

FRANCHISE AGREEMENT

BETWEEN

THE CITY OF NEW YORK

and

PRIVATE TRANSPORTATION CORPORATION

June 27, 2011

TABLE OF CONTENTS

	<u>Page #</u>
SECTION 1 DEFINED TERMS.....	4
SECTION 2 AUTHORIZATION TO OPERATE BUSES AND DESCRIPTION OF ROUTES.....	7
SECTION 3 TERM OF GRANT.....	12
SECTION 4 COMPENSATION TO CITY.....	12
SECTION 5 RATE OF FARE.....	13
SECTION 6 OPERATION OF THE BUS SERVICE.....	14
SECTION 7 SECURITY FUND.....	17
SECTION 8 OVERSIGHT AND REGULATION.....	18
SECTION 9 LIABILITY FOR DAMAGES.....	21
SECTION 10 INSURANCE.....	26
SECTION 11 EMPLOYMENT REGULATIONS.....	22
SECTION 12 RESTRICTION AGAINST ASSIGNMENT AND OTHER TRANSFERS.....	22
SECTION 13 RECEIVERSHIP.....	24
SECTION 14 DEFAULTS AND REMEDIES; TERMINATION.....	25
SECTION 15 NO WAIVER.....	25
SECTION 16 MISCELLANEOUS.....	28

EXHIBITS

Exhibit A. Authorizing Resolution
Exhibit B. RFP and Addenda
Exhibit C. Proposal
Exhibit D. Route Map
Exhibit E. Service Schedule

Exhibit F. Maintenance Plan
Exhibit G. Customer Service Plan
Exhibit H. Liquidated Damages
Exhibit I. Investigations Clause
Exhibit J. MacBride Principles

THIS AGREEMENT, made and executed as of the 27 day of June, 2011, by and between The City of New York (the "City"), acting by and through the Commissioner of the New York City Department of Transportation (the "Commissioner" and the "Department" respectively), having a principal place of business at 55 Water Street, New York, New York 10041 and Private Transportation Corporation, a New York corporation, whose principal place of business is 15 Second Avenue, Brooklyn, NY 11215 (the "Franchisee"):

W I T N E S S E T H:

WHEREAS, the Department, on behalf of the City, has the authority to grant franchises involving bus lines and routes within the City for the purposes described in this Agreement; and

WHEREAS, the Department, pursuant to authorization granted by Resolution No. 838-A (adopted by the New York City Council on June 5, 2007) (the "Authorizing Resolution"), attached as Exhibit A hereto, issued on February 22, 2010, a Request for Proposals (the "RFP"), attached as Exhibit B hereto, for franchises of a type which includes the franchise described in this Agreement; and

WHEREAS, the City Department of City Planning determined that the proposed franchise, as described in the RFP, would not have land use impacts or implications and would not require review pursuant to section 197-c of the City Charter; and

WHEREAS, the Franchisee submitted to DOT its Proposal on June 8, 2010, in response to the RFP; (the Proposal is attached as Exhibit C hereto); and

WHEREAS, DOT recommended the Franchisee's Proposal based on its assessment that it was the most beneficial proposal in the interest of the City; and

WHEREAS, on June 6, 2011, the New York City Franchise and Concession Review Committee (the "FCRC") held a public hearing on the Franchisee's proposal for a franchise, which was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the City Charter, including without limitation publication of notice of such hearing in accordance with Section 371 of the City Charter; and

WHEREAS, on June 13, 2011, the FCRC voted to adopt a resolution approving the grant of a franchise to the Franchisee on the terms set forth in this Agreement; and

WHEREAS, by this Agreement, dated as of June 27, 2011, between the City and the Franchisee, the City grants to the Franchisee the right to operate and maintain an unsubsidized bus line providing common carrier service to passengers for local service to operate along designated routes between Williamsburg and Borough Park in the Borough of Brooklyn (the "Franchise" or "Bus Service"),

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

SECTION 1

DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended:

1.1. "Affiliate" or "Affiliated Person" means each person who falls into one or more of the following categories: (i) each person having, directly or indirectly, a Controlling Interest in the Franchisee; (ii) each person in which the Franchisee has, directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, or other person holding an interest of five percent (5%) or more in the Franchisee; and (iv) each person directly or indirectly controlling, controlled by or under common Control with the Franchisee; provided that "Affiliate" or "Affiliated Person" shall in no event mean the City, any person holding an interest of less than five percent (5%) of the Franchisee, or any creditor of the Franchisee solely by virtue of its status as a creditor and which is not otherwise an "Affiliate or "Affiliated Person".

1.2. "Agreement" means this agreement, together with the Appendices and Exhibits attached hereto and all amendments or modifications thereof.

1.3. "Authorized Bus Stop" or "Authorized Bus Stops" shall refer to such place or places duly designated by the Department through its authorized representative and subject to change by the Department for the pickup and discharge of passengers by the Franchisee on City streets.

1.4. "Authorized Route" shall mean the streets upon which the Franchisee is granted the franchise to operate the Bus Service (collectively, the "Authorized Routes").

1.5. "Authorizing Resolution" has the meaning set forth in the second Whereas clause of this Agreement.

1.6. The words "Bus" or "Buses" shall mean motor vehicles used by the Franchisee in the business of transporting passengers for hire pursuant to this Agreement on routes as authorized in this Agreement, which meet the requirements set forth in this Agreement and regulations of any governmental agency having jurisdiction thereof.

1.7. "City" shall mean the City of New York or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission, department or any other entity of the City of New York, or any authorized officer, official, employee or agent thereof, or any successor thereto.

1.8. "City Charter" means the Charter of the City of New York.

1.9. "City Code" means the New York City Administrative Code.

1.10. "Commissioner" means the Commissioner of the Department, or his or her designee, or any successor in function to the Commissioner.

1.11. "Comptroller" means the Comptroller of the City, the Comptroller's designee, or any successor in function to the Comptroller.

1.12. "Control" or "Controlling Interest" of the Franchise or Franchisee means working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the Franchise or of the Franchisee. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than ten percent (10%) of any other Person (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

1.13. "Customer" means any Person lawfully receiving any service provided by the Franchisee.

1.14. "Department" or "Department of Transportation" shall refer to the Department of Transportation of the City, or any successor thereto.

1.15. "Effective Date" means the date stated in a notice issued by the City to the Franchisee, which shall be issued only after all of the following conditions have been met: (a) this Agreement has been registered with the Comptroller as provided in Sections 375 and 93(p) of the City Charter, (b) all the documents have been submitted as required by the RFP, (c) the City's VENDEX review of the Franchisee has been favorably completed, and (d) payment has been made to the City of the Security Fund and the FCRC publication costs.

1.16. "Execution Date" means the date set forth on the cover page of this Agreement.

1.17. "FCRC" or "Committee" means the Franchise and Concession Review Committee of the City of New York, or any successor thereto.

1.18. "Franchisee" means Private Transportation Corporation, a corporation organized and existing under the laws of the State of New York, whose principal place of business is located at 15 Second Avenue, Brooklyn, NY 11215.

1.19. "Gross Revenues" shall mean all revenues, cash or non-cash (in-kind revenue will be treated as cash), derived by the Franchisee in any manner, either directly or indirectly arising from or related to the operation of the Bus Service including but not limited to fares, advertising, and sponsorship and/or related fees.

1.20. "License" or "Permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

1.21. "Mayor" means the chief executive officer of the City, the Mayor's designee, or any successor to the executive powers of the present Mayor.

1.22. "Notice," "Direction" or "Order" shall mean a written Notice, Direction or Order delivered pursuant to Section 16.17 herein.

1.23. "Person" shall mean any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.

1.24. "Proposal" shall mean the offer made by Private Transportation Corporation.

1.25. "RFP" has the meaning set forth in the second Whereas clause of this Agreement.

1.26. "Security Fund" means the security fund described in Section 7 hereof.

1.27. "Span of Service" shall mean a given Authorized Route's hours of operation.

1.28. "Street" shall mean streets, avenues, highways, parkways, driveways, concourses, boulevards, bridges, viaducts, tunnels, public places or any other property, to which the City has title or over which the public has easement, encountered or intersected by the streets and avenues hereinafter described and also upon or in which authority is now or hereinafter given to the Franchisee to operate Buses.

1.29. "Term" has the meaning set forth in Section 3.1 hereof.

1.30. "Unavoidable Delay" means a delay due to strike; war or act of war; insurrection; riot; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the Franchisee and beyond normal and reasonable expectation. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall constitute an "Unavoidable Delay" in such an occurrence, but only if such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the Franchisee has taken and continues to take all reasonable steps to pursue such decision. In no event will a government entity's final decision, whether positive or negative, once made constitute an Unavoidable Delay (the term "final decision" in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). Except to the extent required by any applicable state or federal law, the financial incapacity of the Franchisee or other financial matters shall not constitute an Unavoidable Delay.

1.31. "Vehicle Revenue Miles" shall mean the miles traveled when the Buses are available to the general public and there is an expectation of carrying passengers.

SECTION 2

AUTHORIZATION TO OPERATE BUSES AND DESCRIPTION OF ROUTES

SECTION 2.1. The City hereby grants the Franchisee, in accordance with the terms and conditions of this Agreement, the RFP and the Proposal a non-exclusive franchise providing the right to maintain and operate common carrier bus service to passengers for local service to operate along designated routes between Williamsburg and Borough Park in the Borough of

Brooklyn, on the following Authorized Routes, that may be utilized as alternatives to one another:

SECTION 2.2. ROUTE B-110, Williamsburg to Borough Park, Borough of Brooklyn

BEGINNING at Williamsburg Street West and Lee Avenue along Williamsburg Street West to entrance of Brooklyn Queens Expressway, thence along Brooklyn Queens Expressway, along Gowanus Expressway, along Prospect Expressway to 10th Avenue Exit, along 10th Avenue to McDonald Avenue, along McDonald Avenue to Fort Hamilton Parkway, along Fort Hamilton Parkway to 50th Street, along 50th Street to 18th Avenue, along 18th Avenue to 49th Street, along 49th Street to Fort Hamilton Parkway along Fort Hamilton Parkway to McDonald Avenue, along McDonald Avenue to Terrace Place, along Terrace Place to 18th Street, along Prospect Expressway to Gowanus Expressway, along Gowanus Expressway to Brooklyn Queens Expressway, along Brooklyn Queens Expressway to Flushing Avenue Exit, along Classon Avenue to Kent Avenue along Kent Avenue to Williamsburg Street East, along Williamsburg Street East to Bedford Avenue, along Bedford Avenue to Ross Street, along Ross Street to Lee Avenue, along Lee Avenue to Williamsburg Street West.

SECTION 2.3. Alternate Route

BEGINNING at Williamsburg Street West and Lee Avenue, along Williamsburg Street West to Park Avenue, thence along Park Avenue to Vanderbilt Avenue, along Vanderbilt Avenue to Grand Army Plaza, along Grand Army Plaza to Prospect Park West, along Prospect Park West to 20th Street, along 20th Street to McDonald Avenue, along McDonald Avenue, to Fort Hamilton Parkway, along Fort Hamilton Parkway to 50th Street, along 50th Street to 18th Avenue, along 18th Avenue to 49th Street, along 49th Street to Fort Hamilton Parkway, along Fort Hamilton Parkway to McDonald Avenue, along McDonald Avenue to Terrace Place, along Terrace Place to 18th Street, along 18th Street to 8th Avenue, along 8th Avenue to Flatbush Avenue, along Flatbush Avenue to Carlton Avenue, along Carlton Avenue to Flushing Avenue, along Flushing Avenue to Classon Avenue, along Classon Avenue to Kent Avenue, along Kent Avenue to Williamsburg Street East, along Williamsburg Street East to Bedford Avenue, along Bedford Avenue to Ross Street, along Ross Street to Lee Avenue, along Lee Avenue to Williamsburg Street West.

The Franchisee should utilize the alternate route only when absolutely necessary.

SECTION 2.2. The Franchisee is authorized to pick up and discharge passengers only at Authorized Bus Stops. Authorized Bus Stops shall be designated by the Department and subject to change by the Department.

Below is a list of Authorized Bus Stops that the Franchisee is permitted to utilize, subject to change by the Department.

Stop #	On Street	Direction of Travel	Street Side	Intersecting Street	Corner
1	18 AV	NORTH	EAST	50 ST	FAR
2	49 ST	NORTH	NORTH	17 AV	FAR
3	49 ST	NORTH	NORTH	16 AV	FAR

Stop #	On Street	Direction of Travel	Street Side	Intersecting Street	Corner
4	49 ST	NORTH	NORTH	15 AV	FAR
5	49 ST	NORTH	NORTH	14 AV	FAR
6	49 ST	NORTH	NORTH	13 AV	FAR
7	49 ST	NORTH	NORTH	12 AV	FAR
8	49 ST	NORTH	NORTH	11 AV	FAR
9	FT HAMILTON PKY	NORTH	EAST	45 ST	FAR
10	FT HAMILTON PKY	NORTH	EAST	43 ST	NEAR
11	BEDFORD AV	NORTH	EAST	RUTLEDGE ST	FAR
12	BEDFORD AV	NORTH	EAST	HEWES ST	FAR
13	BEDFORD AV	NORTH	EAST	RODNEY ST	FAR
14	BEDFORD AV	NORTH	EAST	TAYLOR ST	NEAR
15	LEE AV	NORTH	WEST	TAYLOR ST	NEAR
1	LEE AV	SOUTH	WEST	ROSS ST	FAR
2	LEE AV	SOUTH	WEST	WILLIAMSBURG ST	FAR
3	LEE AV	SOUTH	WEST	HEWES ST	FAR
4	LEE AV	SOUTH	WEST	RUTLEDGE ST	FAR
5	WALLABOUT ST	SOUTH	NORTH	BEDFORD AV	NEAR
6	WALLABOUT ST	SOUTH	NORTH	WYTHE AV	NEAR
7	WILLIAMSBURG ST	SOUTH	WEST	KENT AV	MIDBLOCK
8	FT HAMILTON PKY	SOUTH	WEST	43 ST	FAR
9	FT HAMILTON PKY	SOUTH	WEST	45 ST	FAR
10	50 ST	SOUTH	SOUTH	FT HAMILTON PKY	FAR
11	50 ST	SOUTH	SOUTH	11 AV	FAR
12	50 ST	SOUTH	SOUTH	NEW UTRECHT AV	FAR
13	50 ST	SOUTH	SOUTH	13 AV	FAR
14	50 ST	SOUTH	SOUTH	14 AV	FAR
15	50 ST	SOUTH	SOUTH	15 AV	FAR
16	50 ST	SOUTH	SOUTH	16 AV	FAR
17	50 ST	SOUTH	SOUTH	17 AV	FAR
18	50 ST	SOUTH	SOUTH	18 AV	FAR

SECTION 2.3. If vehicular traffic is temporarily diverted from any of the streets forming all or part of an Authorized Route because of fires, parades, traffic congestion or any other event closing any such streets temporarily to vehicular traffic, the Franchisee may during such closing use such other streets as are necessary, or as may be specified by the Department or the New York City Police Department, to continue the operation of the Bus Service. If, however, any such streets shall be temporarily closed to vehicular traffic for a period of longer than ninety-six (96) hours or traffic regulations shall require a continued diversion of all or part of any Authorized Route, then the Franchisee shall notify the Department and the Department may authorize the use of such other streets as the Department in its sole discretion determines, for the remaining period during which such streets of the Authorized Route may be temporarily closed or traffic thereon temporarily diverted. In such event, the Franchisee shall be responsible for complying with all applicable laws, rules and regulations in order to implement such route modifications.

SECTION 2.4. Should vehicular traffic be permanently diverted from any of the streets forming all or part of any Authorized Route, the Franchisee shall, within ten (10) days after notice thereof from the Federal, State, or City agency, or public authority having jurisdiction over such streets, apply to the Department for modification of this Agreement to operate Buses upon, along and over or across such other streets as may be necessary to continue its Bus Service. In such event,

the Franchisee shall be responsible for complying with all applicable laws, rules and regulations in order to implement such route modifications.

SECTION 2.5. All permanent changes to any Authorized Route requested by the Franchisee must receive the prior written approval of the Commissioner before such changes may be implemented. In addition, the Department shall have the right, in its discretion, to change any Authorized Route. Where such changes to any Authorized Route, whether requested by the Franchisee or required by the Department, either cumulatively within a three-year period or singly, represent twenty-five percent (25%) or less of the total mileage of that Authorized Route, a copy of the Commissioner's approval shall be sent to the FCRC for its information; where such changes to any Authorized Route, either cumulatively within a three-year period or singly, represent more than twenty-five percent (25%) of the total mileage of that Authorized Route, the written approval of the Commissioner shall be submitted to the FCRC for its additional approval prior to the implementation thereof.

SECTION 2.6. Neither the City nor the Department shall have any liability to the Franchisee for lost revenue or profit or otherwise in the event of any changes to any Authorized Route or diversion from any Authorized Route.

SECTION 2.7. The Franchisee shall provide written notification to the Commissioner not less than thirty days (30) prior to any modification of the weekly scheduled Vehicle Revenue Miles or change to the Span of Service of any Authorized Route, provided, however, that the Commissioner may waive such notice requirement in the case of special events or other short-term contingencies where the Commissioner deems it in the public interest to do so.

SECTION 2.8. Any changes in the number of weekly scheduled Vehicle Revenue Miles on any Authorized Route that exceed twenty-five percent (25%), either cumulatively within a three year period or singly, or changes in the Span of Service of greater than four hours on any given Authorized Route, either cumulatively within a three year period or singly, must receive prior written approval of the Commissioner, a copy of which shall be sent to the FCRC.

SECTION 2.9. Service shall be provided in each direction seven days per week. On Sunday through Thursday, at least one vehicle shall be operated in each direction at least once per hour between 7:00 am and midnight. The service schedule on Friday and Saturday shall be at the discretion of the Franchisee, subject to the approval of the Department. The Department reserves the right to require increased service on Fridays and Saturdays. Exceptions to the minimum service schedule may be made subject to the approval of the Department.

SECTION 2.10. The Franchisee shall at all times maintain on file with the Department a complete, accurate and current schedule of service. The current approved schedule of service is annexed hereto and made a part hereof as Exhibit E. The Franchisee shall post a complete and up-to-date schedule of service on the internet and on all Buses operating the Bus Service, and shall furnish written copies to the public upon request. Prior to public dissemination, the Franchisee shall submit to the Department for its review and approval all service schedules for the Authorized Routes, including seasonal and other changes; and the Franchisee shall submit to the Department copies of all public information materials regarding the schedules and fares on the Authorized Routes.

SECTION 2.11. The Franchise, including but not limited to changes to the Authorized Route, the Vehicle Revenue Miles, the Span of Service and the service schedule, shall be subject to environmental and land use review, in accordance with City Environmental Quality Review and Sections 197(c) and 197(d) of the Charter, to the extent required by law. Upon request of the City and at the sole discretion of the Department, the Franchisee shall either assume the cost of or reimburse the City for the City's cost of any such environmental or land use review, or shall provide for the conduct of such review itself, at its sole cost and expense.

SECTION 2.12. The granting of this Franchise, so far as it shall include or affect any street, bridge, property or land now or hereafter under or subject to the jurisdiction of any Federal, State or City agency, or public authority, is and shall be subject to such other or further conditions, restrictions, agreements, consents, tolls, rules and regulations as the Federal, State or City agency, or public authority may now or hereafter see fit to impose or require, pursuant to the authority or control over any such street, bridge, property or land now or hereafter vested in any of them by law.

SECTION 2.13. Nothing in this Agreement shall be deemed to limit in any way the right of the City to grant to any other entity, corporation, firm, Person or Persons a similar franchise upon the same or other terms and conditions, including but not limited to the grant to operate over the streets hereinbefore named.

SECTION 2.14. Nothing herein contained shall be construed as permitting the Franchisee to construct, modify or maintain any structure whatsoever upon any Street and the Franchisee shall not construct, modify or maintain any fixture or structure in any Street unless especially authorized by the Department or its representative and such other officials as may have jurisdiction.

SECTION 3

TERM OF GRANT

SECTION 3.1. This Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years ("Initial Term"), unless earlier terminated as provided in this Agreement. The Department shall have the option to renew this Agreement for two additional terms, an initial renewal term of ten (10) years ("First Renewal Term") and a second Renewal term of five (5) years ("Second Renewal Term"). The renewals shall be exercised at the sole option of the Department. Collectively the Initial Term, the First Renewal Term and the Second Renewal Term shall be referred to as the "Term". In no case shall the Term of the Agreement exceed twenty-five (25) years.

SECTION 4

COMPENSATION TO THE CITY

SECTION 4.1. The Franchisee shall pay to the City as compensation for the Franchise a percentage of Gross Revenue as set forth in (a) and (b) below, cash or non-cash, derived by the Franchisee from any source, in any manner, either directly or indirectly arising from or related to

the operation of the Bus Service described in this Agreement, for the period commencing on the Effective Date of this Agreement and continuing throughout the Term (the "Franchise Fee"). Such compensation shall not be considered in any manner to be in the nature of a tax, but such payments shall be made in addition to any and all taxes of whatsoever kind or description which are now or may at any time hereafter be required to be paid pursuant to any local law of the City, or any law of the State of New York, or any law of the federal government.

(a) For revenues derived from advertising: Seven percent (7%) of the Gross Revenues

(b) For revenues derived from fares and any other source, in any manner, either directly or indirectly arising from or related to the operation of the Bus Service, including but not limited to sponsorship and/or related fees: Three percent (3%) of the Gross Revenues

SECTION 4.2. Compensation for the Bus Service shall be paid to the Department monthly, within fifteen (15) days after the expiration of each calendar month except in the case of the last payment when compensation shall be paid within ten (10) days after the expiration, termination or cancellation of this Agreement. Each payment shall be based on the Gross Revenues for the calendar month immediately preceding the date of payment. In the event that any payment is not made on or before the date such payment is due, interest on such payment shall apply from the date such payment is due at the rate of one and one-half percent (1.5%) per month.

SECTION 4.3. The Franchisee shall submit with each monthly payment a revenue report in a format and manner acceptable to the Department detailing for the relevant month: (1) the Gross Revenue received by the Franchisee from each source; (2) the number of passengers on each Authorized Route; (3) the number of passengers paying each fare offered by the Franchisee; (4) for all advertising sales, the number of advertising units sold, the type of unit, and the sales price; and (5) detailed information on the source and amount of any Gross Revenue received by the Franchisee from any source other than fares and advertising. The Franchisee shall also provide to the Department, simultaneous with the submission of the monthly revenue report, a report from an independent third party demonstrating that the report of Gross Revenue included in the monthly revenue report referenced above is accurate. The Franchisee shall provide to the Department copies of all advertising contracts, sponsorship contracts, or other agreements providing Gross Revenue within thirty (30) days of the effective date of any such agreement

SECTION 4.4. The charges or payments shall continue as set forth by this Agreement throughout the Term, notwithstanding any clause in any statute or in the charter of any other franchisee providing for payments for similar rights or franchises at a different rate.

SECTION 4.5. In the event the Franchisee continues the operation of Bus Service on an Authorized Route, or any portion of an Authorized Route, after and in spite of termination, cancellation or expiration of the Franchise hereby granted, the Franchisee shall continue to comply with all provisions of this Agreement as if the Agreement was still in full force and effect and agrees to pay the City the compensation and charges set forth in this Agreement that were in effect immediately prior to such termination, cancellation or expiration and in the manner as set forth herein, together with all taxes it would have been required to pay had its operation been duly authorized; such continued operation and compliance with this Agreement shall not be deemed to constitute an extension of this Agreement and all of the City's rights and

the Franchisee's obligations shall remain in full force and effect notwithstanding such continued operation.

SECTION 4.6. If the Franchisee shall fail to pay the compensation described herein, the Department may withdraw the amounts thereof from the Security Fund pursuant to section 7 herein.

SECTION 4.7. There shall be no subsidy from the City, whether monetary or in-kind, for any part of the service, including but not limited to equipment, vehicles, maintenance, repair, fuel, or storage.

SECTION 5

RATE OF FARE

SECTION 5.1. The Franchisee shall charge the following fares for one-way Bus Service.

Fare Type	Fare Amount
Adult - One Ride Fare	\$ 2.50
Children - One Ride Fare Ages 6-11	\$ 1.00
Children - Ages 0-5	Free
Students - Monthly Pass	\$ 55.00

SECTION 5.2. The fares and fare structure, at all times, shall be subject to the prior written approval of the Department. Franchisee may make changes to the fares or fare structure during the term of the Franchise up to the uniform maximum fare set by the Department at \$4.00 per ride, subject to the prior written approval of the Department. The uniform maximum fare may be amended from time to time by the Department with the approval of the FCRC. Upon approval by the FCRC of any proposed change to the uniform maximum fare, this Agreement shall be deemed modified to provide for the revised uniform maximum fare. Notwithstanding the forgoing provisions of Sections 5.1 and 5.2, the fare shall never be more than \$0.50 above the current fare(s) charged by the Metropolitan Transportation Authority New York City Transit for non-express bus service.

SECTION 5.3. The Franchisee shall at all times post in all vehicles operating on the Authorized Route and on the internet a complete and up-to-date fare chart that sets forth each and every current fare offered by the Franchisee, the method(s) of purchasing or applying for each fare, and how to qualify for each fare. The Franchisee shall include such a fare chart on all schedules. The Franchisee shall furnish written copies of the fare chart to the public upon request.

SECTION 5.4. Franchisee shall at all times during the Term accept payment in the form of coins and bills. The Franchisee may also accept fares on the Buses, at office locations or on the internet by means of an electronic system, including MetroCard, credit or debit card or similar

electronic fare collection system. Any plans for electronic or automated fare collection shall be subject to the review and approval of the Department.

SECTION 5.5. The sale of tickets on City sidewalks and from vehicles parked on City streets is prohibited, except that tickets may be sold from the Buses operating on the Authorized Routes.

SECTION 6

OPERATION OF THE BUS SERVICE

SECTION 6.1. The Franchisee shall provide at its own expense: facilities, equipment and working capital sufficient to provide the Bus Service to the public, in accordance with this Agreement, including at a minimum a fleet of eight (8) Buses. All buses shall be compliant with the Americans with Disabilities Act. The Franchisee shall provide the Department with a complete vehicle list which lists the make, model and year of each Bus the Franchisee will use to provide the Bus Service prior to the commencement of the Bus Service. Buses will be replaced as necessary, but under no circumstance will a Bus be used that is older than fifteen (15) years from the date of manufacture. The Franchisee shall replace any Bus taken out of service with a Bus that is no more than ten (10) years old. The Franchisee shall notify the Department of such replacement or any other replacement of Buses during the Term and provide the replacement Buses' make, model and year. The vehicle list and all changes to the vehicle list throughout the Term shall be subject to the prior written approval of the Department.

SECTION 6.2. The Franchisee shall comply with all applicable federal, state, and local laws rules and regulations whatsoever, including those relating to employment and investigation and those relating to accessibility for persons with disabilities.

SECTION 6.3. All Buses operated pursuant to this Agreement shall comply with the following specifications and requirements and the Department shall have the right to prohibit operation of any Bus that does not comply with these specifications and requirements:

SECTION 6.3.1. All Buses shall be no more than ten (10) years old when introduced into the Bus Service. All Buses shall be fully accessible and be otherwise fully compliant with the Americans with Disabilities Act as amended. All Buses shall be alternative fuel vehicles, or shall be equipped with the best available after-treatment technology to reduce particulate emissions. All Buses used at the beginning of the Term shall employ diesel particulate filters. Any other proposed after-treatment technology shall be subject to Department review and approval.

SECTION 6.3.2. On the exterior of each Bus, in a color different from that of the Bus and easily readable, there shall appear:

- A. The name of the Franchisee owning and operating such Bus, in letters not less than one and one-half inches in height;
- B. The number of such Bus, which shall be assigned to it by the Franchisee, in figures not less than four (4) inches in height; and

C. The seating capacity and standing room of such Bus, in figures not less than two (2) inches in height.

SECTION 6.3.3. The Franchisee shall prominently post in each Bus the current fare charts, current service schedules and a current address, website and telephone number for the Franchisee to which service complaints can be directed.

SECTION 6.3.4. The destination of each Bus shall be plainly visible from the outside of the Bus and the destination signs shall be illuminated when necessary.

SECTION 6.3.5. Any legal or official notice, regulation or order as to the control or management of Buses as required by law, ordinance or otherwise, shall be displayed inside or upon the Buses, if and as directed by the Department or other authority having jurisdiction.

SECTION 6.3.6. The width of any Bus shall not exceed 8.5 feet.

SECTION 6.3.7. The length of any Bus shall not exceed forty five (45) feet, and any Bus greater than forty (40) feet must be approved by the Department before being used by the Franchisee pursuant to this Agreement.

SECTION 6.3.8. The weight of any Bus, including passengers, fuel, water, oil and any other material and accessories carried therein shall not exceed forty-five thousand (45,000) pounds.

SECTION 6.3.9. The minimum seating capacity of all Buses shall be 25 passengers, including the driver.

SECTION 6.3.10. All Buses operated pursuant to this Agreement shall be designed and constructed so that no projection extends beyond the exterior of the rear end of the Bus. In particular, all rear bumpers shall be concealed and the exterior designed and constructed to prevent any person from hitching rides thereon.

SECTION 6.4. The Franchisee shall maintain all Buses used to provide the Bus Service in good repair, order and appearance; shall keep them clean and free of graffiti at all times; and shall keep them heated and air-conditioned as required for the comfort of passengers. Franchisee shall be responsible for cleaning, removing graffiti from, maintaining, repairing, fueling, and storing all vehicles at its sole cost and expense. All Buses shall be maintained in accordance with the Maintenance Plan attached hereto as Exhibit F. Proposed changes in the Maintenance Plan shall be subject to the Department's prior written approval.

SECTION 6.5. The Franchisee shall provide the Department with a monthly maintenance report showing the status of preventative maintenance for the fleet, as well as a report of road calls/breakdowns for the previous month. This report shall be provided by the tenth working day of every month. The Franchisee shall provide access to the maintenance database and maintenance records should the City request an audit of the records.

SECTION 6.6. The Department shall have the right at all times to inspect the facilities, service, and equipment used by the Franchisee and to order compliance with operational requirements

and performance standards set forth in this Agreement, including but not limited to the Service Schedule, Vehicle List, Maintenance Plan and Customer Service Plan. The Franchisee shall permit the Department at all times to inspect or examine any or all of the Buses operated pursuant to this Agreement at the garages used by the Franchisee or at any location in the City designated by the Department. If upon such inspection or examination any Bus shall be found by the Department, in its discretion, to be unfit for public service, then the Franchisee, if so directed by the Department, shall immediately withdraw such Bus from service and shall cause the defect or condition, at the sole expense of the Franchisee, to be properly repaired or remedied before restoring such Bus to service. The right to inspect and examine Buses under this Agreement shall be in addition to and shall not supersede or otherwise limit, qualify or modify the powers of the Department or any other governmental agency to determine the safety of the equipment, appliances and mechanical operation of Buses.

SECTION 6.7. The Franchisee may sell and post advertising in the interior and/or exterior of Buses, subject to the specifications, terms, reservations and restrictions set by the Department and provided, however, that advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful or obscene as determined by the City, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11 shall be prohibited. There shall be no advertisements related to tobacco products in the exterior or interior of the Buses operated by the Franchisee. Unauthorized advertising shall be removed immediately by the Franchisee from all of its Buses, at its sole cost and expense, upon receipt of oral or written notice from the Department.

SECTION 6.7.1. Advertising shall not obscure or interfere with information necessary for the public, such as the route number or destination of the vehicle, schedules or fares, or with visibility. The Franchisee shall maintain the advertising in a clean and attractive condition at all times and shall be responsible for all costs associated therewith.

SECTION 6.7.2. Electronic and new media for the purpose of displaying advertising will be permitted on a case by case basis at the sole discretion of the Department, and shall be consistent with local law and subject to any applicable approvals by City agencies.

SECTION 6.7.3. In the event Franchisee wishes to engage in sponsorship activity related to the Franchise, such activity may be permitted on a case by case basis as reasonably determined by the Department to be consistent with the purpose of the Franchise and shall be consistent with local law and be subject to any applicable approvals by City agencies.

SECTION 6.8. The Franchisee shall not be entitled to any rights related to bus stop shelters or any advertising placed thereon.

SECTION 6.9. The enclosed portions of all Buses operated pursuant to this Agreement shall be well and sufficiently lighted and shall be heated and ventilated in conformity with such laws and ordinances as are now or shall hereafter be in force affecting such public operations. All Buses shall be equipped with a HVAC system that shall control the average passenger compartment temperature within a range between 60 and 78 degrees Fahrenheit, while maintaining the relative humidity to a value of 50 percent or less.

SECTION 6.10. All employees of the Franchisee engaged in the operation of the Bus Service shall wear a Franchisee approved uniform and shall clearly display Franchisee identification upon their person.

SECTION 6.11. The Franchisee shall comply with and enforce the carrying out of specific orders, directions or regulations with respect to traffic or the operation of Buses as may be issued by the New York City Police Department, designed to govern traffic or the movement of buses in the streets.

SECTION 6.12. The Franchisee shall obtain all necessary authorizations, licenses and/or permits from and comply with all applicable provisions of the New York State Vehicle and Traffic Law, and all applicable rules of the New York State Department of Motor Vehicles, the New York State Department of Transportation, the Port Authority (applicable for when the Franchisee operates within the Port Authority's leased airport properties), and any other governmental body having jurisdiction over its bus operations.

SECTION 6.13. The Franchisee shall be subject to all laws, ordinances, and traffic regulations affecting or applicable to the operation of buses now in force or which may be in force during the term of this Agreement.

SECTION 6.14. The Franchisee shall at all times maintain a system for two-way communication with drivers in all vehicles.

SECTION 6.15. The Franchisee shall comply with the Customer Service Plan attached hereto as Exhibit G. Proposed changes in the Customer Service Plan shall be subject to the Department's prior written approval.

SECTION 6.16. The Franchisee shall maintain a log of complaints received from the public whether in writing, by telephone, in person, via email or other electronic means. The log shall be provided to the Department quarterly, or more frequently upon Department request. Quarterly logs shall be submitted to the Department within fifteen (15) days after the last day of each quarter. The log shall include the date of the complaint, the name, address, and telephone number of the complainant (if provided by the complainant), the nature of the complaint, and a summary of the Franchisee's response. At the Department's request, the Franchisee shall provide full copies of any written or electronic correspondence in regard to such complaints.

SECTION 7

SECURITY FUND

SECTION 7.1. The Franchisee shall establish and maintain a monetary Security Fund to ensure the Franchisee's compliance with its obligations under the Agreement. Prior to the execution of the Agreement, the Franchisee shall furnish the Security Fund to the Department in the form of a certified check, payable to the Comptroller of the City of New York, in the sum of \$20,000. The Department reserves the right throughout the Term to increase the required Security Fund to an amount not to exceed the prior year's Franchise Fee. The Security Fund will be held by the City, without liability for the City to pay interest thereon.

SECTION 7.2. The Department shall have the right to make withdrawals from the Security Fund should the Franchisee fail to pay the required Franchise Fee or taxes, or other charges. The Department is also authorized, in the event the Franchisee fails to cure a breach of the Agreement after notice from the Department, to cause the necessary work to be done and collect the cost thereof from the Security Fund. The Department is also authorized to collect any assessed liquidated damages from the Security Fund. Franchisee shall replenish the amount withdrawn from the Security Fund within 10 days of withdrawal so that the amount deposited with the Comptroller remains equal to the required Security Fund for that year.

SECTION 7.3. If the amount deposited in the Security Fund is insufficient to cover any costs to the Department or any sum of money due to the Department, the Franchisee shall be liable for the shortfall and shall pay such to the City upon demand.

SECTION 7.4. Upon the expiration, termination, cancellation or revocation of this Franchise, any amount remaining in the Security Fund shall be repaid to the Franchisee without interest provided the Franchisee is in compliance with the terms of this Agreement. Such amount repaid to the Franchisee shall be offset by any amounts necessary to compensate the City pursuant to Section 7.2 hereof.

SECTION 7.5. No action or proceeding or rights of the City under the provisions of this section shall affect any other legal rights, remedies or causes of action belonging to the City.

SECTION 8

OVERSIGHT AND REGULATION

SECTION 8.1. Throughout the Term of this Agreement, the Franchisee shall maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the Bus Service, in a manner that allows the City to determine whether the Franchisee is in compliance with the Agreement. The Franchisee shall retain such books and records for not less than 6 years following expiration, cancellation or termination of this Agreement. Should the City reasonably determine that the records are not being maintained in such a manner, the Franchisee shall alter the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with Section 8. All financial books and records which are maintained in accordance with generally accepted accounting principles shall be deemed to be acceptable under this Section 8. The Franchisee shall also maintain and provide such additional books and records as the Comptroller or the Commissioner deem reasonably necessary to ensure proper accounting of all payments due the City.

SECTION 8.2. The Franchisee shall have and maintain an office in the City where all books and records referenced in, and pertaining to, this Agreement shall be maintained and where the Franchisee's accounting, billing, and clerical functions pertaining to this Agreement shall be performed.

SECTION 8.3. In the event the City has a good faith reason to believe that the Franchisee's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement, the Franchisee shall submit to the Department, upon its request, a complete set of general purpose financial statements for its most recent past fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from an independent Certified Public Accountant ("CPA") who performed the audit or review of the statements in accordance with the American Institute of Certified Public Accountants' ("AICPA") Professional Standards, not later than two months after the end of such fiscal period. All such statements shall be accurate and complete in all material respects. In the event the City reviews such financial statements and determines in its reasonable discretion that the Franchisee's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement, the City may require the Franchisee to submit, and obtain the Commissioner's approval of, a plan setting forth the steps the Franchisee will take to continue to be able to comply with this Agreement.

SECTION 8.6. In addition to the monthly revenue report described in Section 4.3 of this Agreement, the Franchisee shall submit to the Department annual audited financial statements for the Franchise, setting forth in detail its income and expenses relating to the operation of Bus Service pursuant to this Agreement during the preceding twelve months (or less in the case of the first or last year of the Term), in a format and manner acceptable to the Department and audited by a Certified Public Accountant retained at the sole cost and expense of the Franchisee, by March 1 for the preceding calendar year or within sixty (60) days of the expiration or sooner termination of this Agreement. Notwithstanding the above, the Department reserves the right to require the Franchisee to submit to the Department any other reports and/or information related to the Bus Service it deems necessary.

SECTION 8.7. The City, the Commissioner, the Comptroller, and their designated representatives shall have the right upon demand to the Franchisee to inspect, examine or audit all documents, books of account, records or other information which pertain to the Franchisee or any Affiliated Person related to the Franchisee's obligations under this Agreement. All such documents shall be made available at the Franchisee's New York City office. The parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

SECTION 8.8. In addition to the reports described in Section 4.3 of this Agreement, the Franchisee shall monitor, record and create reports of its performance including, but not limited to, trip times, public information dissemination, cleanliness, graffiti removal, breakdowns and climate control, on-time performance. Franchisee shall submit said reports of its performance to the Department quarterly, or more frequently upon Department request.

SECTION 8.9. Quarterly reports shall be submitted to the Department within fifteen (15) days after the last day of each quarter.

SECTION 8.10. The Department may require the Franchisee to file reports with Federal and State agencies, including but not limited to the National Transit Database.

SECTION 9

LIABILITY FOR DAMAGES

SECTION 9.1. The Franchisee shall be solely responsible for all injuries to persons, including death, and all damage to property arising out of or related to the operation or maintenance of Buses or other activities authorized under this Agreement, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors or subcontractors.

SECTION 9.2. The Franchisee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors and subcontractors and for any claim by or on their behalf, whether or not due to the negligence of the Franchisee, its employees, agents, servants, contractors or subcontractors.

SECTION 9.3. The Franchisee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), allegedly arising out of or related to the Bus Service, operation or maintenance of Buses or other activities authorized under this Agreement and/or Franchisee's failure to comply with the law or any of the requirements set forth herein. Insofar as the facts and law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Franchisee, the City and its officials and employees shall be partially indemnified by the Franchisee to the fullest extent permitted by law.

SECTION 10

INSURANCE

SECTION 10.1. The Franchisee shall procure and continuously maintain insurance throughout the Term of this Agreement of the following types and satisfying the requirements set forth below:

- (a) Commercial General Liability Insurance: \$5 million combined single limit per occurrence for bodily injury and property damage. Coverage shall be at least as broad as that provided by Insurance Services Office Form CG 0001, and shall contain no exclusion for sexual molestation or any other exclusion that the City does not approve in writing. There shall be no deductible or self-insured retention above \$25,000 unless approved in writing by the City. The City, together with its officials and employees, shall be named an Additional Insured with coverage at least as broad as set forth in ISO Form CG 2026.
- (b) Comprehensive Business Automobile Liability Insurance: \$5 million combined single limit per occurrence for liability arising out of any owned, non-owned, leased and hired vehicles used in connection with this Agreement. Coverage should be at least as broad as ISO form CA 0001, and shall contain no exclusion for sexual molestation or any other exclusion that the City does not approve in writing. There shall be no deductible or self-

insured retention above \$25,000 unless approved in writing by the City. The City, together with its officials and employees, shall be named an Additional Insured.

- (c) Workers' Compensation Insurance, Employer's Liability, Disability Benefits and Unemployment Insurance: The Franchisee shall maintain and ensure that each of its subcontractors maintain Workers' Compensation Insurance, Employer's Liability, Disability Benefits and Unemployment Insurance in accordance with the laws of the State of New York.

SECTION 10.2. With regard to all insurance required herein:

- (a) The Franchisee shall ensure that all policies are procured from companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least A unless prior written approval is obtained from the New York City Law Department.
- (b) The Franchisee shall be solely responsible for the payment of all premiums for all required policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is insured under the policy. With regard to the City, all insurance shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.
- (c) The Franchisee shall file Certificate(s) of Insurance with the Department prior to the Effective Date of this Agreement in a form acceptable to the Department. Certificate(s) of Insurance shall certify the issuance and effectiveness of the Commercial General Liability, Comprehensive Business Automobile Liability and such other policies as the Department may require, and shall include the specified minimum limits and scope of coverage for the Additional Insured, if applicable. All Certificate(s) of Insurance shall be accompanied by a duly executed "Certification by Broker" in a form satisfactory to the Department.
- (d) The Franchisee shall not commence services under this Agreement unless and until all required certificates provided in accordance with this Agreement have been submitted to and accepted by the Department. Acceptance of a certificate does not excuse the Franchisee from securing policies that fully comply with the requirements of this Agreement or of any liability arising from its failure to do so.
- (e) The Franchisee shall submit Certificates of Insurance confirming renewals of insurance to the Department prior to the expiration date of coverage of policies required under this agreement. Such Certificates of Insurance shall comply with the requirements herein.
- (f) The Franchisee shall provide the City with a copy of any Certificate of Insurance or any binder and/or policy required under this Agreement upon the demand of the Department or the New York City Law Department.
- (g) The Franchisee shall ensure that all policies prohibit cancellation, termination, modification or change unless the insurance company provides at least thirty (30) days' prior written notice to the Named Insured and the Commissioner of the Department and

to the Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, New York 10007 (except that cancellation for non-payment of premium may be made on ten (10) days written notice).

SECTION 10.3. The Franchisee shall notify in writing all of its Commercial General Liability and Comprehensive Business Automobile Liability insurance carriers of any loss, damage, injury, or accident, and any claim or suit arising out of or related to the operation or maintenance of Buses or other activities authorized under this Agreement (including claims or suits relating to the Franchisee's own employees) no later than 20 days after such event. Such notice must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." Such notice shall also contain the following information: the name of the named insured, the policy number, the date of the occurrence, the location (street address and borough) of the occurrence, and the identity of the persons or things injured, damaged or lost. The Franchisee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

SECTION 10.4. The Franchisee's failure to satisfy any of the requirements of Sections 10.1 through 10.3 herein shall constitute a material breach of this Agreement allowing the Commissioner to immediately suspend this Agreement and/or terminate this Agreement pursuant to Section 14 herein. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

SECTION 10.5. The Franchisee's procurement or maintenance of insurance coverage shall not relieve the Franchisee of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or the law.

SECTION 11

EMPLOYMENT REGULATIONS

SECTION 11.1. The Franchisee agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing, and at all times to recognize and deal with the representatives duly designated or selected by the majority of its employees, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment, and not to dominate, interfere with or participate in the management or control of or give financial support to any union or association, of its employees.

SECTION 11.2. The Franchisee agrees that it will not refuse to hire or employ nor bar or discharge from employment nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin, sex, sexual orientation or preference.

SECTION 12

RESTRICTION AGAINST ASSIGNMENT AND OTHER TRANSFERS

SECTION 12.1. Except as provided in this Section, neither the Franchise granted herein nor any rights or obligations of the Franchisee pursuant to this Agreement shall be encumbered, assigned, sold, transferred, pledged, leased, sublet, or mortgaged in any manner, in whole or in part, to any Person, without the prior written consent of the City, pursuant to Section 12.3 hereof. In the event any transfer of interest which requires consent of the City takes place without such consent, such transfer shall constitute a default and the City may exercise any rights it may have under this Agreement.

SECTION 12.2. Notwithstanding any other provision of this Agreement, no change in Control of the Franchisee or the Franchise granted herein shall occur after the Effective Date of the Franchise, by act of the Franchisee, by act of any Person holding Control of the Franchisee or the Franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City. The requirements of Section 12.3 hereof shall also apply whenever any change is proposed of 10% or more of the direct ownership of the Franchisee or the Franchise granted herein (but nothing herein shall be construed as suggesting that a proposed change of less than 10% does not require consent of the City acting pursuant to Section 12.3 hereof if it would in fact result in a change in Control of the Franchisee or the Franchise granted herein), and/or any other event which could result in a change in Control of the Franchisee or the Franchise granted herein.

SECTION 12.3. The Franchisee shall promptly notify the Commissioner of any proposed action requiring the consent of the City pursuant to Sections 12.1 or 12.2 herein by submitting to the City a petition either (a) requesting the approval of the Commissioner and submission by the Commissioner of a petition to the FCRC and approval thereof by the FCRC or (b) requesting a determination that no such submission and approval is required and its argument why such submission and approval is not required. Each such petition shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, the Franchisee's argument as to why such action would not involve a change in Control of the Franchisee, or the Franchise, or a transfer of interest in the Franchise granted herein or any rights or obligations of the Franchisee in the Bus Service or pursuant to this Agreement and such additional supporting information as the Commissioner and/or the FCRC may reasonably require in order to review and evaluate the proposed action. The Commissioner shall expeditiously review the petition and shall (a) notify the Franchisee in writing if the Commissioner determines that the submission by the Commissioner and the approval of the FCRC is not required or (b) if the Commissioner determines that such submission and approval is required, either (i) notify the Franchisee that the Commissioner does not approve the proposed action and therefore will not submit the petition to the FCRC, or (ii) submit the petition to the FCRC for its approval.

SECTION 12.4. The Commissioner and the FCRC, as the case may be, may take such actions as they deem appropriate in considering the petition and determining whether consent is needed or should be granted. In considering the petition, the Commissioner and the FCRC, as the case may be, may inquire into: (i) the qualifications of each Person involved in the proposed action; (ii) all matters relevant to whether the relevant Person(s) will adhere to all applicable provisions of this Agreement; (iii) the effect of the proposed action on competition; and (iv) all other matters it deems relevant in evaluating the petition. After receipt of a petition, the FCRC may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the Commissioner and the FCRC may review the Franchisee's performance under the terms and conditions of this

Agreement. The Franchisee shall provide all requested assistance to the Commissioner and the FCRC in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

SECTION 12.5. Nothing in this Section shall be deemed to prohibit any mortgage, lien, security interest, or pledge being granted to any banking or lending institution which is a secured creditor of the Franchisee or any of its Affiliates with respect to any stock of the Franchisee or any of its Affiliates, any rights granted pursuant to this Agreement, or any rights of the Franchisee or any of its Affiliates in the Bus Service, including the assets of the Franchisee and its Affiliates, provided that any such mortgage, lien, security interest or pledge shall be subject to the interests of the City as franchisor under this Agreement, including without limitation the City's right of approval with respect to any transfer of the Franchise rights hereunder.

SECTION 12.6. The Franchisee agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior written approval of the Department. Two copies of each such proposed subcontract requiring approval shall be submitted to the Department with the Franchisee's written request for approval. All such subcontracts shall contain provisions specifying:

- (a) That the work performed by the subcontractor must be in accordance with the terms of this Agreement;
- (b) That nothing contained in the subcontract shall impair the rights of the Department or the City; and
- (c) That nothing contained in the subcontract, or under this Agreement, shall create any contractual relation between the subcontractor and the Department or the City.

The Franchisee agrees that it is fully responsible under this Agreement for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it. The Franchisee shall not in any way be relieved of any responsibility under this Agreement by any subcontract. All subcontracts submitted by the Franchisee to the City for approval in accordance with this Section 12.6 shall be approved (or reasons for failure to approve shall be provided) as soon as reasonably practicable.

SECTION 12.7. The grant or waiver of any one or more consents under this Section shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the City, as required in this Section.

SECTION 13

RECEIVERSHIP

SECTION 13.1. The Franchise herein granted to the Franchisee shall, at the option of the Department, cease one hundred and twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Franchisee, whether

in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days or unless:

(a) Such receivers or trustees shall have, within one hundred and twenty (120) days after their election or appointment, fully complied with all the terms and provisions of the Franchise herein granted, and the receivers or trustees within said one hundred and twenty (120) days shall have remedied all defaults under this Agreement, and

(b) Such receivers or trustees shall, within said one hundred and twenty (120) days, execute an agreement duly approved by the Court having jurisdiction in the Franchise, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise herein granted.

SECTION 13.2. In the case of a foreclosure or other judicial sale of the plant, property and equipment of the Franchisee including or excluding this Agreement, the Department may serve notice of termination upon the Franchisee and the successful bidder at such sale, in which event the consent of the City to the exercise of the Franchise herein granted and all rights and privileges of the Franchisee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

(a) The FCRC shall have consented to the transfer of the Franchise, as and in the manner in this Agreement provided; and

(b) Such successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of this Agreement.

SECTION 14

DEFAULTS AND REMEDIES; TERMINATION

SECTION 14.1 Remedies Not Exclusive. The Franchisee agrees that the City shall have the specific rights and remedies set forth in this Section 14. These rights and remedies are in addition to and cumulative of any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement. Such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Franchisee from its obligations or any liability under this Agreement. Notwithstanding anything to the contrary in this Section 14.1, nothing in this provision shall entitle the City to duplicative collection of damages.

SECTION 14.1.1. In the event any requirement listed in the Liquidated Damages Schedule, attached as Exhibit H hereto, is not performed to the standard set forth in Exhibit H and this

Agreement, the Franchisee shall be obligated to pay the liquidated damages described in Exhibit H. Franchisee agrees that any failure to perform such requirements to such standard shall result in injuries to the City and its residents, businesses, travelers to, and institutions, the compensation for which will be difficult to ascertain. Accordingly, Franchisee agrees that the liquidated damages in the amounts set forth in Exhibit H are fair and reasonable compensation for such injuries and do not constitute a penalty or forfeiture. Liquidated damages payable by the Franchisee under this Agreement shall cease to accrue following expiration or termination of this Agreement for any reason, but shall accrue or be imposed during any holdover period.

SECTION 14.1.2. Notice of Default. Upon the occurrence of a breach or default by the Franchisee of any agreement, duty or obligation under this Agreement, the City may notify the Franchisee of said breach or default. Such notice shall be provided in accordance with Section 16.17 hereof and shall specify the alleged breach or default with reasonable particularity.

SECTION 14.1.3. Upon an Event of Default (as defined below), which Event of Default is not cured within twenty (20) days after notice from the City, the City may:

- (a) Cause a withdrawal from the Security Fund, pursuant to the provisions of Section 7 herein;
- (b) Seek and/or pursue money damages from the Franchisee as compensation for such Event of Default (except that if the Event of Default is one to which Exhibit H of this Agreement is applicable then the liquidated damages shall be the only damages available to the City related to such default);
- (c) Assess liquidated damages under Exhibit H;
- (d) Seek to restrain by injunction the continuation of the Event of Default;
- (e) Terminate this Franchise Agreement upon no less than twenty-four (24) hours notice; and/or
- (f) Pursue any other remedy permitted by law or in equity or in this Agreement.

Nothing herein shall prevent the City from electing more than one remedy, simultaneously or consecutively, for any Event of Default so long as there is no duplicative recovery of damages.

SECTION 14.2. Events of Default.

SECTION 14.2.1. Any failure by the Franchisee to comply with the terms and conditions of this Agreement, as such failures are described in the following subsections (a) through (l) shall be an Event of Default hereunder:

- (a) Failure to comply with the Franchisee's obligations to institute and continue to operate the Bus Service in accordance with this Agreement;
- (b) Failure to timely pay amounts due hereunder that are not being disputed by the Franchisee in good faith;

- (c) Failure to timely abide by the Franchisee's obligations under this Agreement;
- (d) Failure to comply with any order or direction of the Department or any term, condition, limitation or requirement herein;
- (e) Failure to replenish the Security Fund as required under the provisions of Section 7 herein and such failure continues for ten business days after notice;
- (f) If, in connection with this Agreement, Franchisee intentionally or recklessly makes a material false entry in the books of account of the Franchisee or intentionally or recklessly makes a material false statement in the reports or other filings submitted to the City, or makes multiple false entries that are material in the aggregate in the books or account of the Franchisee or multiple false statements that are material in the aggregate in the reports or other filings submitted to the City;
- (g) Failure to maintain insurance coverage as required in Section 10 hereof;
- (h) If the Franchisee engages in a course of conduct intentionally designed to practice fraud or deceit upon the City;
- (i) If the Franchisee, intentionally or as a result of gross negligence, engages or has engaged in any material misrepresentation to the City, either oral or written, in connection with the award of this franchise or the negotiation of this Agreement (or any amendment or modification of this Agreement) or in connection with any representation or warranty contained herein;
- (j) The occurrence of any event relating to the financial status of the Franchisee which may reasonably lead to the foreclosure or other similar judicial or non judicial sale of all or any material part of the Franchisee's assets, and Franchisee fails to demonstrate to the reasonable satisfaction of the Department within 20 business days after notice from the Department that such event will not lead to such foreclosure or other judicial or non judicial sale. Such an event may include, without limitation: (1) default under any loan or any financing arrangement material to the Bus Service or the obligations of the Franchisee under this Agreement; (2) default under any contract material to the Bus Service or the obligations of the Franchisee under this Agreement; or (3) default under any lease or mortgage covering all or any material part of the Bus Service.
- (k) If: (1) the Franchisee shall make an assignment or other transfer of interest of the Franchise, Franchisee or the Bus Service, or there is any change in Control, in each case prohibited by or in violation of Section 12, or if the Franchisee shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of or for it or any substantial part of its property or assets, including all or any part of the Bus Service; (2) a writ or warranty of attachment, execution, distraint, levy,

possession or any similar process shall be issued by any tribunal against all or any material part of the Franchisee's property or assets; (3) any creditor of the Franchisee petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Franchisee or of any material parts of the property or assets of the Franchisee under the law of any jurisdiction, whether now or hereinafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings which is unstayed for 60 days (provided that the 60 day period shall not apply if as a result of such final order, judgment or decree the Franchisee will be unable to perform its obligations under this Agreement); or (4) any final order, judgment or decree is entered in any proceedings against the Franchisee decreeing the voluntary or involuntary dissolution of the Franchisee.

- (l) Failure to submit a plan satisfactory to the Department setting forth the steps the Franchisee will take to continue to be able to comply with this Agreement if required to do so in accordance with Section 8.3 of this Agreement.

SECTION 14.2.2. Termination for Event of Default. The City may terminate this Franchise Agreement upon an Event of Default on no less than twenty-four (24) hours written notice to the Franchisee. Upon termination of this Agreement, Franchisee shall cease operating Buses on the Authorized Routes.

SECTION 14.3. Expiration and Termination for Reasons Other Than an Event of Default.

SECTION 14.3.1. Expiration. This Agreement, if not previously terminated pursuant to the terms of the Agreement, shall expire at the end of the Initial Term or any Renewal Term herein and Franchisee shall cease operating Buses on the Authorized Routes.

SECTION 14.3.2. Termination for Reasons Other Than Event of Default.

- (a) In the event the Franchisee shall fail to promptly (1) terminate its relationship with any Affiliated Person, or any employee or agent of the Franchisee, who is convicted (where such conviction is a final, non-appealable judgment or the time to appeal such judgment has passed) of any criminal offense, including without limitation bribery or fraud, arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Franchisee pursuant to this Agreement or (2) suspend pending final resolution of the matter its relationship with any Affiliated Person, any employee or agent of the Franchisee who is indicted in connection with any alleged criminal offense, including without limitation bribery or fraud, arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Franchisee pursuant to

this Agreement, then the City may, at its option, to the extent permitted by law, terminate this Agreement immediately by notice as set forth herein.

- (b) In the Event that the Franchisee is indicted in connection with any alleged criminal offense, including without limitation bribery or fraud, arising out of or in connection with: (1) this Agreement, (2) the award of the franchise granted pursuant to this Agreement, (3) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (4) the business activities and services to be undertaken or provided by the Franchisee pursuant to this Agreement, then the City may, at its option, to the extent permitted by law, terminate this Agreement immediately by notice as set forth herein.

SECTION 14.4. The Franchisee shall not be deemed nor declared to be in default under any of the conditions, provisions, requirements or limitations of this Agreement in any case in which the performance of any such condition, provision, requirement or limitation is prevented by an Unavoidable Delay, provided in each case that the Franchisee has taken and continues to take all reasonable actions to avoid or mitigate such delay and provided that the Franchisee notifies the Department in writing of the occurrence of such delay within five (5) business days of the date upon which the Franchisee learns or should have learned of such Unavoidable Delay.

SECTION 15

NO WAIVER

Nothing in this Agreement shall be construed as a waiver of any local law, rule or regulation of the City or of the City's right to require the Franchisee to secure the appropriate permits or authorizations for operation of the Bus Service.

SECTION 16

MISCELLANEOUS

SECTION 16.1. This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Franchisee, and shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 16.2. The parties agree that any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Franchisee agrees:

- (1) If the City initiates any action against the Franchisee in Federal Court or in New York State Court, service of process may be made on the Franchisee either in person, wherever such Franchisee may be found, or by Registered Mail addressed to the Franchisee at its address as set forth in this Agreement, or to such other address as the Franchisee may provide to the City in writing;

(2) With respect to any action between the City and Franchisee in New York State Court, the Franchisee hereby expressly waives and relinquishes any rights it might otherwise have to: (a) move to dismiss on grounds of forum non conveniens; (b) remove to Federal Court; and (c) move for a change of venue to a New York State Court outside New York County;

(3) With respect to any action between the City and the Franchisee in Federal Court located in New York City, the Franchisee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York; or

(4) If the Franchisee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Franchisee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Franchisee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

SECTION 16.3. The clauses and provisions of this Agreement are intended to be severable. If any clause or provision is declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect, but only so long as the fundamental assumptions underlying this Agreement are not undermined.

SECTION 16.4. The City hereby reserves to itself and the Franchisee hereby grants to the City the right to intervene in any suit, action or proceeding by any person or persons, firm or corporation seeking to enjoin, restrain or in any manner interfere with the Franchisee in the performance or observance by it of any of the terms or conditions of this Agreement, or any notice or direction of the Department in such connection, or which involves or might involve the constitutionality, validity or enforcement of any section, subdivision, clause or sentence of this Agreement, and the City may move for dissolution of any such injunction or restraining order or take any other appropriate step, in any such suit, action or proceeding which it may deem necessary or advisable to protect its interests.

SECTION 16.5. The Franchisee promises, covenants and agrees to conform to, abide by and perform all the conditions, provisions, requirements and limitations in this Agreement fixed and contained, and the Franchisee will not at any future time set up as against the City or the Department the claim that the provisions of this Agreement reserving to the City the right to cancel this Agreement and terminate the Franchise hereby granted are unreasonable and void nor will the Franchisee set up or maintain as against the City, the Department, the Comptroller or any other official or officer of the City, that any other provisions of this Agreement are unreasonable or void.

SECTION 16.6. All the conditions, provisions, requirements and limitations of this Agreement shall be binding upon the Franchisee, its successors or assigns.

SECTION 16.7. The rights, powers, privileges and remedies reserved to the City by this Agreement are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City may have at law or in equity with respect to the subject matter of this Agreement, and a waiver thereof at any time or in any instance shall not affect any other time or instance.

SECTION 16.8. In the event the City receives notice that any part of this Agreement has been held invalid, the City shall have the option to cancel this Agreement. If the City does not exercise this option within six months from the date of receipt of such notice, the remainder of this Agreement shall continue in full force and effect.

SECTION 16.9. Neither the Mayor, the Commissioner nor any officer, employee, agent or representative of the City shall be personally liable to the Franchisee under or by reason of this Agreement or any of its covenants, articles or provisions.

SECTION 16.10. No elected official or other officials, or employees of the City nor any person whose salary is payable in whole or in part from the City treasury shall participate in any decision relating to this Agreement which affects a financial interest or the interest of any corporation in which that person is directly or indirectly interested nor shall any such person have any financial interest, direct or indirect, in this Agreement or in the proceeds thereof.

SECTION 16.11. The Franchisee warrants and represents that it has not been asked to pay, offered to pay, nor has paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Agreement.

SECTION 16.12. All personnel furnished by the Franchisee as required under this Agreement shall be employees of the Franchisee and not the Department or the City. The Franchisee alone is responsible for the work and the conduct of such personnel while performing work, labor and compensation. Nothing included in this Agreement shall impose any liability or duty upon the Mayor, the FCRC, the Commissioner or the City to persons, firms or corporations employed or engaged by the Franchisee as coordinators, consultants or independent contractors or in any other capacity, or as employees, servants or agents of the Franchisee, or to make the aforesaid individuals or the City liable to any person, corporation, association or any government for the acts, omissions, liabilities, obligations and taxes of whatever nature, including but not limited to unemployment insurance and pensions of the Franchisee or its coordinator, consultants or employees, servants, agents or independent contractors.

SECTION 16.13. No action shall lie or be maintained against the City by the Franchisee upon any claims based upon this Agreement, unless such action shall be commenced against the City:

(a) Within six (6) months after the termination, cancellation or expiration of this Agreement; or

(b) Within six (6) months after the accrual of the cause of action,

whichever is earlier. If the provisions of the Civil Practice Laws and Rules shall provide for a shorter period of time to commence an action against the City than the foregoing, said shorter period of time shall be deemed applicable.

SECTION 16.14. This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

SECTION 16.15. The Franchisee agrees to comply in all respects with the City's "Investigations Clause," a copy of which is attached as Exhibit I hereto.

SECTION 16.16. The Franchisee agrees to comply with the City's "MacBride Principles", a copy of which is attached as Exhibit J hereto.

SECTION 16.17. All notices, requests, consents or other communications hereunder shall be delivered:

SECTION 16.17.1. If to the City, by certified mail, return receipt requested to the Executive Director, Franchises, Concessions, and Consents, New York City Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10041, or by email to franchises@dot.nyc.gov, or to such other address or email address as the City shall designate by notice hereunder; or

SECTION 16.17.2. If to the Franchisee, by certified mail, return receipt requested, to the President, Private Transportation Corporation, 15 Second Avenue, Brooklyn, NY 11215, or by email to mark@nyairportservice.com, or to such other address or email address as the Franchisee shall designate by notice hereunder.

SECTION 16.17.3. Notices shall be deemed to have been received on the date noted on the receipt if sent by certified mail or on the date of the electronic receipt if sent by email.

SECTION 16.18. To the full extent permitted by applicable law, either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its powers, including, but not limited to, its police powers, and the Franchisee expressly agrees to comply with all such lawful rules, regulations, orders, or other directives.

SECTION 16.19. Franchisee shall promptly terminate its relationship with any Person, or any employee or agent of Franchisee, who is convicted of any criminal offense, including without limitation bribery or fraud, arising out of or in connection with: (a) this Agreement, (b) the award of the Franchise granted pursuant to this Agreement, (c) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (d) the business activities and services to be undertaken or provided by the Franchisee pursuant to this Agreement.

SECTION 16.20. Organization, Standing and Power. Franchisee represents and warrants to the City that:

(a) The Franchisee is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and is duly authorized to do business in the State of New York and in the City. The Company has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. The Company is qualified to do business and is in good standing in the State of New York. The Company holds or shall obtain any and all necessary licenses and permits from any governmental body having jurisdiction over provision of services by the Franchisee.

(b) The Franchisee will preserve and maintain its existence, its business, and all of its rights and privileges necessary to fulfill the obligations of the Franchisee hereunder. The Franchisee shall maintain its good standing in its state of organization and continue to qualify to do business and remain in good standing in the State of New York, and shall conduct business in accordance with its governing documents

(c) The execution, delivery and performance by Franchisee of this Agreement has been duly authorized by all necessary corporate action of Franchisee and do not and will not (a) require any consent or approval by any Person, (b) contravene the charter or by-laws of Franchisee, (c) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award currently in effect having applicability to Franchisee, (d) result in a breach of, or constitute a default or require any consent under, any indenture or agreement, lease or instrument to which Franchisee is a party or its properties may be bound or affected, (e) cause Franchisee to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, or in default under any such indenture, agreement, lease or instrument, or (f) result in or require the creation or imposition of a lien, upon or with respect to any of the properties or interests now owned or hereafter acquired by Franchisee.

(d) No consent, approval or authorization of, or declaration or filing with, any public, governmental or other authority is required for the valid execution and delivery of this Agreement or any other agreement or instrument, if any, executed or delivered in connection herewith.

(e) No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Franchisee in this Agreement, in connection with any submission to the City, including the Franchisee's response to the RFP, or in connection with the negotiation of this Agreement.

SECTION 16.21. Americans with Disabilities Act. In connection with its obligations under this Agreement the Franchisee, at its sole cost and expense, agrees to comply with the applicable provisions of the Americans With Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA"), the Architectural and Transportation Barriers Compliance Board Guidelines, and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

SECTION 16.22. Continuity of Service. In the event the Franchisee, with the consent of the City as required and in accordance with the provisions of Section 12 hereof, sells or otherwise transfers the Franchise, or any part thereof, or control thereof to any Person, or to the City or the City's assignee, the Franchisee shall transfer the Franchise, or such relevant part, in an orderly manner in order to maintain continuity of the Bus Service.

SECTION 16.23. Local Opportunities. The Franchisee shall use commercially reasonable efforts, at its own cost and expense, to recruit, educate, train and employ residents of the City, for the opportunities to be created by the construction, installation, operation, management, administration, marketing and maintenance of the Bus Service. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. The Franchisee shall ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Franchisee.

SECTION 16.24. This Agreement may not be amended except by an instrument in writing signed by both parties. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either Party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other Party. The waiver by either Party of any failure on the part of the other Party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar thereto.

SECTION 16.25. No Discrimination. The Company shall not discriminate in the provision of the Bus Service on the basis of race, creed, color, national origin, sex, age, handicap, marital status, or real or perceived sexual orientation.

SECTION 16.26. It is the intention and understanding of the parties hereto that each and every provision of law required to be inserted in this Agreement should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then this Agreement shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

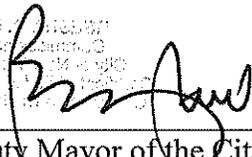
SECTION 16.27. The Franchisee affirms and declares that it is not in arrears to the City upon any debt, contract or taxes and that it is not a defaulter, as a surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Franchisee to receive a franchise or other public contracts.

SECTION 16.28. The Franchisee has filed all tax (federal, state and local) returns required to be filed and has paid all taxes, assessments and governmental charges and levies thereon to be due, including interest and penalties. The Franchisee has no knowledge of any claims for taxes due and unpaid which might become a lien upon any of its assets.

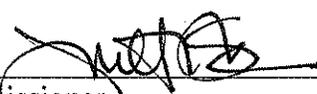
SECTION 16.29. Order of Governance. The following order of governance shall prevail in the event of a conflict between this Agreement and any attachments hereto: 1. Authorizing Resolution; 2. this Agreement; 3. the Exhibits attached hereto, excluding, however, the Proposal and the RFP; 4. Proposal; 5. RFP.

IN WITNESS WHEREOF, the City, by its duly authorized representatives, has caused the corporate name of said City to be hereunto signed, and the Franchisee, by its duly authorized officer, has caused its name to be hereunto signed, as of the date and year first above written.

THE CITY OF NEW YORK

By:  _____
Deputy Mayor of the City of New York

**NEW YORK CITY
DEPARTMENT OF TRANSPORTATION**

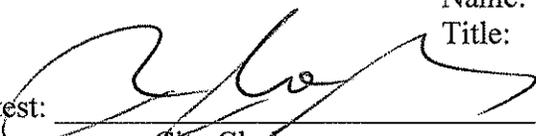
By:  _____
Commissioner

Approved as to form,
Certified as to Legal Authority

 _____ *CS*
Acting Corporation Counsel

PRIVATE TRANSPORTATION CORPORATION

By:  _____
Name: Jacob Marmurstein
Title: President

Attest:  _____
City Clerk

STATE OF New York)
COUNTY OF New York) ss:

On the 20 day of June in the year 2011 before me, the undersigned, personally appeared Jacob Marmurstein, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

BEESHA G. STEPHENS
Commissioner of Deeds
City of New York No. 2-13191
Certificate Filed in New York County
Commission Expires Sept. 1, 2011

STATE OF New York)
COUNTY OF New York) ss:

On the 23rd day of JUNE 2011 in the year 2011 before me, the undersigned, personally appeared JANETTE SADIK-KHAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

JOSEPH MUCIELLO
Notary Public, State of New York
No. 02FU6109949
Qualified in Queens County
Commission Expires May 24, 2012

STATE OF New York)
COUNTY OF New York) ss:

On the 24 day of June in the year 2011 before me, the undersigned, personally appeared Robert K. Steel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

Lynne E. Gardner
Notary Public, State of New York
NO. 01GA4992059
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires 2-18-14

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

On the 27 day of JUNE in the year 2011 before me, the undersigned, personally appeared MICHAEL MCSWENEY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

WENDY BRIZARRY-LOPEZ
Commissioner of Deeds
City of New York No. 2-12331
Certificate Filed in New York County
Commission Expires Jan 26, 2011

11/1/2012