

**AGREEMENT FOR TAXI AND LIMOUSINE
COMMISSION AUTHORIZATION**

Between

New York City Taxi and Limousine Commission and
Medallion Owners/Agents to participate in a pilot program
(the "Pilot Project") testing the suitability of Battery Electric
Vehicles ("BEVs") for use as medallion taxicabs

THIS AGREEMENT (the "Agreement") effective as of this _____ day of _____, 2021 between the City of New York (the "City"), acting by and through the Taxi and Limousine Commission, located at 33 Beaver Street, New York, New York 10004 (the "TLC"), and _____, located at _____ ("Medallion Owner/Agent") for Medallion License Number _____ ("Medallion")

Whereas, the TLC is authorized by the New York City Charter to license and regulate medallion taxicabs in the City;

Whereas, the TLC 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)") that may be used as licensed taxicabs, and adopted the pilot programs rules, codified in Chapter 52, Subsection C, of Title 35 of the Rules of the City of New York;

Whereas, the Commission voted on May 4, 2021, to approve a pilot program for the testing of BEVs, and to authorize the negotiation and entry into this Agreement;

Whereas, this pilot program will be for a limited period of time, and will be conducted pursuant to terms and conditions set forth herein.

NOW THEREFORE, the TLC and _____ hereby agree as follows:

Section 1. Approval of Participation in the Pilot Project.

TLC hereby grants approval to Medallion Owner/Agent to hackup a BEV (the "Proposed BEV"), in accordance with the terms and conditions set forth herein. This approval is for the limited purpose of participation in the Pilot Project.

Section 2. Duration of the Agreement and the Terms and Conditions.

(a) The term of this Agreement shall commence on _____, 2021.

(b) This Agreement shall expire one (1) year from the commencement date, unless sooner terminated pursuant to this Agreement.

- (c) This Agreement is not exclusive; accordingly, the TLC may enter into agreements for the same or similar purpose with other private or public entities.

Section 3. Duties and Responsibilities of Medallion Owner/Agent.

- (a) The Proposed BEV shall not be certified as a medallion for taxi use unless the following conditions are met:
 - (1) The Proposed BEV meets all the requirements for vehicle hakeup as specified in 67-05.1 of TLC's Rules, with the exception of the requirements contained in 67-05.1(f), as determined by the Assistant Commissioner for Safety and Emissions, and
 - (2) The Proposed BEV does not have a 0-60 mph acceleration rate faster than 4.4 seconds.
- (b) By entering into this Agreement, the Medallion Owner/Agent hereby certifies the following:
 - (1) All individuals that will drive the Proposed BEV will possess a current, valid license from TLC at all times.
 - (2) All licensed drivers that will operate the Proposed BEV will be properly instructed and trained on the safe operation of BEVs prior to operating such BEV.
 - (3) All licensed drivers that have been trained to properly operate the Battery Electric Vehicle will be required to demonstrate their ability to safely operate the vehicle prior to using the Battery Electric Vehicle as a taxicab.
- (c) Participation in the pilot project does not eliminate a Medallion Owner/Agent's obligation to place a Wheelchair Accessible Vehicle into service pursuant to 58-50 of TLC's Rules. A participant may not place a BEV into service in lieu of a Wheelchair Accessible Vehicle.
- (d) The Medallion Owner/Agent may be required to bring the Proposed BEV to TLC's Safety and Emissions Division, upon notice from TLC, for additional vehicle inspections beyond the regularly scheduled inspections required pursuant to TLC rules.

Section 4. Evaluation Criteria and Reporting Requirements

- (a) The quantitative and qualitative data for analysis shall be obtained primarily, but not exclusively, through:
 - (1) The collection of trip records for the participating medallion taxis

- (2) Surveys conducted of Pilot Participants
 - (3) Vehicle inspection reports
 - (4) Vehicle crash data
- (b) The data will be evaluated to determine:
- (1) The range, both distance and time, of BEVs, used as taxis
 - (2) The impact of BEV's range on the length of drivers shifts
 - (3) The rate of crashes involving BEVs used as taxis compared to the rate of crashes of non-BEVs as taxis
 - (4) Average speed of BEVs while being used as taxis as compared to the average speed of non-BEVs while being used as taxis
 - (5) Any other analysis or evaluation the Chair deems necessary to determine the viability of using BEVs as taxis
- (c) A final report, including a recommendation on whether to commence rulemaking, will be issued to the Commission within six months of the conclusion of the pilot program. The Chairperson will commence rulemaking, if warranted, within six months of the issuance of the final report.
- (d) The Medallion Owner/Agent shall notify the TLC Safety and Emissions Division within three business days if any of the following events occur:
- (1) Any equipment malfunctions or service interruptions of the Proposed BEV, including vehicle accidents
 - (2) Upon the Medallion Owner/Agent obtaining knowledge of recalls or safety notices made regarding the Proposed BEV
- (e) The Medallion Owner/Agent shall not make any material modification to the Proposed BEV without the express written approval of the TLC's Safety and Emission Division.
- (f) The Medallion Owner/Agent must maintain records and complete reporting requirements as required by this Agreement and as otherwise specified by TLC for the duration of the pilot project.

Section 5. Other Provisions Relating to the Pilot Project.

- (a) The City and the TLC shall not incur any costs for the Pilot Project, except the costs of additional inspections which are, in addition to, the vehicle inspections required under section 58-29(b) of the TLC's rules.
- (b) In the event that the Pilot Project is terminated, this Agreement shall automatically and immediately terminate.
- (c) The Chairperson may terminate this Agreement and/or the Pilot Project prior to the expiration date, at any time, of either if:
 - (1) the Chairperson determines that this Agreement has not been substantially complied with, or
 - (2) the Chairperson, in his or her sole discretion, determines that continuation of the Pilot Project and/or this Agreement is not in the best interest of the City, the TLC or the public for any reason.
- (d) Notwithstanding the provisions of subsection (c), the Chairperson may immediately terminate the Pilot Project and/or this Agreement if, in the sole discretion of the Chairperson, there is an immediate danger to the City, the TLC or the public in continuing either the Pilot Program, this Agreement, or both. Notwithstanding anything else contained in this agreement, if the Pilot Project and/or this Agreement are terminated under this provision the Proposed BEV must immediately cease operation and medallion will be suspended by the TLC..
- (e) In the event the Pilot Project is terminated pursuant to (c)(2), above, prior to the initiation of proposed rules to establish permanent standards for the use of BEVs as taxis, the Medallion Owner/Agent may continue operating the BEV in conjunction with the medallion pending the promulgation of new TLC rules.
- (f) In the event that the Pilot Project is terminated pursuant to (c)(2), above, and the TLC does not propose rules to establish permanent standards for the use of BEVs as taxis, the Medallion Owner/Agent may continue operating the BEV in conjunction with the medallion until the medallion's next scheduled vehicle retirement date. The medallion license must be operated in compliance with Section 3 and other applicable TLC Rules.
- (g) Neither any provision of this Agreement, nor participation in the Pilot Project generally, shall exempt any person, including any Medallion Owner/Agent, from any of the obligations, requirements, or responsibilities set forth in any of the Commission's rules as they are now in effect, or as they may be amended.

Section 6. Participation in the Pilot Project.

- (a) This Agreement must be fully executed and submitted to the TLC before the commencement of the Proposed BEV's participation in the Pilot Project. Only the Proposed BEV may be operated pursuant to this Agreement. Any future BEVs enrolled in the Pilot Program shall be subject to separate and additional participation agreements that must be fully executed and submitted to the TLC before individual approval for such other BEV is granted.

Section 7. Insurance; Indemnification, and Liability.

- (a) Participant shall pay for, maintain and keep in full force and effect the appropriate insurance concerning the operations and liabilities of the participant relevant to this agreement, including but not limited to, vehicle insurance and workers compensation insurance as required in Chapter 58 of TLC Rules.

Neither the City nor its officials nor its employees shall be responsible to Medallion Owner/Agent, any vehicle owner, or any of their respective agents, employees, contractors, drivers, passengers, pedestrians or to any other party, in the event of any injuries, damages, losses or liabilities arising out of the pilot project or this Agreement, including but not limited to any personal injury or property damage.

The Medallion Owner/Agent shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damages to any property sustained during its work on the pilot project under this Agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors. To the fullest extent permitted by Law, the Medallion Owner/Agent shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Medallion Owner/Agent and/or any of its officers, trustees, employees, agents, servants, and independent contractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with law or any of the requirements of this Agreement. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Medallion Owner/Agent, the City and its officials and employees shall be partially indemnified by the Medallion Owner/Agent to the fullest extent permitted by law.

- (b) To the fullest extent permitted by law, the Medallion Owner/Agent shall defend, indemnify, and hold harmless the City, including its officials and employees,

against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Medallion Owner/Agent and/or its officers, trustees, employees, agents, servants, and independent contractors in relation to this Agreement. To the fullest extent permitted by Law, the Medallion Owner/Agent shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the scope of the Agreement. Insofar as the facts or law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Medallion Owner/Agent, the City and its officials and employees shall be partially indemnified by the Medallion Owner/Agent to the fullest extent permitted by law.

- (c) This indemnification provision shall not be limited in any way or discharged by Medallion Owner/Agent's obligations to maintain insurance as provided in this Agreement.
- (d) The parties expressly understand the risks and liabilities attendant to the pilot project. EXCEPT FOR THE MEDALLION OWNER/AGENT'S OBLIGATIONS AS STATED IN SECTIONS 7(b) AND (b) ABOVE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INCIDENTAL, SPECIAL, PUNITIVE, RELIANCE, CONSEQUENTIAL, OR INDIRECT LOSSES OR DAMAGES, WHETHER FORESELEABLE OR NOT, OR FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE SUSTAINED BY THE PARTIES, A CONTRACTOR, OR ANY THIRD PARTIES HOWSOEVER ARISING UNDER THIS AGREEMENT AND WHETHER UNDER CONTRACT, TORT OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, THIRD PARTY CLAIMS, LOSS OF PROFITS, LOSS OF DATA, LOSS OF CUSTOMERS, OR DAMAGE TO REPUTATION OR GOODWILL).

Section 8. Confidential Information

- (a) Medallion Owner/Agent and the TLC each acknowledges that during the term of this Agreement each may have access to and/or be in possession of Confidential Information of the other. "Confidential Information" shall mean information identified in writing as such by Medallion Owner/Agent or the TLC and shall include but not be limited to Pilot Project or business information, technical information, ideas; licensee names, addresses, and other personal information related to licensees and other information that is proprietary to a party. Medallion Owner/Agent, the Commission, and their respective employees, subcontractors

and agents shall hold in confidence all Confidential Information of the other to which it may have access. Each party agrees to use at least the same degree of

care to avoid disclosure or dissemination of the other party's Confidential Information as it uses to protect its own confidential materials, but in any event, at least a reasonable degree of care. Access to Confidential Information shall be restricted to those persons to whom disclosure is reasonably necessary for the performance of the Pilot Project or a party's performance under this Agreement.

- (b) Confidential Information shall not include information which: (i) is or becomes a part of the public domain through no act or omission of the receiving party; or (ii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure.
- (c) Neither party shall be liable for disclosure of information regarded as Confidential Information by the other party if disclosure is required by virtue of court order, subpoena, or other validly issued administrative or judicial notice or order or as a matter of applicable law, rule, or regulation, provided that the party so required to disclose such Confidential Information has given the other party prompt notice of its receipt of the court order, subpoena or other validly issued administrative or judicial notice or order or other request for disclosure.
- (d) If either party decides not to proceed with the Pilot Project, and/or if asked by the other party, said party shall promptly return all Confidential Information belonging to the requesting party, and all copies, extracts and other objects or items in which such information may be contained or embodied. Additionally, each party shall promptly notify the other party of any unauthorized release of the other party's Confidential Information of which said party may become aware.

Section 9. Miscellaneous Provisions

- (a) **Modifications.** All modifications to this Agreement must be in writing and signed by both parties.
- (b) **Merger.** This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation, oral or written, relating to the subject matter hereof preceding the date of this Agreement shall not be binding upon either party and is superseded hereby.
- (c) **Counterparts.** This Agreement may be executed in as many counterparts as may be required, each of which when delivered is an original but all of which taken together constitute one and the same instrument.
- (d) **Further Assurances.** The parties will execute and deliver all such further endorsements, instruments, agreements, and other documents and take all

such further actions as the other party may reasonably request from time to time in order to effectuate the terms, purposes, and intent of this Agreement.

- (e) **Interpretation.** Whenever the context requires, the singular includes the plural and vice versa and each gender includes the other gender. The headings of the sections of this Agreement are for convenience only and do not limit their provisions.
- (f) **Assignment.** Neither party may assign this Agreement or any of the rights hereunder or delegate any of its obligations hereunder, without the prior written consent of the other party, and any such attempted assignment shall be void. 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 as creating any right, claim or cause of action in favor of any such third party, against either of the parties hereto.
- (g) **Severability.** In the event that any covenant, provision or restriction contained in this Agreement is found to be void or unenforceable (in whole or in part) by a court of competent jurisdiction, it shall not affect or impair the validity of any other covenant, provisions or restrictions contained herein, nor shall it affect the validity or enforceability of such provisions in any other jurisdiction or in regard to other circumstances. Any covenants, provisions or restrictions found to be void or unenforceable are declared to be separate and distinct, and the remaining covenants, provisions and restrictions shall remain in full force and effect.
- (h) **Waiver.** The failure of either party to insist upon such compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver by that party of that term, covenant or condition or of any other term, covenant or condition of this Agreement.
- (i) **Governing Law.** This Agreement shall be governed by the laws of the State of New York without reference to its principles of conflict of laws. The Medallion Owner/Agent and the TLC irrevocably consent and submit to personal jurisdiction in the courts of the State of New York located in the City and County of New York for all matters arising under this Agreement.
- (j) **Notices.** Any notice provided for or concerning this Agreement shall be in writing and deemed received when sent by certified or registered mail, if sent to the address below:

For Medallion Owner/Agent:

Medallion Number _____

For the New York City Taxi and Limousine Commission:

NYC TLC
33 Beaver Street, 22nd Floor
Attn: Legal Department
New York, NY 10004

IN WITNESS WHEREOF, the parties hereto have executed these Terms and Conditions and consent to the provisions contained herein on the date indicated.

Medallion Owner/Agent

Date

By: _____

Title: _____

General Counsel
Deputy Commissioner for Legal Affairs
New York City Taxi and Limousine Commission

Date