

MEMORANDUM OF UNDERSTANDING

TERMS AND CONDITIONS FOR TAXI AND LIMOUSINE COMMISSION AUTHORIZATION

Between

New York City Taxi and Limousine Commission and
_____ to participate in a pilot program testing
flexible fares in Taxicabs.

TERMS AND CONDITIONS FOR TLC AUTHORIZATION (the “Agreement”) effective as of this _____ day of _____, 2018 (“Effective Date”) between the City of New York (the “City”), acting by and through the Taxi and Limousine Commission, located at 33 Beaver Street, 22nd Floor, New York, NY 10004 (the “TLC” or “Commission”), and _____ a _____ corporation having a place of business at _____ (“Flex Fare Pilot Participant” or “Participant”).

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

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

Whereas, by resolution adopted on March 29, 2018 (“Pilot Resolution”), the Commission approved a pilot program (the “Flex Fare Pilot” or “Pilot”) to test and evaluate E-Hail Applications with the ability to offer non-metered fares;

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

Whereas, the Commission, based on the Flex Fare Pilot Participant’s agreement and subject to the Participant’s ability to meet and continue to meet all requirements for approval of Participant’s E-Hail Application for use in the Flex Fare Pilot, is prepared to authorize Participant to participate in the Pilot.

Now therefore, the TLC and the Flex Fare Pilot Participant agree as follows:

I. Definitions

- (a) *Flex Fare*. A non-metered, binding fare for yellow taxicabs and Street Hail Liveries (“SHLs”) determined by the licensed E-hail Application company and provided to passengers prior to the commencement of a Taxicab or Street Hail Livery trip.

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

II. Authorization of Participation and Consequences of Termination

- (a) The Chair hereby authorizes the Flex Fare Pilot Participant to offer Flex Fares through its licensed E-Hail Application. The fares provided by Participant, as described in Appendix A, attached hereto and made a part of this Agreement, are approved by the Chair for use in Taxicabs and SHLs in connection with the Flex Fare Pilot, subject to the terms hereof (“Authorization”).
- (b) If the Flex Fare Pilot Participant’s Authorization is terminated by either the Commission or the Participant, or if the Flex Fare Pilot terminates prior to the expiration of this Agreement, the Participant shall immediately:
 - i. pay all Drivers any balances owed,
 - ii. pay all Medallion Owners or Agents outstanding MTA Tax, Taxicab Improvement Surcharge, and
 - iii. cease offering Flex Fares and revert back to offering the Taxicab Rate of Fare pursuant to section 58-26 of the TLC Rules.

III. Duration of the Authorization

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

IV. Grounds for Termination of the Agreement

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

V. Duties and Responsibilities of the Flex Fare Pilot Participant

- (a) **Compliance with Pilot Resolution:** Participant must comply, and must not cause TLC Licensees to fail to comply, with the requirements of the Pilot Resolution, attached hereto and made a part hereof as Appendix B.
- (b) **Compliance with TLC Rules:** Participant must comply, and must not cause TLC Licensees to fail to comply, with all TLC Rules, except as exempted by Section VII of the Pilot Resolution and this Agreement, or otherwise as exempted by TLC. By signing this MOU, Participant acknowledges that it is in compliance with all TLC Rules and the terms set forth herein and that participation in the Pilot shall be conditioned upon this representation.
- (c) **General Indemnification:** To the fullest extent permitted by law, the Participant shall defend, indemnify and hold harmless the City, including its officials and employees, against any and all third-party 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 (including reasonable attorneys' fees) to which the City or its officials and employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Participant and/or its employees, agents, or subcontractors in connection with any of the activities 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 provisions 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 Participant, the City and its officials and employees shall be partially indemnified by the Participant to the fullest extent permitted by law.
- (d) **Infringement Indemnification:** To the fullest extent permitted by law, the Participant shall defend, indemnify and hold harmless the City, including its officials and employees, against any and all third-party claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses (including reasonable attorneys' fees) 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 Participant and/or its employees, agents, or subcontractors in the conduct of any of the activities under this Agreement. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Participant, the City and its officials and employees shall be partially indemnified by the Participant to the fullest extent permitted by law.
- (e) **Damages:** Participants shall be responsible to pay vehicle owners, drivers, other participating TLC licensees, passengers and the TLC, restitution, and/or damages for any harm caused by use of the E-Hail app during the duration of the Flex Fare Pilot.

- (f) **Data Collection:** Participant shall provide the Commission machine-readable data generated by Participant’s E-Hail Application as required in the specifications set forth in Section VI(e) of the Agreement.
- (g) **Reporting and Evaluation:** Participant must submit a report to the Commission every month summarizing all complaints related to the Pilot received from TLC Licensees (including Drivers and/or Vehicle Owners) and Passengers. Such reporting must be in a format approved by the Commission.
- (h) **Rate Schedule:** Participant must submit a Flex Fare Rate Schedule, subject to approval by the Chair, inclusive of the manner in which the fare will be calculated, all potential surge charges, no-show fees, cancelation fees, and all other charges to the Passengers. All rate schedules and any subsequent modifications thereto shall be approved by the Chair prior to such modifications taking effect.
- (i) **Fee Schedule:** Participant must keep on file with the Commission a complete and up-to-date schedule of all fees, including the fee structure, charged to Licensees for the use of its E-Hail Application. All fee schedules and any subsequent modifications thereto shall be filed with the TLC at least ten (10) days in advance of any such fee schedule or modification to such fee schedule taking effect.
- (j) **Modifications of E-Hail App:** Participant must notify the TLC before making any modifications to the manner in which its TLC-authorized E-Hail App complies with Section VI of this Agreement and must not use the modified E-hail App in the Pilot until such modification has been approved by the TLC.

VI. Specifications for E-Hail Applications

The Participant’s E-Hail Application must adhere to the following specifications and Participant must provide documentation to the TLC demonstrating how the E-Hail Application complies with the following specifications prior to offering Flex Fares through the E-Hail App. MTA Access-A-Ride trips are not subject to the terms of (b)(1) – (3) listed below.

	Fares, Tips, and Taxes
(a)	
(a)(1)	Participant may not charge fares exceeding the Flex Fare Rate Schedule approved by the Commission, inclusive of all fees, price multipliers, MTA Tax, Taxicab Improvement Surcharge, and other charges, but not including gratuities.
(a)(2)	Participants must not charge more for a wheelchair accessible hail request than for a non-wheelchair accessible hail request.
(a)(3)	Participant must assess the MTA Tax, the Taxicab/SHL Improvement Surcharge and any congestion surcharge that may be required by TLC Rules on all applicable trips in a Taxicab/SHL.

(a)(4)	Participant must remit to each Medallion Owner (or Owner’s Agent) all MTA Taxes and Taxicab/SHL Improvement Surcharges assessed for trips performed in their respective Taxicabs/SHLs.
(a)(5)	Participant must provide a means to allow Passengers to tip Drivers through the E-Hail App offering the Flex Fare. Participant must remit to the Driver the entirety of anything designated as a tip or gratuity collected by the Participant from a customer on behalf of the Driver.
(a)(6)	Participants must not engage the Taximeter for Flex Fare trips.
(b)	Passenger Experience
(b)(1)	The breakdown of the binding fare quote must be viewable to the Passengers within the E-Hail Application.
(b)(2)	Each time a prospective Passenger requests a e-hail, Participant must provide a binding quote of the total fare in dollars and cents, inclusive of all taxes, fees and any price multiplier, for the specific trip requested, prior to dispatching the trip.
(b)(3)	Participant must require the customer to affirmatively acknowledge and accept that they are being charged a non-metered fare that is not calculated by the Taximeter at the Taxicab Rate of Fare set by the Commission.
(b)(4)	Participant must not state or imply in any advertising that the fare is calculated by a Taximeter.
(c)	Driver Experience
(c)(1)	The Participant must sign agreements with Drivers to use the E-Hail Applications and such agreements must include terms regarding the following:
(c)(1)(ii)	The Participant must disclose the fare amount to the driver when offered a Flex Fare trip.
(c)(1)(iii)	The Participant must encourage Drivers to accept street-hails and Accessible Dispatch trips while not attending to an E-Hail dispatch
(c)(1)(iv)	The Participant must not allow non-metered fares for trips other than those originating through the E-hail Application
(c)(1)(v)	The Participant must notify the Drivers to place their TPEP into the “On-duty E-hail” option after accepting an E-Hail.
(c)(1)(v)(i)	The Participant must instruct the Drivers not to engage the Taximeter for Flex Fare trips.
(d)	Payment
(d)(1)	Participant must not allow Passengers to pay in cash.

(d)(2)	Participant must offer accurate electronic receipts to the Passenger.
(d)(3)	The receipt must contain all applicable items required by §75-25(a)(2)(v) of the TLC Rules and any fee paid by the Passenger to the E-Hail Application Provider.
(e)	Data
(e)(1)	The E-Hail Application must be capable of automatically collecting and transmitting to the Commission data on all trips using the Participant's Flex Fare including all applicable Trip Data described in §75-25(c).
(e)(2)	<p>The data described in (e)(1) and its component elements must be stored, maintained and accessible to the Commission and any designee as follows:</p> <ol style="list-style-type: none"> 1. in a standardized format and layout prescribed by the Commission that is open and non-proprietary; and 2. by secure file transfer protocol, transfer according to a format, layout, procedure, and frequency prescribed by the Commission.

VII. Exemptions

For the purposes of this Pilot, any and all rules regarding the following may be deemed satisfied by the use of an E-Hail Application provided by an approved Participant and an approved Participant will not be deemed to be in violation of any such rules:

- (a) 58-26 – Metered rate of fare
- (b) 75-25(a)(2)(v) - Passenger and driver receipts for E-Hail fares
- (c) 75-25(n) - E-hail application integration with TPEP
- (d) 78-15(b) - Maximum allowable fares charged for an E-Hail
- (e) 78-17(a)(3) - Driver payments for E-Hail fares,
- (f) 78-17(b) – Trip data submission from E-hail application to TPEP
- (g) 78-21(a)(3) – E-payment integration with TPEP
- (h) 78-21(b) - TPEP and LPEP integration
- (i) 78-21(c)(2) – E-hail application data transition to TPEP
- (j) 78-21(d)(4) – E-hail application may not disclose the passenger's destination to the driver prior to acceptance
- (k) 80-16(b) - Change of destination
- (l) 80-17(a) - Overcharge of approved rate of fare
- (m) 80-17(k)(3) - E-Payment restrictions to metered fares
- (n) 80-20(a)(4) – Ask destination in advance
- (o) 80-25 – Logging into TPEP/LPEP
- (p) 82-26 – Metered rate of fare

VIII. Choice of Law

- (a) The parties agree that this Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the parties, and shall be governed by and construed in accordance with the laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the laws of the United States, where applicable.
- (b) The parties agree that any and all claims asserted by or against either party arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City of New York or in the courts of the State of New York located in the City and County of New York.

IX. Third Party Beneficiary

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

X. Counterparts

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

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

City of New York
Taxi and Limousine Commission

By: _____
Name: Christopher Wilson
Title:

By: _____
Name:
Title:

ACKNOWLEDGEMENT BY CORPORATION

STATE OF _____)

:SS.:

COUNTY OF _____)

ON THE _____ DAY OF _____ IN THE YEAR 2018, BEFORE ME
PERSONALLY CAME _____ TO ME KNOWN, WHO, BEING BY ME
DULY SWORN, DID DEPOSE AND SAY THAT (S)HE RESIDES IN _____;
THAT (S)HE IS THE _____ OF

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

NOTARY PUBLIC OR COMMISSIONER OF DEEDS