.

(f) Data Retention. All data required to be collected, transmitted and maintained pursuant to this section must be maintained for at least three (3) years.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Rules Governing E-Hail Applications

REFERENCE NUMBER: TLC-40

RULEMAKING AGENCY: TLC

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because rule violations arise from completed events, the consequences of which are immediate, which makes a cure period impracticable under the circumstances.

/s/ Francisco Navarro
Mayor's Office of Operations

October 25, 2012
Date

NEW YORK CITY LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Rules Governing E-Hail Applications

REFERENCE NUMBER: 2012 RG 083

RULEMAKING AGENCY: Taxi and Limousine Commission

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 25, 2012