

City of Houston, Texas, Ordinance No. 2020- 650

AN ORDINANCE APPROVING AND AUTHORIZING TRANSPORTATION NETWORK COMPANY (TNC) OPERATING AGREEMENTS BETWEEN THE CITY OF HOUSTON, TEXAS, AND RAISER INC., DOING BUSINESS AS UBER, AND LYFT INC., AT GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON AND WILLIAM P. HOBBY AIRPORT; CONTAINING PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form shown in the document that is attached hereto as Exhibits "A" and "B" and incorporated herein by this reference. The Mayor is hereby authorized to execute such documents and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 2. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 22nd day of July, 2020.

APPROVED this ____ day of _____, 2020.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUL 28 2020.

[Signature]
City Secretary

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: JUL 28 2020

DocuSigned by:
Robert W. Collins DS
[Signature]

Prepared by Legal Dept.
RWC: rwc 04/03/2020
Requested by Mario C. Diaz, Director, Houston Airport System
L. D. File Nos. 0041900219001 and 0041900113001

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
	✓	THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

EXHIBIT "A"

TRANSPORTATION NETWORK COMPANY (TNC) OPERATING AGREEMENT
RAISER INC., doing business as UBER

(to be attached)

**CITY OF HOUSTON, TEXAS
HOUSTON AIRPORT SYSTEM
TRANSPORTATION NETWORK COMPANY
OPERATING AGREEMENT**

This **TRANSPORTATION NETWORK COMPANY OPERATING AGREEMENT** ("Agreement") is hereby made and entered into by and between **THE CITY OF HOUSTON, TEXAS**, a home-rule city and municipal corporation principally situated in Harris County, Texas ("City"), and **RASIER, LLC**, a Delaware limited liability company, authorized to do business in the State of Texas, doing business as **UBER**, and has been granted a permit to operate as a transportation network company as defined by Chapter 2402 of the Texas Occupations Code ("TNC"). City and TNC are sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties".

WHEREAS, the City is the owner of George Bush Intercontinental Airport/Houston ("IAH") and William P. Hobby Airport ("HOU") (collectively "Airports"), which are managed and operated by the City's Houston Airport System ("HAS") as an enterprise fund, whose functions are public and governmental, exercised for a public purpose, and matters of public necessity; and

WHEREAS, TNC desires to operate a transportation network business at the Airports wherein the Digital Network (hereinafter defined) will be used by independent contractor drivers to connect customers with pre-arranged transportation services offered by TNC Drivers (hereinafter defined); and

WHEREAS, City has the authority to regulate TNC at the Airports pursuant to Section 2402.003(b) of the Texas Occupations Code and has agreed to allow the TNC to conduct its business at the City Airports, subject to the terms and conditions in this Agreement; and

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I.
DEFINITIONS**

Definitions. As used in this Agreement, the following terms shall be defined as specified below:

"Airport Geofence" means a virtual perimeter boundary around each of the Airports, inside of which TNC Vehicles shall not be visible on the Digital Network as being available to accept customers (unless such TNC Vehicles are within the TNC Staging Area), as set forth in the TNC OI.

"Commencement Date" means the first day of the month following 30 days from the Effective Date.

"Digital Network" means any online-enabled application, website, or system offered or used by a transportation network company that enables the prearrangement of rides between customers and TNC Drivers/TNC Vehicles.

"Director" means the Director of Aviation or other official appointed by the Mayor to serve as the head of the Houston Airport System, or his or her designee.

"Effective Date" means the date of countersignature by the City Controller.

"FAA" means the Federal Aviation Administration or successor agency of the federal government that regulates airports and aviation.

"Pre-Match/Pre-Dispatch" means a feature of the Digital Network that prompts TNC Drivers in the TNC Staging Lot to begin heading toward the airport terminals a few minutes before TNC anticipates a pick-up request, for the purpose of minimizing TNC Driver idle time in the TNC Staging Lot and decreasing the time a customer would wait to be picked up.

"Regulations" means all applicable, federal, state, City, and other local laws, statutes, ordinances, rules, and regulations governing TNC and/or TNC Vehicles, including without limitation, the Texas Occupations Code, Title 14, Subtitle C, Chapter 2402 and the Texas Administrative Code, Title 16, Part 4, Chapter 95, HAS rules and regulations for the Airports, including TNC Rules.

"Re-Match" means a feature of the Digital Network that allows a TNC Driver who just completed an airport drop-off to receive a pick-up request without having to go to the TNC Staging Area.

"Service Animals" means dogs that are individually trained to do work or perform tasks for people with disabilities.

"TNC OI" means the operating instructions, titled as "OI Category III No. 14-02 Transportation Network Company Operations (TNC) at Houston Airport System (HAS) Airports", as may be amended from time-to-time.

"TNC Rules" means (a) the prohibited activities attached hereto and incorporated herein as **Exhibit A**, which may be amended by written agreement between the Director and TNC, and (b) the TNC OI.

"TNC Service" means the on-demand transportation services to and from the Airports which TNC and TNC Drivers are authorized to offer through TNC's Digital Network.

"TNC Staging Area" means the area at each of the Airports, designated by the Director, that is utilized for the staging of TNC Vehicles, as set forth in the TNC OI.

"TNC Driver" means the driver authorized by TNC to use the Digital Network at the Airports who have the TNC's app on and in use for the purpose of providing airport trips. TNC shall inform its TNC Drivers of the terms of this Agreement. TNC Drivers are independent contractors and are not subcontractors of TNC for any purpose.

"TNC Vehicle" means the personal vehicle, as defined in Chapter 2402 of the Texas Occupations Code, authorized by TNC to use the Digital Network at the Airports.

"TSA" means the Transportation Security Administration or successor agency of the federal government that regulates airports and aviation security.

ARTICLE II. TERM

- A. The Term of this Agreement (the "Term") shall commence on the Commencement Date, and, subject to the parties' respective termination rights under this Agreement, run for a period of five (5) consecutive years, and month to month thereafter.
- B. Either party may terminate this Agreement for convenience upon thirty (30) days' prior written notice.

ARTICLE III. TNC PRIVILEGES

- A. Use of Airports. The City grants TNC the right and privilege to provide TNC Service at the Airports subject to the Regulations, including, but not limited to, the TNC Rules.
- B. Rights of Ingress and Egress. TNC Drivers shall have the rights of ingress and egress on the roadways of the Airports, and other areas designated by the Director for TNC use, provided that such ingress and egress: (a) shall not impede or interfere with the operation of the Airports or the use of the Airports by its tenants, customers, service providers or employees; and (b) shall be subject, at all times, to the Regulations.
- C. Non-exclusivity. The rights and privileges granted herein are for the non-exclusive provision of TNC Services. Customers or patrons of the Airports may use other ground transportation services that may be authorized by the City to provide public transportation to and from the Airports.

ARTICLE IV. TNC OBLIGATIONS

- A. TDLR Permit. TNC shall provide Director an updated copy of TNC's permit from the Texas Department of Licensing and Regulation ("TDLR"), within thirty (30) days after receipt of a permit renewal, permit amendment, address change, or name change. If TDLR denies TNC's permit renewal or if TNC's permit lapses, TNC shall block TNC's Drivers access to the TNC's Digital Network.
- B. Compliance with Regulations. TNC and TNC Drivers shall comply with Regulations, including without limitation the TNC Rules, as may be amended from time-to-time. The failure of TNC or TNC Drivers to comply with TNC Rules will adversely affect the convenience and satisfaction of the public in its use of the Airports, and impair the efficiency of the Airports' operations, thereby damaging the City. The Director or City may issue violation notices for violation of TNC Rules or Houston Code of Ordinances to TNC Drivers. TNC will use its best efforts to promptly notify the City in writing of any material, on-airport violations by TNC Drivers to which it becomes aware.
- C. Enforcement of Regulations by TNC. TNC shall establish and enforce policies requiring compliance with the applicable provisions of this Agreement by TNC Drivers. City will notify TNC in writing of all violation notices that it issues for TNC Drivers and drivers for other TNCs, by submitting the name of the driver, vehicle make and model, license plate number, the nature of the violation, and a statement of the facts supporting the allegation of the violation. TNC agrees that, upon such notice, TNC will prohibit said TNC Driver from providing TNC Service at both Airports as follows:

- a. Level 1 Violations
 - i. First instance – Warning
 - ii. Second instance – permanent suspension.
- b. Level 2 Violations – upon first instance, permanent suspension.

For clarity, if a driver is issued a violation notice, City shall notify all transportation network companies operating at the Airports, and TNC agrees to suspend said driver regardless of which Digital Network was being used at the time of the violation.

- D. Airport Geofence. The Director shall determine the virtual perimeter for a geofence that shall border each of the Airports and the TNC Staging Areas as set forth in the TNC OI. The geofence shall be comprised of one or more polygons whose boundaries are formed by geographic coordinates for airport-owned and operated property. The Director, in his sole discretion, may adjust the boundaries of the geofence at either of the Airports as the airports develop. TNC shall establish, at its sole expense, the geofence and demonstrate its accuracy to the perimeter established by the Director. TNC shall ensure that TNC Drivers inside the geofenced area shall not be visible on the Digital Network as being available to accept customers.
- E. TNC Staging Area. TNC shall require TNC Drivers, while waiting to pick up customers, to use the TNC Staging Area that is designated by the Director at each of the Airports, as set forth in the TNC OI. The Director, in his sole discretion and upon 30 days' prior written notice, may change the location, size, or configuration of any TNC Staging Area.

While in the TNC Staging Area, TNC Drivers shall conduct themselves in accordance with the TNC Rules and shall not engage in activities that are unnecessary to, or inconsistent with, waiting to pick up a customer, including but not limited to car washing, performing vehicle maintenance, and non-TNC Service commercial activities. TNC Drivers shall not use public or employee parking lots, garages, roadways, or any other areas at the Airports for storage, parking, or idling of TNC Vehicles.

A maximum capacity level may be established for each designated TNC Staging Area by the Director. When the TNC digital platform determines that a TNC Staging Area is at maximum capacity the TNC will communicate to TNC Drivers outside of the TNC Staging Area and advise them from coming to the particular TNC Staging Area or parking on surrounding airport roadways.

- F. Pick-up and Drop-off Areas. TNC shall require TNC Drivers to use the pick-up and drop-off areas at each of the Airports that are designated by the Director for use by TNCs, as set forth in the TNC OI. The Director, in his sole discretion and upon 30 days' prior written notice, may change the location, size, or configuration of the pick-up and drop-off areas. TNC Drivers shall not create congestion in the pick-up and drop-off areas, on airport roads, or other areas of the Airports. TNC Drivers shall not accept any customers for pick-up other than those arranged through the Digital Network.
- G. Digital Identification. TNC shall require TNC Drivers to maintain, on his or her smartphone, "digital identification" while using the Digital Network. The digital identification will allow City, at any and all times, to confirm the following information for any TNC Driver using the Digital Network while at the Airports:
 - a. TNC Driver identity and color photo,
 - b. TNC Vehicle make, model and color,
 - c. TNC Vehicle License Plate number,

- d. Proof of insurance in accordance with Chapter 1954 of the Texas Insurance Code, and
- e. An electronic waybill in a form acceptable to the Director.

TNC and TNC Driver are prohibited from displaying an altered or fictitious electronic waybill at any time.

- H. Trade Dress. TNC shall require TNC Drivers to display prominently, in the front window of the TNC Vehicle, the trade dress of the TNC while providing TNC Services at the Airports.
- I. Pre-Match/Pre-Dispatch and Re-Match. Pre-Match and Re-Match are permitted features of the Digital Network at the Airports. TNC Drivers must immediately leave the designated drop-off areas after dropping off a customer. Linger by a TNC Driver at a curb or other area in anticipation of being re-matched with a new customer is not allowed and a violation of the TNC Rules; and TNC agrees to enforce the TNC Rules with such TNC Driver in accordance with Section D above. The TNC vehicle will also be subject to towing by the City or its contractor. The Director reserves the right to request either Pre-Match/Pre-Dispatch or Re-Match, or both features together, be discontinued due to emergencies, irregular operations, or any other event the Director determines to negatively affect operations. Upon 30 days prior written notice from the Director, TNC will immediately discontinue such feature or features. TNC will provide aggregate data on Pre-Match/Pre-Dispatch and Re-Match activity, as requested from time to time by the City, as needed.
- J. Point-of-Contact for TNC's Airport Operations. TNC shall designate a management-level TNC employee to serve as the point-of-contact for TNC's operations at the Airports. Such person must be an outstanding, highly qualified and experienced manager or supervisor of comparable retail operations, vested with full power and authority to accept service of all notices provided for herein, except those required under Article XX, regarding TNC's operations at each of the Airports and compliance of the Agreement and shall be available by telephone or email during business hours to address the concerns and needs of the City, and available to address emergency situations twenty four hours a day. TNC shall provide the Director with the current office and business cellular telephone numbers and email address of TNC's manager.
- K. Future Innovations. TNC and Director shall cooperate to identify and implement on a mutually agreeable schedule new programs, services, and operational changes that improve customer service and/or operational efficiency.

ARTICLE V. SERVICE STANDARDS

- A. General Service Standards. TNC shall approve only such TNC Drivers as will assure a high standard of service to the public. City reserves the right to inform TNC that any TNC Driver or TNC Vehicle does not meet the published standards required by the State, and TNC agrees to take remedial actions.
- B. Non-discrimination. TNC shall furnish all TNC Services authorized under this Agreement, on a fair, equal, and non-discriminatory basis to all persons or users thereof and shall not refuse to convey a customer, unless such customer is deemed in the reasonably exercised judgment of the TNC Driver, airport personnel, or law enforcement officer to be a threat to the safety and welfare of the other customers, TNC Drivers, or TNC Vehicles.
- C. Accommodation of Customer Disabilities. In addition to any Regulations regarding TNCs meeting the needs of those with disabilities, TNC shall require TNC Drivers to provide assistance to handicapped,

disabled, blind, and elderly customers in boarding TNC Vehicles, to the fullest extent practicable and in accordance with applicable Regulations. If a TNC Driver cannot provide a customer a requested accessible ride, the TNC will identify an alternative transportation arrangement for the customer where reasonably available.

- D. Service Animals. TNC shall require TNC Drivers to reasonably accommodate Service Animals. Should exposure to a Service Animal cause a TNC Driver an undue health burden, the TNC Driver shall provide an alternate TNC Driver for the customer and Service Animal.
- E. Customer Complaints. TNC shall develop, implement, and maintain an electronic system whereby customers may file complaints regarding TNC, TNC Drivers, or TNC Vehicles. All customer complaints received by the HAS or referred to TNC by HAS shall be answered in writing by TNC within 10 days from receipt of complaint or notice. A written copy of TNC's response shall be delivered to HAS within the 10-day period.
- F. Credit Cards. TNC shall accept at least three (3) major debit/credit cards.
- G. Emergency Circumstances. TNC shall use commercially reasonable efforts to minimize negative impact to passengers and the Airport(s) in the event of an emergency or threat of emergency that it actually becomes aware of, (including by notice from the Director) , such as an evacuation of a terminal or events that affect or compromise the security of the Airport(s) or its surrounding lands, or an extreme weather-related emergency and shall work with the Director to provide emergency operations assistance."
- H. Wayfinding, Signage and Advertising.

Passenger Experience. In consultation with the TNC and applying the recommendations set forth in the American Association of Airport Executives August 2018 whitepaper entitled "Establishing a Common Standard for TNC Wayfinding at Airports", the City shall update and install all necessary and appropriate passenger wayfinding signage. Such signage shall be installed in logical decision points for passengers disembarking aircraft and transitioning to appropriate pickup or drop off areas ("Designated Areas"). Before the City relocates any Designated Areas in accordance with the terms of this Agreement, it shall have first relocated all wayfinding signage.

TNC Driver Experience. In consultation with the TNC and applying the recommendations set forth in the American Association of Airport Executives August 2018 whitepaper entitled "Establishing a Common Standard for TNC Wayfinding at Airports", the City shall update and install all necessary and appropriate TNC Driver wayfinding signage to pick up, drop off, and TNC Staging Areas. Such signage shall be installed in logical decision points for TNC Drivers entering the Airports. Before the City relocates any pickup, drop off, and TNC Staging Areas in accordance with the terms of this Agreement, it shall have first relocated all applicable wayfinding signage.

Advertising. TNC and TNC Drivers shall not install and maintain signs in and about the Airports or on TNC Vehicles to advertise its services and/or other services or products without the prior written approval of the Director, in his sole discretion. Upon approval of the Director, approved advertising may be installed so long as such advertising is compliant with Regulations. TNC may, at its sole expense, contract with the HAS-authorized airport advertising concessionaire, to advertise at the Airports.

ARTICLE VI.
AIRPORT CONDITION AND CHANGES TO THE AIRPORTS

- A. "As-Is Condition. TNC accepts the pick-up and drop-off areas and TNC Staging Areas and the Airports in their present condition and "as-is", without representation or warranty of any kind, and subject to Regulations.
- B. Changes to the Airports. TNC acknowledges and agrees that: (a) City shall have the right, at all times, to change, alter and expand the Airports, including the terminals, roadways and designated pick-up, drop-off and TNC Staging Areas; and (b) City has made no representations, warranties and/or covenants to TNC regarding the design, construction, customer or automobile traffic, or views of the Airports. Without limiting the generality of the foregoing, TNC acknowledges and agrees that: (y) the Airports may from time to time undergo renovation, construction and other Airport modifications; and (z) City may from time to time adopt rules and regulations relating to security or other operational matters that may affect TNC's business. City agrees to provide reasonable advance notice to TNC of any such modifications that may affect TNC's business or TNC Drivers' ingress and egress across airport properties. TNC expressly waives any and all claims for damages of any kind, including but not limited to, loss of revenues or profits as a result of the interruption of business of TNC that may arise as a result of such changes to the Airports.
- C. Planned HOU Improvements. The Parties acknowledge a desire to make certain improvements to the facilities used by TNC Drivers at HOU ("HOU Improvements"). The planned HOU Improvements shall be at the City's cost and consist of (i) repaving and lighting upgrades to the TNC Staging Lot, and (ii) improvements to the TNC Pick-up and Drop-off Areas including installation of new signage to direct passengers to the TNC Pick-up Area and relocation, if feasible, from Zone 5 to Zone 4. The Director or his representative will notify TNC, in writing, of the completion of the HOU Improvements.

ARTICLE VII.
DIGITAL ID AND VEHICLE TRACKING

The Director reserves the right to track TNC Vehicles at the Airports at all times and TNC agrees to provide access to TNC Vehicle locations and movements. TNC shall work with assigned HAS personnel and/or a third-party company that HAS shall designate to develop and implement, at TNC's sole expense, a TNC Vehicle tracking protocol, consistent with the Data Interface Requirement, detailed in **Exhibit B**. TNC Vehicle tracking shall be established as follows:

1. Unique Trip Number. When a TNC Driver connected to the Digital Network in order to provide TNC Services enters airport property by crossing the Airport Geofence the TNC Driver's trip shall be identified electronically by a unique trip number ("Trip Number"). The Trip Number shall be linked by the TNC to the TNC Driver and TNC Vehicle license plate number in a manner that allows HAS to verify trips for enforcement and operations purposes. HAS shall periodically audit TNC's records with respect to its operations at the Airports as set forth in Article IX.B. Audit of Books and Records herein.
2. Tracking. All TNC Drivers shall be tracked at various stages of travel during their trips within the Airports. Upon (i) entry into the Airport Geofence, (ii) entry into the TNC Staging Area, (iii) exit from the TNC Staging Area, (iv) customer pick-up, (v) customer drop-off, and (vi) exit from the Airport Geofence, TNC shall provide electronically and in real time the following data:

- a. TNC identification,
- b. Trip Number,
- c. TNC Driver unique identifier,
- d. TNC Vehicle license plate number,
- e. TNC Vehicle make, model, and color,
- f. TNC transaction type,
- g. Date and time,
- h. Geographical location, and
- i. Whether there is a customer in the TNC Vehicle.

ARTICLE VIII. FEES, PAYMENTS AND REPORTS

A. Fees. The following fees shall be collected by the City as of the Commencement Date:

IAH Fees. TNC shall pay to the City, for the privilege of operating at IAH, an amount equal to THREE DOLLARS AND NO CENTS (\$3.00) per customer pick up commencing anywhere inside the geofence at IAH ("IAH Pick-up Fee"). TNC shall pay to the City an amount equal to THREE DOLLARS AND NO CENTS (\$3.00) per customer drop-off occurring anywhere inside the geofence at IAH ("IAH Drop-off Fee").

HOU Fees. Prior to the City making the planned HOU Improvements, TNC shall pay to the City, for the privilege of operating at HOU, an amount equal to ONE DOLLAR AND 25 CENTS (\$1.25) per customer pick up commencing anywhere inside the geofence at HOU ("HOU Pick-up Fee") and an amount equal to ONE DOLLAR AND 25 CENTS (\$1.25) per customer drop-off occurring anywhere inside the geofence at HOU ("HOU Drop-off Fee"). On the first day of the month following written notification by the Director or his representative of the completion of the HOU Improvements, TNC shall pay to the City, for the privilege of operating at HOU, a HOU Pick-up Fee of TWO DOLLARS AND 75 CENTS (\$2.75) and a HOU Drop-off Fee of TWO DOLLARS AND 75 CENTS (\$2.75).

Payment of all Pick-up and Drop-off fees ("Fees") shall be made to the City no later than the fifteenth (15th) day of each calendar month. In the event the City initiates an access fee to all vehicles entering the Airports, such access fees collected from TNC Drivers (or TNC) will be credited against the Fees due from TNC.

B. Payments. All electronic payments by wire transfer to City shall be sent to the following, unless later changed by written notice from HAS Finance:

BANK NAME:	JP Morgan Chase
BANK ADDRESS:	707 Travis Street, 9 North Houston, TX 77002 Mail Code: TX2-N026
ABA ROUTING NUMBER:	111000614 - ACH 021000021 - Wire
SWIFT CODE:	CHASUS33
ACCOUNT NUMBER:	001-03333978

ACCOUNT NAME: City of Houston Aviation System Deposits

ADDRESS: 16930 John F. Kennedy Blvd.
Houston, TX 77032

REMITTANCE ADVICE DETAILS: HAS-WireTransfers@houstontx.gov

CONTACT NUMBERS: Office: 281-233-1387
Fax: 281-233-1574

The lockbox address to receive paper checks is as follows:

Houston Airport System
AKS-COH
PO Box 204172
Houston, Texas 77216-4172

Postage, delivery charges or wire/transfer fees for payments must be paid by TNC.

Any monies not paid on or before the 5th day following that due date may bear interest at the highest rate allowed by law until paid and entitle the City to charge TNC an administrative processing charge in an amount equal to five percent (5%) of the amount then due. The administrative processing charge is agreed by the Parties to be liquidated damages and to constitute a reasonable estimate of the extra administrative costs and expenses expected to be incurred by the City in handling a delinquency.

- C. TNC Activity Report. TNC shall, no later than the fifteenth (15th) day of each calendar month, submit to the City a report, in a form mutually agreeable by the Parties, detailing the number of pick-ups and drop-offs made at the Airports, along with other pertinent information, in the preceding calendar month ("TNC Activity Report"). The TNC Activity Report shall include the number of pick-ups and drop-offs made, listed on a daily basis, along with other mutually agreed information. If TNC fails to timely submit the monthly TNC Activity Report to the City within 3 days after the due date, TNC shall pay the City a late report charge equal to ten dollars (\$10.00) per day that each monthly TNC Activity Report is past due as liquidated damages.
- D. Liquidated Damages. City and TNC recognize that the damages which City will suffer as a result of TNC's failure to timely submit Fees and any other payment amounts under this Agreement or monthly TNC Activity Reports are difficult or impracticable to ascertain and agree that such late charges and interest are a reasonable approximation of the damages which City will suffer in the event of TNC's late payment or reporting. This provision shall not relieve TNC from payment of amounts due hereunder at the time and in the manner as specified in this Agreement.
- E. Payment Disputes. If a dispute arises between City and TNC with respect to any obligation or alleged obligation of the TNC to pay money to the City, the TNC shall make the payment under protest and the payment under protest by the TNC of the amount claimed by the City to be due shall not waive any of TNC's rights, or if any court or other body having jurisdiction determines that all or part of the protested payment was not due, then the City shall promptly reimburse the TNC any amount determined as not due. In the event that TNC makes a payment under protest, such payment shall be accompanied by a formal protest, in writing, setting forth the grounds on which TNC protests such obligation or alleged

obligation. Failure by TNC to protest within fifteen (15) days from the payment due date shall be deemed a waiver by the TNC to protest the amount in the future.

ARTICLE IX. ACCOUNTING RECORDS

- A. Record Retention. TNC shall keep true, accurate, and complete books and records, during the full Term of this Agreement and any extension or renewal thereof. TNC shall maintain said books and records for additional periods, until an audit of this Agreement is complete, and all issues arising from such audit are resolved, or not less than three (3) years following expiration of this Agreement, whichever is later, but in no event shall TNC be required to maintain books and records for a period longer than seven (7) years. TNC shall make all such books and records available to the City within twenty (20) days of receipt of a written request from the City, or TNC shall pay the expenses (including without limitation, travel, lodging, and meals) incurred by the City to examine the books and records in another location.
- B. Audit of Books and Records.
1. Upon written notice at any time or times during the Term of this Agreement or within three (3) years after the end of any Contract Year, the City or its authorized representatives may inspect, reproduce, and/or audit the books and records of TNC relating to payments and reports under Article VIII herein but in no event more than one (1) time per calendar year. TNC shall use commercially reasonable efforts to make such books and records available in electronic format. If, as a result of such inspection and audit, it is established that additional Fees are due the City, TNC shall, upon written notice by the City, pay such additional Fees, plus interest, calculated at the Contract Rate, within ten (10) days of written notice. If, on the other hand, such audit determines that TNC has overpaid the Fees due the City, the City shall refund to TNC the amount of such overpayment. Except at the end of the Term of this Agreement, a refund by the City under this Section shall be in the form of a credit against future Fees.
 2. If the results of such audit reveal a discrepancy of more than ten percent (10%) between Fees reported by TNC and Fees as determined by audit, TNC shall, in addition to the amount of the discrepancy, pay liquidated damages equal to ten percent (10%) of the amount of discrepancy found pursuant to such audit.

ARTICLE X. INSURANCE REQUIREMENTS

- A. TNC shall, at its cost and expense, throughout the Term obtain and maintain in full force and effect the policies of insurance applicable to TNC's as set forth in Chapter 2402 of the Texas Occupations Code.
- B. TNC shall provide the City with certificates of insurance demonstrating the same, to be held by HAS, during the Term of this Agreement.

ARTICLE XI. INDEMNITY AND LIMITATION OF LIABILITY

RELEASE AND INDEMNIFICATION

- A. **RELEASE.** EXCEPT FOR THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TNC AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. TNC HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS ARTICLE XI. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.
- B. **INDEMNIFICATION.** TNC SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "CITY"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS"), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF
1. A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY TNC, ITS OFFICERS, AGENTS, EMPLOYEES, TNC DRIVERS, CONTRACTORS, SUCCESSORS OR ASSIGNS, (COLLECTIVELY THE "TNC PARTIES")
 2. A FALSE REPRESENTATION OR WARRANTY MADE BY THE TNC PARTIES IN THIS AGREEMENT,
 3. THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE TNC PARTIES IN CONNECTION WITH THIS AGREEMENT, THE OPERATION OF THE SERVICE, OR THE USE OF THE AIRPORT.

CLAIMS TO BE INDEMNIFIED UNDER THIS ARTICLE INCLUDE, WITHOUT LIMITATION, CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKER'S COMPENSATION CLAIMS.

TNC'S OBLIGATIONS UNDER THIS ARTICLE EXPRESSLY INCLUDE CLAIMS TO THE FULL EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, EXCLUDING ONLY CLAIMS CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

TNC SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR (4) YEARS AFTER THIS AGREEMENT TERMINATES FOR THE ABOVE REFERENCED MATTERS.

C. Indemnification Procedures – In General.

1. Notice of Claims. If the City receives notice of any claim or circumstances which could give rise to an indemnified loss, the City shall give written notice to TNC within one hundred and eighty (180) days. The notice must include the following:
 - (a) a description of the indemnification event in reasonable detail;
 - (b) the basis on which indemnification may be due; and
 - (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the one hundred and eighty (180)-day period, it does not waive any right to indemnification except to the extent that TNC is prejudiced, suffers loss, or incurs expense because of the delay.

2. Defense of Claims.

- (a) Assumption of Defense. TNC may assume the defense of the claim at its own expense with counsel chosen by TNC that is reasonably satisfactory to the City Attorney. TNC shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within ten (10) days after receiving written notice of the indemnification request, TNC must advise the City as to whether or not it will defend the claim. If TNC does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- (b) Continued Participation. If TNC elects to defend the claim, the City may retain separate counsel at its sole expense to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

**ARTICLE XII.
TAXES**

- A. Taxes. TNC will pay, or cause to be paid, all applicable ad valorem, use and occupancy, and occupation taxes, excises, levies, assessments, and other charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind which are assessed, levied, or imposed from and after the Effective Date by any public or quasi-public authority (collectively "Taxes") upon or with respect to the income received by or for the account of TNC for any use or occupation of the Airport as and when they become due. TNC shall deliver to City evidence of timely payment of all Taxes, upon request.
- B. Tax Contest. TNC may, at TNC's expense, contest the validity or amount of any Tax for which TNC is responsible, in which event, the payment thereof may be deferred, as permitted by Regulations, during the pendency of such contest, if diligently prosecuted. Nothing herein contained, however, shall be construed to allow any Tax to remain unpaid for such length of time as would permit any part of City property to be sold or seized by any governmental authority for the nonpayment of the same. If at any time, in City's reasonable judgment, it shall become necessary to do so, TNC shall, at City's written request, under protest if so determined by TNC, pay such amount of the Taxes as may be required to prevent a sale or seizure of City property or foreclosure of any lien created thereon by such item. TNC shall promptly furnish City with copies of all proceedings and documents with regard to any tax contest, and City may, at its expense, participate therein.

**ARTICLE XIII.
ENVIRONMENTAL COMPLIANCE**

- A. TNC shall strictly comply with all federal, state, City, and local statutes, laws, ordinances, rules and regulations, now or hereafter in effect, and as amended from time to time, related to pollution or the protection of the environment, including those related to emissions, discharges, releases or threatened

releases of or the use, handling, treatment, storage, discharge, disposal, or transportation of hazardous materials or toxic substances ("Environmental Laws") applicable to TNC or this Agreement. TNC shall comply with all Airport Environmental Policies/Procedures. TNC shall not knowingly use, store, generate, treat, transport or dispose of any hazardous, toxic, or regulated substances or waste on or near the Airport except in strict compliance with applicable Environmental Law, and without first obtaining prior written approval from the Director and obtaining all required permits and approvals from all authorities having jurisdiction over TNC's operations. TNC shall promptly notify the City of any spills, releases, or other discharges of hazardous, toxic or regulated substances by TNC at the Airport and promptly abate, remediate, and remove any the same in accordance with applicable Environmental Laws. TNC shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries, or notices relating to the environmental condition of the Airport, or any alleged material noncompliance with Environmental Laws by TNC at the Airport within ten (10) days after such documents are generated or received by TNC. **IN ADDITION TO ANY OTHER INDEMNITIES IN THIS AGREEMENT, TNC SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, ASSIGNS, AND CONTRACTORS FROM ANY AND ALL CLAIMS (INCLUDING REASONABLE ATTORNEY'S FEES, LITIGATION AND INVESTIGATION EXPENSES, AND COURT COSTS) TO THE EXTENT ARISING OUT OF OR RESULTING FROM TNC'S USE, HANDLING, TREATMENT, STORAGE, DISPOSAL, DISCHARGE, OR TRANSPORTATION OF HAZARDOUS, TOXIC OR REGULATED SUBSTANCES ON THE AIRPORT, THE VIOLATION OF ANY ENVIRONMENTAL LAW BY TNC PERTAINING TO ITS USE OR OCCUPANCY OF THE AIRPORT , OR THE FAILURE OF TNC TO COMPLY WITH THE TERMS, CONDITIONS, AND COVENANTS OF THIS ARTICLE.** The rights and obligations set forth in this paragraph shall survive the termination of this Agreement.

ARTICLE XIV. MODIFICATION AND ASSIGNMENT

- A. Modification. No officer or employee of the City shall have the right to extend, modify, or change the terms hereof except by authority of an ordinance of the City Council.
- B. Assignment.
1. Except as explicitly authorized in this Article, TNC shall not assign, sell, convey, transfer, mortgage or pledge this Agreement or any part thereof without the Director's prior written consent. Any restrictions, which form a part of any written consent granted, shall be incorporated into a written instrument and shall form a part of this Agreement. Due to the significance of this Agreement and the nature of the services to be provided hereunder, the Director shall have the right in his sole discretion, to withhold his consent.
 2. Upon the prior written consent of the Director and TNC's assignment of this Agreement, TNC shall remain liable for the full, faithful and complete performance of this Agreement.
 3. Provided TNC is not in default pursuant to the terms of this Agreement and written notice is given to the Director, TNC may assign this Agreement to an affiliate of TNC without the Director's consent.
 4. Any assignment of this Agreement permitted under the terms hereof, shall be on the condition that the assignee accepts and agrees to all of the terms, conditions, and provisions of this Agreement, and agrees to accept and discharge all of the covenants and obligations of TNC hereunder, including but not limited to, the payment of all sums due and to become due by TNC under the terms hereof.

5. TNC shall provide the City with a copy of any assignment of this Agreement to which TNC is a party within twenty (20) days of the effective date of the assignment.

ARTICLE XV. TNC DEFAULT AND CITY REMEDIES

- A. TNC Defaults. Each of the following events shall be a TNC Default:
1. TNC fails to timely pay when due the City the Fees, and such failure continues for ten (10) days after the date of receipt of notice from the City of such non-payment.
 2. TNC tenders more than one check in payment of Fees or charges under this Agreement which is not paid upon presentment to TNC's bank.
 3. TNC makes any assignment of its property for the benefit of Creditors, or files a voluntary petition in bankruptcy, or has an involuntary petition in bankruptcy filed against it which is not discharged within ninety (90) days from the date of filing.
 4. TNC fails to perform any of its material obligations under this Agreement, other than a failure to pay Fees or other amounts due the City, and such failure continues for thirty (30) days after receipt of written notice from the City.
 5. TNC falsifies or makes a material misrepresentation in its operations, or on any reports or other documentation required to be made by TNC under this Agreement or Regulations.
- B. Remedies upon TNC Default. If a TNC Default occurs, City may at any time thereafter and without waiving any other rights hereunder or available to City at law or in equity (City's rights being cumulative), do any one or more of the following:
1. City may terminate this Agreement by giving TNC written notice thereof, in which event this Agreement and the rights and privileges hereby created and all interest of TNC, and all parties claiming by, through, or under TNC, to the Agreement shall automatically terminate upon the effective date of such notice.
 2. City may exercise any other right or remedy available to City under this Agreement, or at law or in equity.
- C. TNC Liability Continues. Termination of this Agreement under this Article shall not relieve TNC of its liability and obligations under this Agreement and such liability and obligations shall survive any such expiration or termination.
- D. In addition to any other right that the City may have, the Director at all times reserves the right to prohibit TNC Driver from servicing the Airport.

ARTICLE XVI. CITY DEFAULT AND TNC REMEDIES

- A. City Default. The City shall be in default under this Agreement in the event the City fails to substantially perform any material term, covenant, or condition of this Agreement, and such default is not cured by the City within thirty (30) days after receipt of written notice from TNC.
- B. TNC Remedies. Upon the happening of a City Default, and the passage of the time periods described, should the City fail to cure such default within thirty (30) days from the receipt of written notice thereof, TNC may, in addition to other rights or remedies available under Regulations, terminate this Agreement by giving written notice thereof to the City at least thirty (30) days in advance of the date upon which termination is to be effective; provided, however, should the nature of the default be such that it is curable, but not curable within such thirty (30) day period, the City shall be deemed to have cured such default, if within such thirty (30) day period it shall commence performance and thereafter diligently prosecute the same to completion.
- C. TNC's Right to Terminate for Other Events. Provided that TNC is not itself in default under this Agreement, TNC may terminate this Agreement upon the happening of any one or more of the following events by giving the City written notice at least thirty (30) days prior to the effective date of termination:
1. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereto, in such a manner as to substantially restrict TNC for a period of at least ninety (90) days from operating thereon.
 2. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restricting the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.
 3. The inability of TNC or its customers to use, for a period of ninety (90) consecutive days, the Airport or any substantial part of it due to enactment or enforcement of any Regulations, or because of an event of Force Majeure.
 4. The permanent abandonment of the Airport by the City.
- D. Fees Due. In the event TNC terminates this Agreement under this Article, Fees due hereunder shall be payable through and up to date of termination.

ARTICLE XVII. CERTAIN FEDERAL REQUIREMENTS

- A. TNC agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If TNC transfers its obligation to another, the transferee is obligated in the same manner as TNC.
- B. During the performance of this Agreement, TNC, for itself, its assignees, and successors-in-interest, agrees as follows:
1. Compliance with Regulations. TNC (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth in Section XXII(f) ("Nondiscrimination Acts and Authorities"), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination. TNC, with regard to any work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. TNC will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
 3. Solicitations for Subcontracts, including Procurements of Materials and Equipment. In all solicitations for work to be performed at the Airports, either by competitive bidding or negotiation made by TNC for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by TNC of the subcontractor's or supplier's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 4. Information and Reports. TNC will provide all information and reports required by the Nondiscrimination Acts and Authorities and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Director or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of TNC or its contractor is in the exclusive possession of another who fails or refuses to furnish the information, TNC will so certify to the Director or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
 5. Sanctions for Noncompliance. In the event of TNC's or its contractor's noncompliance with the non-discrimination provisions of this Agreement, the Director will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - (i) Withholding payments to TNC or its contractor under this Agreement or the TNC's contract with such contractor until TNC or its contractor complies; and/or
 - (ii) Cancelling, terminating, or suspending this Agreement or TNC's contract with such contractor, in whole or in part.
 6. Incorporation of Provisions. TNC will include the provisions of paragraphs (1) through (6) in every subcontract for work at the Airports, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities and directives issued pursuant thereto. TNC will take action with respect to any subcontract or procurement as the Director or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if TNC becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, TNC may request the City to enter into any litigation to protect the interests of the City. In addition, TNC may request the United States to enter into the litigation to protect the interests of the United States.
- C. TNC for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, if applicable, that in the event facilities are constructed, maintained, or otherwise operated by TNC on property at the Airports for a purpose for which an FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, TNC will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as

may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- D. TNC, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, if applicable, that, (i) no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the provision of TNC Services; (ii) in the construction of any improvements on, over, or under property at the Airports, and the furnishing of services thereon, no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) TNC will use the Airports in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Authorities.
- E. In the event of breach of any of the above nondiscrimination covenants, the Director shall have the right to terminate this Agreement. Further, TNC shall include the provisions of 49 C.F.R. Part 21 and 49 C.F.R. Part 21, Appendix C(a)(1) as amended from time to time, in subcontracts it enters into for work at the Airports pursuant to this Agreement.
- F. During the performance of this Agreement, as applicable, TNC, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d *et seq.*, 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
 - 49 C.F.R. Part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. Section 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); 49 C.F.R. Part 27 and 28 C.F.R. Parts 35 and 36;
 - The Age Discrimination Act of 1975, as amended (42 U.S.C. Section 6101 *et seq.*) (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982 (49 U.S.C. Section 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987 (P.L. 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. Sections 12131–12189) as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
 - The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. Section 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. Section 1681 *et seq.*).
- G. TNC acknowledges and agrees that the provisions of all Federal-Aid Airport Program Grant Leases with the City that are applicable to the Airport are by reference made a part hereof to the same extent as though copied herein at length.
- H. Nothing herein shall be deemed to grant TNC any exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended, within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended or supplemented.
- I. This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States of America relative to the operation and maintenance of the Airport, including but not limited to the terms of the sponsor assurances that are incorporated into grants provided to the City pursuant to the Airport Improvement Program (49 U.S.C. Section 47101 *et seq.*).

ARTICLE XVIII.

LAWS, AGREEMENTS AND GRANT CONDITIONS

- A. Compliance with Regulations. TNC shall comply with all Regulations governing TNC, or the operation of its TNC Services. The City may adopt and enforce reasonable rules and regulations, which TNC agrees to obey, with respect to the use of the Airport and its appurtenances, together with all facilities, improvements, equipment, and services of the Airport, for the purpose of providing for safety, good order, good conduct, sanitation, and preservation of the Airport and its facilities; provided that such rules and regulations shall be consistent with safety and with rules, regulations, and orders of the FAA or TSA; and provided, further that such are not inconsistent with the provisions of this Agreement, or other agreements with TNC at the Airport, or the procedures prescribed, or approved from time-to-time by the FAA, or the TSA, or their successors in duties, with respect to the operation of the Airport.

- B. Nonexclusive Rights. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by the Federal Aviation Administration Authorization Act of 1994, as amended.
- C. Airport Security. TNC shall comply with and cause its TNC Drivers to comply with all present and future laws, rules, regulations, or ordinances promulgated by the City, State, or the Federal Aviation Administration, Transportation Security Administration, or other governmental agencies related to the security of the Airport, including, without limitation, the Transportation Security Regulations set forth in 49 CFR Chapter XII. **TNC SHALL BE SOLELY AND FULLY RESPONSIBLE FOR, AND SHALL INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, ASSIGNS, AND CONTRACTORS HARMLESS FROM AND AGAINST ANY FINES OR PENALTIES IMPOSED ON THE CITY AS A RESULT OF ANY BREACH OF AIRPORT SECURITY BY TNC, OR ITS TNC DRIVERS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, ASSIGNS AND SUPPLIERS.**
- D. Grant Assurances. This Agreement is subject to the provisions of any agreement made between City and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the FAA's Airport Improvement Program, or in order to impose and use Passenger Facilities Charges ("PFCs") under 49 U.S.C. Section 40117 or any successor thereto.
- E. Amendment. In the event that the FAA, TSA, or other governmental authority of competent jurisdiction, shall require any modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport to use or impose Passenger Facility Charges, or if it is necessary to modify this Agreement to comply with the requirements of Regulations, including regulations, orders and decisions of the FAA or TSA, City shall notify TNC in writing. If the Parties are unable to agree upon and execute a suitable amendment within the time frame required by the governmental authority, TNC agrees that City may unilaterally modify this Agreement, upon advice of its legal counsel, as may reasonably be required to obtain such funds or comply with Regulations. Nothing herein shall preclude TNC from contesting such orders or decisions, but TNC shall abide by the unilateral modification by City until such time if any as such governmental authority's order or decision is stayed, rescinded or invalidated as long as such stay, rescission or invalidation remains in effect. In no event will TNC be required, pursuant to this subsection, to pay Fees greater than specified herein.

ARTICLE XIX. FORCE MAJEURE

- A. The failure of a party to perform its obligations hereunder shall be excused to the extent, and for the period of time, such failure is caused by the occurrence of an event of Force Majeure. Force Majeure shall mean acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, without limitation: Acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labor; epidemics, civil disturbances, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery. The party invoking Force Majeure

shall give prompt, timely and adequate notice to the other party, by facsimile transmission or telephone confirmed promptly thereafter in writing and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible. Nothing contained herein shall be construed to require a party to settle a strike or other labor dispute against its will.

**ARTICLE XX.
NOTICES AND CONTRACT ADMINISTRATION**

- A. Notices. Any notice required to be given hereunder must be in writing and shall be given by depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section; or overnight courier of general use in the business community of Houston, Texas. Notice given in accordance with this section shall be deemed delivered and effective on the earlier of actual receipt or three calendar-days next following deposit thereof in accordance with the requirements above. A party may, by giving written notice to the other, change the address at which its notices are to be delivered.

Notices to the City shall be sent to the following address:

Director of Aviation
Houston Airport System
16930 John F. Kennedy Blvd
Houston, Texas 77032

Notice to TNC shall be sent to the following address:

Rasier, LLC
ATTN: Legal
1455 Market Street, Suite 400 San Francisco, CA 94103
With copy to USAirports@Uber.com

- B. Contract Administrator. The Airport Landside Operations Manager; Houston Airport System; 16930 John F. Kennedy Blvd; Houston, Texas 77032; will act as the contact point between the City and TNC and is designated as the Contract Administrator for the City. The Contract Administrator shall be authorized to act on behalf of the City to organize, schedule, coordinate work processes, and review and approve projects for this Agreement. The Contract Administrator shall endeavor to resolve questions, expedite decisions, and facilitate management of all aspects of this Agreement.

**ARTICLE XXI.
MISCELLANEOUS**

- A. Approvals, Consents and Notices. All approvals, consents and notices called for in this Agreement must be in writing and signed by the party to be charged.
- B. National Emergencies. This Agreement shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during a time of war or national emergency.

- C. Relationship of Parties. TNC is, and shall be, an independent contractor hereunder and shall control all ways, means and details incident to the performance of its obligations under this Agreement. Except as expressly stated herein, nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto. TNC's Employees and contractors are not employees of the City, are not subject to the personnel policies of the City, and do not participate in the benefits which accrue to City employees.
- D. Jurisdiction and Venue. This Agreement is made under and shall be governed by the laws of the State of Texas. Any and all disputes arising under this Agreement, which cannot be administratively resolved, shall be determined according to the laws of the State of Texas, without regard to conflicts of laws principles. Venue for any such dispute, either administrative or judicial, shall be proper and lie exclusively in Travis County Texas.
- E. Gratuities. The City may terminate this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by TNC or any agent or representative to any City official or employee with a view toward securing favorable treatment with respect to the performance of this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover from TNC the amount of the cost incurred by TNC in providing such gratuities.
- F. Prohibited Interests. No member, officer, or employee of the City during his or her tenure, and for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or its proceeds.
- G. Nonwaiver of Rights. No waiver of default by either party of any terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other party.
- H. Headings. The headings of the articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- I. Severability of Provisions. If any provisions of this Agreement are held invalid, illegal, or unenforceable, such provisions shall be severed and the remainder shall remain in force and effect and construed to conform to the intent of the parties.
- J. Liability of Agents and Employees. No member, officer, agent, director or employee of the City shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.
- K. Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the authorized successors and assigns of the parties hereto where permitted by this Agreement.
- L. Warranty of Authority. Each party warrants and represents to the other that the person signing this Agreement on its behalf has been duly authorized and empowered to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of such party, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditor's rights, or with respect to the City, governmental immunity under the Constitution and laws of the State of

Texas. TNC shall furnish to the Director certified copies of resolutions of the Directors, By-laws, or other evidence of authority within thirty (30) days from the date of execution hereof.

- M. Time of the Essence. Time is of the essence in this Agreement.
- N. Waiver of Attorney's Fees. Each party waives any and all rights under law or equity to seek or recover attorney's fees from the other party in any civil or administrative litigation or dispute resolution proceeding for breach of this Agreement or to enforce any provision of this Agreement.
- O. Texas Public Information Act. TNC acknowledges that City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement, and documents related to this Agreement, which are in City's possession, or to which City has access, are presumed to be public and the City may release these records to the public unless an exception described in the Public Information Act applies to a document. If TNC does not desire proprietary information to be disclosed, each page and section containing proprietary information must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure; provided, however, TNC shall be solely responsible to justify its confidentiality claims to the Texas Attorney General.
- P. Interpretations. In this Agreement and any certificate or other document delivered pursuant hereto, unless otherwise expressly provided herein or therein, the following rules of interpretation shall apply:

Headings and subheadings are for convenience only and do not affect the interpretation of an agreement.

Words importing the singular include the plural and vice versa and the masculine, feminine, or neuter gender shall include all genders. The word "or" is not exclusive.

The words "hereof," "herein," and "hereunder" and words of similar import when used in any agreement shall refer to such agreement as a whole and not to any particular provision of such agreement.

Any reference to an agreement shall include a reference to each exhibit, annex, schedule, and other attachment thereto.

Any reference in an agreement to an Article, Section, Clause, subsection, sub-clause, paragraph, party, Exhibit, Annex, or Schedule is a reference to that Section, Clause, subsection, sub-clause, or paragraph of, or that party, Exhibit, Annex or Schedule to, such agreement unless otherwise specified.

Any reference to an agreement or document is to such agreement or document as amended, varied, supplemented, replaced, notated, or modified from time to time in accordance with the terms of such agreement or document.

Any reference to any Regulations shall be construed so as to include such Regulations as amended, modified, extended, reenacted, re-designated or replaced from time to time.

A reference to a person or entity includes that person's or entity's successors and permitted assigns.

The term "including" shall mean "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided.

Accounting terms shall have the respective meanings given to them under generally accepted accounting principles in the United States ("GAAP").

References to "days" shall mean calendar days and references to a time of day shall mean such time in Houston, Harris County, Texas.

This Agreement is the result of negotiations among the parties and has been reviewed by each party and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against any of them.

References to any condition or any representation by any party being to the (i) best knowledge of such party shall be deemed to be to the best knowledge of an authorized officer of such party after due inquiry and (ii) knowledge of such party shall be deemed to be to the knowledge of an authorized officer of such party.

- Q. Disputes. Any and all disputes arising under this Agreement, which cannot be administratively resolved, shall be determined according to the laws of the State of Texas, and TNC agrees that the venue of any such dispute, either administratively or judicial, shall be in Travis County, Texas. TNC agrees as a condition of this Agreement that notwithstanding the existence of any dispute between the parties, insofar as is possible under the terms of this Agreement, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a court of competent jurisdiction.
- R. State of Texas Law. This Agreement will be interpreted under and governed by the Law of the State of Texas.
- S. Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.
- T. Entire Agreement.
1. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter of this Agreement. It is further understood and agreed by TNC that the City and its agents have made no representations or promises with respect to this Agreement, except as expressly set forth herein, and that no claim or liability or cause for termination shall be asserted by TNC against the City, and the City shall not be liable by reason of the breach of any representations or promises not expressly stated in this Agreement.
 2. The City and TNC are the only parties to this Agreement and as such are the only parties to enforce its terms. Nothing in this Agreement gives, or shall be construed to give or provide, any benefit, direct or indirect, to third parties unless a third party is expressly described as an intended beneficiary of its terms.

3. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits hereto, and have sought and received whatever advice needed for them to form a full and complete understanding of all rights and obligations herein.
- U. Prohibition on Contracts with Companies Boycotting Israel. TNC represents that, to the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent TNC is required to make this representation under) Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270, Texas Government Code, and subject to Regulations, neither TNC nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of TNC (a) currently boycotts Israel, and (b) for the duration that TNC is providing goods and services to the City under this Agreement, TNC will not boycott Israel. The terms "boycotts Israel" and "boycott Israel" as used in this Section 9.21 mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- V. Prohibition on Business with Iran, Sudan, or Any Foreign Terrorist Organization. TNC represents that, to the extent this Agreement constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252.152 of the Texas Government Code, and except to the extent otherwise required by Regulations, neither TNC nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of TNC (a) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (b) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this Section 9.22 means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.
- W. Human Trafficking. The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. TNC has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's countersignature date. TNC shall notify the City's Chief Procurement Officer, the City Attorney, and the Director of any information regarding possible violation of TNC or its subcontractors providing services or goods under this Agreement within seven (7) days of TNC becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.
- X. Electronic Signature. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.
- Y. Exhibits. The exhibits to this Agreement are as follows:
- "A" TNC Rules
"B" Data Interface Requirements

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, this Agreement has been entered into and effective as of the Effective Date. The Parties have executed this Agreement in multiple copies and/or counterparts, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

ATTEST/SEAL:

By: _____

Name: _____

Title: _____

RASIER, LLC

By: _____
DocuSigned by:
Niraj Patel
17D0E87DE99A43C...

Name: **Niraj Patel**

Title: **Director, Central operations**

80-0896455

Federal Taxpayer ID No.

ATTEST/SEAL:

Pat J. Daniel
Interim City Secretary

CITY OF HOUSTON, TEXAS

Sylvester Turner
Mayor

APPROVED:

Mario C. Diaz, Director
Houston Airport System

COUNTERSIGNED:

Chris Brown
City Controller

APPROVED AS TO FORM:

DocuSigned by:
Robert W. Collins
C8E1D41C435443B
Senior Assistant City Attorney
LD File No.: 0041900113001

DATE COUNTERSIGNED:

EXHIBIT "A"

TNC RULES

City requires that all TNC Drivers, while providing TNC Service at the Airports, shall be clean, neat in appearance, and courteous at all times.

Prohibited TNC Driver activities:

Level 1 Violations

1. Turning off or disabling the Digital Network while providing TNC Services, unless the TNC Driver is departing the airport after a drop-off or otherwise not offering or providing TNC Services
2. Picking up or dropping off customers, or their baggage, at any location other than the marked/designated areas
3. Waiting, standing, or idling on roadways
4. Failing to operate a TNC Vehicle in a safe manner
5. Failing to comply with posted speed limits and traffic control signs
6. Using profane or vulgar language
7. Operating a TNC Vehicle which is not in a safe mechanical condition or which lacks mandatory safety equipment
8. Creating a nuisance that negatively affects the customer experience
9. Obstructing traffic flow for the purpose of loading or unloading customers
10. Improperly or not displaying proper TNC trade dress while providing TNC Services
11. Littering on airport property, or causing or producing any unusual, noxious, or objectionable smoke, gases, vapors, or odors

Level 2 Violations

1. Circumventing, by any method, the Airport Geofence
2. Allowing operation of a TNC Vehicle on airport roadways by an unauthorized driver
3. Transporting a customer in an unauthorized vehicle
4. Failing to provide information, or providing false information, to police officers or airport personnel
5. Failing to immediately comply with request of airport personnel or Law Enforcement
6. Leaving TNC Vehicle or any item unattended anywhere on airport property except while in the TNC Staging Area (provided the TNC Driver also remains in the TNC Staging Area)
7. Making or causing to make any improvements, modifications, or alterations to airport property

8. Making or causing any damage or destruction to airport property
9. Abandoning containers of human waste or materials contaminated with human waste on airport property
10. Failing to provide digital identification, waybill, manifest, or confirmation that the Digital Network is activated while on airport property or within the geofence
11. Displaying, to an airport official, digital identification, waybill, manifest or other identification in an altered or fictitious form
12. Using or possessing any alcoholic beverage, illegal drug or narcotic while offering or providing TNC Services
13. Soliciting customers on airport property
14. Attempting to solicit payment in excess of the published fare
15. Soliciting for or on behalf of any hotel, club, nightclub, or other business
16. Soliciting of any activity other than the provision of TNC Services or any activity prohibited by the Regulations
17. Operating a TNC Vehicle at any time during which TNC Driver's authority is suspended or revoked
18. Engaging in criminal activity
19. Engaging in acts of violence or aggression
20. Engaging in lewd or lascivious acts
21. Carrying firearms in restricted areas
22. Attempting to bypass the Digital Network and solicit cash payment from a TNC customer

EXHIBIT "B"**DATA INTERFACE REQUIREMENTS****1. DATA REQUIREMENTS**

The data exchange between the Recipient and City and any other necessary third parties as identified and required by City, shall conform to the following formats:

Name	Format	Description	Samples
uid	<Driver ID + ":" + Trip ID>	Driver ID concatenated with the Trip ID.	<Recipient to provide samples and format> Alphanumeric and special characters
tnc_id	Integer	A unique number assigned to the TNC.	<Recipient to provide samples>
license_plate	Seven-character string	Seven-character or less, numerical and alphabetic, that represents the vehicle license plate. Accepts an empty String value if there hasn't been a license plate assigned yet.	"ABC123", "ABC1234"
timestamp	[YYYY]-[MM]-[DD]T[hh]:[mm]:[ss]Z	The current time of the event or "ping" expressed in ISO 8601 combined date and time in UTC using 24-hour clock. http://en.wikipedia.org/wiki/ISO_8601#UTC	"2014-09-10T14:12:05Z"
txn_type	Literal String	The four types of events or "pings" as defined in the national standard in the terms and conditions of the system.	"ENTRY" "DROP-OFF" "PICK-UP" "EXIT"
ride_count	Integer	Whether there is an active TNC ride in the vehicle following the transaction event/ping.	"0", "1",
lon	World Geodetic System 1984 (WGS84) formatted longitude	The longitude coordinate of the event or "ping" expressed as a positive or negative number. For locations in North America, this will always be a negative number.	"-123.12345678"
lat	World Geodetic System 1984 (WGS84) formatted latitude	The latitude coordinate of the event or "ping" expressed as a positive or negative number. For locations in North America this will always be a positive number.	"123.12345678"

2. WEB SERVICE

The City or a third party designated and identified by the City and agreed to by the Recipient, shall provide a web service in order to accept data from the Recipient in the following manner:

- a. The web service shall use HTTPS protocol to submit all requests and posts.
- b. The web service shall allow HTTPS POST for all "pings" from Recipient.
- c. The web service shall accept the values for the following attributes as defined in the following list in the URL:
"uid", "tnc_id", "license_plate", "timestamp", "txn_type", "ride_count", "lon", "lat". Parameters must be URL encoded.
- d. A username and secret phrase shall be shared in order to create a basic authorization mechanism for all requests from Recipient. Base64 encoding of the <username:password> shall be provided in the HTTP Authorization Header for all HTTPS requests.
- e. Data from Recipient shall be posted to the following URL with the following parameters with URL encoding (based on RFC 1738: <http://www.ietf.org/rfc/rfc1738.txt>) employed:
<TBD>
Example: <TBD>

EXHIBIT "B"

TRANSPORTATION NETWORK COMPANY (TNC) OPERATING AGREEMENT
LYFT INC.

(to be attached)

**CITY OF HOUSTON, TEXAS
HOUSTON AIRPORT SYSTEM
TRANSPORTATION NETWORK COMPANY
OPERATING AGREEMENT**

This **TRANSPORTATION NETWORK COMPANY OPERATING AGREEMENT** ("Agreement") is hereby made and entered into by and between **THE CITY OF HOUSTON, TEXAS**, a home-rule city and municipal corporation principally situated in Harris County, Texas ("City"), and **LYFT, INC.**, a Delaware corporation, authorized to do business in the State of Texas, and has been granted a permit to operate as a transportation network company as defined by Chapter 2402 of the Texas Occupations Code ("TNC"). City and TNC are sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties".

WHEREAS, the City is the owner of George Bush Intercontinental Airport/Houston ("IAH") and William P. Hobby Airport ("HOU") (collectively "Airports"), which are managed and operated by the City's Houston Airport System ("HAS") as an enterprise fund, whose functions are public and governmental, exercised for a public purpose, and matters of public necessity; and

WHEREAS, TNC desires to operate a transportation network business at the Airports wherein the Digital Network (hereinafter defined) will be used by independent contractor drivers to connect customers with pre-arranged transportation services offered by TNC Drivers (hereinafter defined); and

WHEREAS, City has the authority to regulate TNC at the Airports pursuant to Section 2402.003(b) of the Texas Occupations Code and has agreed to allow the TNC to conduct its business at the City Airports, subject to the terms and conditions in this Agreement; and

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I.
DEFINITIONS**

Definitions. As used in this Agreement, the following terms shall be defined as specified below:

"Airport Geofence" means a virtual perimeter boundary around each of the Airports, inside of which TNC Vehicles shall not be visible on the Digital Network as being available to accept customers (unless such TNC Vehicles are within the TNC Staging Area), as set forth in the TNC OI.

"Commencement Date" means the first day of the month following 30 days from the Effective Date.

"Digital Network" means any online-enabled application, website, or system offered or used by a transportation network company that enables the prearrangement of rides between customers and TNC Drivers/TNC Vehicles.

"Director" means the Director of Aviation or other official appointed by the Mayor to serve as the head of the Houston Airport System, or his or her designee.

"Effective Date" means the date of countersignature by the City Controller.

"FAA" means the Federal Aviation Administration or successor agency of the federal government that regulates airports and aviation.

"Pre-Match/Pre-Dispatch" means a feature of the Digital Network that prompts TNC Drivers in the TNC Staging Lot to begin heading toward the airport terminals a few minutes before TNC anticipates a pick-up request, for the purpose of minimizing TNC Driver idle time in the TNC Staging Lot and decreasing the time a customer would wait to be picked up.

"Regulations" means all applicable, federal, state, City, and other local laws, statutes, ordinances, rules, and regulations governing TNC and/or TNC Vehicles, including without limitation, the Texas Occupations Code, Title 14, Subtitle C, Chapter 2402 and the Texas Administrative Code, Title 16, Part 4, Chapter 95, HAS rules and regulations for the Airports, including TNC Rules.

"Re-Match" means a feature of the Digital Network that allows a TNC Driver who just completed an airport drop-off to receive a pick-up request without having to go to the TNC Staging Area.

"Service Animals" means dogs that are individually trained to do work or perform tasks for people with disabilities.

"TNC OI" means the operating instructions, titled as "OI Category III No. 14-02 Transportation Network Company Operations (TNC) at Houston Airport System (HAS) Airports", as may be amended from time-to-time.

"TNC Rules" means (a) the prohibited activities attached hereto and incorporated herein as **Exhibit A**, which may be amended by written agreement between the Director and TNC, and (b) the TNC OI.

"TNC Service" means the on-demand transportation services to and from the Airports which TNC and TNC Drivers are authorized to offer through TNC's Digital Network.

"TNC Staging Area" means the area at each of the Airports, designated by the Director, that is utilized for the staging of TNC Vehicles, as set forth in the TNC OI.

"TNC Driver" means the driver authorized by TNC to use the Digital Network at the Airports who have the TNC's app on and in use for the purpose of providing airport trips. TNC shall inform its TNC Drivers of the terms of this Agreement. TNC Drivers are independent contractors and are not subcontractors of TNC for any purpose.

"TNC Vehicle" means the personal vehicle, as defined in Chapter 2402 of the Texas Occupations Code, authorized by TNC to use the Digital Network at the Airports.

"TSA" means the Transportation Security Administration or successor agency of the federal government that regulates airports and aviation security.

ARTICLE II. TERM

- A. The Term of this Agreement (the "Term") shall commence on the Commencement Date, and, subject to the parties' respective termination rights under this Agreement, run for a period of five (5) consecutive years, and month to month thereafter.
- B. Either party may terminate this Agreement for convenience upon thirty (30) days' prior written notice.

ARTICLE III. TNC PRIVILEGES

- A. Use of Airports. The City grants TNC the right and privilege to provide TNC Service at the Airports subject to the Regulations, including, but not limited to, the TNC Rules.
- B. Rights of Ingress and Egress. TNC Drivers shall have the rights of ingress and egress on the roadways of the Airports, and other areas designated by the Director for TNC use, provided that such ingress and egress: (a) shall not impede or interfere with the operation of the Airports or the use of the Airports by its tenants, customers, service providers or employees; and (b) shall be subject, at all times, to the Regulations.
- C. Non-exclusivity. The rights and privileges granted herein are for the non-exclusive provision of TNC Services. Customers or patrons of the Airports may use other ground transportation services that may be authorized by the City to provide public transportation to and from the Airports.

ARTICLE IV. TNC OBLIGATIONS

- A. TDLR Permit. TNC shall provide Director an updated copy of TNC's permit from the Texas Department of Licensing and Regulation ("TDLR"), within thirty (30) days after receipt of a permit renewal, permit amendment, address change, or name change. If TDLR denies TNC's permit renewal or if TNC's permit lapses, TNC shall block TNC's Drivers access to the TNC's Digital Network.
- B. Compliance with Regulations. TNC and TNC Drivers shall comply with Regulations, including without limitation the TNC Rules, as may be amended from time-to-time. The failure of TNC or TNC Drivers to comply with TNC Rules will adversely affect the convenience and satisfaction of the public in its use of the Airports, and impair the efficiency of the Airports' operations, thereby damaging the City. The Director or City may issue violation notices for violation of TNC Rules or Houston Code of Ordinances to TNC Drivers. TNC will use its best efforts to promptly notify the City in writing of any material, on-airport violations by TNC Drivers to which it becomes aware.
- C. Enforcement of Regulations by TNC. TNC shall establish and enforce policies requiring compliance with the applicable provisions of this Agreement by TNC Drivers. City will notify TNC in writing of all violation notices that it issues for TNC Drivers and drivers for other TNCs, by submitting the name of the driver, vehicle make and model, license plate number, the nature of the violation, and a statement of the facts supporting the allegation of the violation. TNC agrees that, upon such notice, TNC will prohibit said TNC Driver from providing TNC Service at both Airports as follows:

- a. Level 1 Violations
 - i. First instance – Warning
 - ii. Second instance – permanent suspension.
- b. Level 2 Violations – upon first instance, permanent suspension.

For clarity, if a driver is issued a violation notice, City shall notify all transportation network companies operating at the Airports, and TNC agrees to suspend said driver regardless of which Digital Network was being used at the time of the violation.

- D. Airport Geofence. The Director shall determine the virtual perimeter for a geofence that shall border each of the Airports and the TNC Staging Areas as set forth in the TNC OI. The geofence shall be comprised of one or more polygons whose boundaries are formed by geographic coordinates for airport-owned and operated property. The Director, in his sole discretion, may adjust the boundaries of the geofence at either of the Airports as the airports develop. TNC shall establish, at its sole expense, the geofence and demonstrate its accuracy to the perimeter established by the Director. TNC shall ensure that TNC Drivers inside the geofenced area shall not be visible on the Digital Network as being available to accept customers.
- E. TNC Staging Area. TNC shall require TNC Drivers, while waiting to pick up customers, to use the TNC Staging Area that is designated by the Director at each of the Airports, as set forth in the TNC OI. The Director, in his sole discretion and upon 30 days' prior written notice, may change the location, size, or configuration of any TNC Staging Area.

While in the TNC Staging Area, TNC Drivers shall conduct themselves in accordance with the TNC Rules and shall not engage in activities that are unnecessary to, or inconsistent with, waiting to pick up a customer, including but not limited to car washing, performing vehicle maintenance, and non-TNC Service commercial activities. TNC Drivers shall not use public or employee parking lots, garages, roadways, or any other areas at the Airports for storage, parking, or idling of TNC Vehicles.

A maximum capacity level may be established for each designated TNC Staging Area by the Director. When the TNC digital platform determines that a TNC Staging Area is at maximum capacity the TNC will communicate to TNC Drivers outside of the TNC Staging Area and advise them from coming to the particular TNC Staging Area or parking on surrounding airport roadways.

- F. Pick-up and Drop-off Areas. TNC shall require TNC Drivers to use the pick-up and drop-off areas at each of the Airports that are designated by the Director for use by TNCs, as set forth in the TNC OI. The Director, in his sole discretion and upon 30 days' prior written notice, may change the location, size, or configuration of the pick-up and drop-off areas. TNC Drivers shall not create congestion in the pick-up and drop-off areas, on airport roads, or other areas of the Airports. TNC Drivers shall not accept any customers for pick-up other than those arranged through the Digital Network.
- G. Digital Identification. TNC shall require TNC Drivers to maintain, on his or her smartphone, "digital identification" while using the Digital Network. The digital identification will allow City, at any and all times, to confirm the following information for any TNC Driver using the Digital Network while at the Airports:
 - a. TNC Driver identity and color photo,
 - b. TNC Vehicle make, model and color,
 - c. TNC Vehicle License Plate number,
 - d. Proof of insurance in accordance with Chapter 1954 of the Texas Insurance Code, and

e. An electronic waybill in a form acceptable to the Director.

TNC and TNC Driver are prohibited from displaying an altered or fictitious electronic waybill at any time.

- H. Trade Dress. TNC shall require TNC Drivers to display prominently, in the front window of the TNC Vehicle, the trade dress of the TNC while providing TNC Services at the Airports.
- I. Pre-Match/Pre-Dispatch and Re-Match. Pre-Match and Re-Match are permitted features of the Digital Network at the Airports. TNC Drivers must immediately leave the designated drop-off areas after dropping off a customer. Linger by a TNC Driver at a curb or other area in anticipation of being re-matched with a new customer is not allowed and a violation of the TNC Rules; and TNC agrees to enforce the TNC Rules with such TNC Driver in accordance with Section D above. The TNC vehicle will also be subject to towing by the City or its contractor. The Director reserves the right to request either Pre-Match/Pre-Dispatch or Re-Match, or both features together, be discontinued due to emergencies, irregular operations, or any other event the Director determines to negatively affect operations. Upon 30 days prior written notice from the Director, TNC will immediately discontinue such feature or features. TNC will provide aggregate data on Pre-Match/Pre-Dispatch and Re-Match activity, as requested from time to time by the City, as needed.
- J. Point-of-Contact for TNC's Airport Operations. TNC shall designate a management-level TNC employee to serve as the point-of-contact for TNC's operations at the Airports. Such person must be an outstanding, highly qualified and experienced manager or supervisor of comparable retail operations, vested with full power and authority to accept service of all notices provided for herein, except those required under Article XX, regarding TNC's operations at each of the Airports and compliance of the Agreement and shall be available by telephone or email during business hours to address the concerns and needs of the City, and available to address emergency situations twenty four hours a day. TNC shall provide the Director with the current office and business cellular telephone numbers and email address of TNC's manager.
- K. Future Innovations. TNC and Director shall cooperate to identify and implement on a mutually agreeable schedule new programs, services, and operational changes that improve customer service and/or operational efficiency.

ARTICLE V. SERVICE STANDARDS

- A. General Service Standards. TNC shall approve only such TNC Drivers as will assure a high standard of service to the public. City reserves the right to inform TNC that any TNC Driver or TNC Vehicle does not meet the published standards required by the State, and TNC agrees to take remedial actions.
- B. Non-discrimination. TNC shall furnish all TNC Services authorized under this Agreement, on a fair, equal, and non-discriminatory basis to all persons or users thereof and shall not refuse to convey a customer, unless such customer is deemed in the reasonably exercised judgment of the TNC Driver, airport personnel, or law enforcement officer to be a threat to the safety and welfare of the other customers, TNC Drivers, or TNC Vehicles.
- C. Accommodation of Customer Disabilities. In addition to any Regulations regarding TNCs meeting the needs of those with disabilities, TNC shall require TNC Drivers to provide assistance to handicapped, disabled, blind, and elderly customers in boarding TNC Vehicles, to the fullest extent practicable and in

accordance with applicable Regulations. If a TNC Driver cannot provide a customer a requested accessible ride, the TNC will identify an alternative transportation arrangement for the customer where reasonably available.

- D. Service Animals. TNC shall require TNC Drivers to reasonably accommodate Service Animals. Should exposure to a Service Animal cause a TNC Driver an undue health burden, the TNC Driver shall provide an alternate TNC Driver for the customer and Service Animal.
- E. Customer Complaints. TNC shall develop, implement, and maintain an electronic system whereby customers may file complaints regarding TNC, TNC Drivers, or TNC Vehicles. All customer complaints received by the HAS or referred to TNC by HAS shall be answered in writing by TNC within 10 days from receipt of complaint or notice. A written copy of TNC's response shall be delivered to HAS within the 10-day period.
- F. Credit Cards. TNC shall accept at least three (3) major debit/credit cards.
- G. Emergency Circumstances. TNC shall use commercially reasonable efforts to minimize negative impact to passengers and the Airport(s) in the event of an emergency or threat of emergency that it actually becomes aware of, (including by notice from the Director) , such as an evacuation of a terminal or events that affect or compromise the security of the Airport(s) or its surrounding lands, or an extreme weather-related emergency and shall work with the Director to provide emergency operations assistance."
- H. Wayfinding, Signage and Advertising.

Passenger Experience. In consultation with the TNC and applying the recommendations set forth in the American Association of Airport Executives August 2018 whitepaper entitled "Establishing a Common Standard for TNC Wayfinding at Airports", the City shall update and install all necessary and appropriate passenger wayfinding signage. Such signage shall be installed in logical decision points for passengers disembarking aircraft and transitioning to appropriate pickup or drop off areas ("Designated Areas"). Before the City relocates any Designated Areas in accordance with the terms of this Agreement, it shall have first relocated all wayfinding signage.

TNC Driver Experience. In consultation with the TNC and applying the recommendations set forth in the American Association of Airport Executives August 2018 whitepaper entitled "Establishing a Common Standard for TNC Wayfinding at Airports", the City shall update and install all necessary and appropriate TNC Driver wayfinding signage to pick up, drop off, and TNC Staging Areas. Such signage shall be installed in logical decision points for TNC Drivers entering the Airports. Before the City relocates any pickup, drop off, and TNC Staging Areas in accordance with the terms of this Agreement, it shall have first relocated all applicable wayfinding signage.

Advertising. TNC and TNC Drivers shall not install and maintain signs in and about the Airports or on TNC Vehicles to advertise its services and/or other services or products without the prior written approval of the Director, in his sole discretion. Upon approval of the Director, approved advertising may be installed so long as such advertising is compliant with Regulations. TNC may, at its sole expense, contract with the HAS-authorized airport advertising concessionaire, to advertise at the Airports.

ARTICLE VI.
AIRPORT CONDITION AND CHANGES TO THE AIRPORTS

- A. "As-Is Condition. TNC accepts the pick-up and drop-off areas and TNC Staging Areas and the Airports in their present condition and "as-is", without representation or warranty of any kind, and subject to Regulations.
- B. Changes to the Airports. TNC acknowledges and agrees that: (a) City shall have the right, at all times, to change, alter and expand the Airports, including the terminals, roadways and designated pick-up, drop-off and TNC Staging Areas; and (b) City has made no representations, warranties and/or covenants to TNC regarding the design, construction, customer or automobile traffic, or views of the Airports. Without limiting the generality of the foregoing, TNC acknowledges and agrees that: (y) the Airports may from time to time undergo renovation, construction and other Airport modifications; and (z) City may from time to time adopt rules and regulations relating to security or other operational matters that may affect TNC's business. City agrees to provide reasonable advance notice to TNC of any such modifications that may affect TNC's business or TNC Drivers' ingress and egress across airport properties. TNC expressly waives any and all claims for damages of any kind, including but not limited to, loss of revenues or profits as a result of the interruption of business of TNC that may arise as a result of such changes to the Airports.
- C. Planned HOU Improvements. The Parties acknowledge a desire to make certain improvements to the facilities used by TNC Drivers at HOU ("HOU Improvements"). The planned HOU Improvements shall be at the City's cost and consist of (i) repaving and lighting upgrades to the TNC Staging Lot, and (ii) improvements to the TNC Pick-up and Drop-off Areas including installation of new signage to direct passengers to the TNC Pick-up Area and relocation, if feasible, from Zone 5 to Zone 4. The Director or his representative will notify TNC, in writing, of the completion of the HOU Improvements.

ARTICLE VII.
DIGITAL ID AND VEHICLE TRACKING

The Director reserves the right to track TNC Vehicles at the Airports at all times and TNC agrees to provide access to TNC Vehicle locations and movements. TNC shall work with assigned HAS personnel and/or a third-party company that HAS shall designate to develop and implement, at TNC's sole expense, a TNC Vehicle tracking protocol, consistent with the Data Interface Requirement, detailed in **Exhibit B**. TNC Vehicle tracking shall be established as follows:

1. Unique Trip Number. When a TNC Driver connected to the Digital Network in order to provide TNC Services enters airport property by crossing the Airport Geofence the TNC Driver's trip shall be identified electronically by a unique trip number ("Trip Number"). The Trip Number shall be linked by the TNC to the TNC Driver and TNC Vehicle license plate number in a manner that allows HAS to verify trips for enforcement and operations purposes. HAS shall periodically audit TNC's records with respect to its operations at the Airports as set forth in Article IX.B. Audit of Books and Records herein.
2. Tracking. All TNC Drivers shall be tracked at various stages of travel during their trips within the Airports. Upon (i) entry into the Airport Geofence, (ii) entry into the TNC Staging Area, (iii) exit from the TNC Staging Area, (iv) customer pick-up, (v) customer drop-off, and (vi) exit from the Airport Geofence, TNC shall provide electronically and in real time the following data:
 - a. TNC identification,

- a. TNC identification,
- b. Trip Number,
- c. TNC Driver unique identifier,
- d. TNC Vehicle license plate number,
- e. TNC Vehicle make, model, and color,
- f. TNC transaction type,
- g. Date and time,
- h. Geographical location, and
- i. Whether there is a customer in the TNC Vehicle.

ARTICLE VIII. FEES, PAYMENTS AND REPORTS

- A. Fees. The following fees shall be collected by the City as of the Commencement Date:

IAH Fees. TNC shall pay to the City, for the privilege of operating at IAH, an amount equal to THREE DOLLARS AND NO CENTS (\$3.00) per customer pick up commencing anywhere inside the geofence at IAH ("IAH Pick-up Fee"). TNC shall pay to the City an amount equal to THREE DOLLARS AND NO CENTS (\$3.00) per customer drop-off occurring anywhere inside the geofence at IAH ("IAH Drop-off Fee").

HOU Fees. Prior to the City making the planned HOU Improvements, TNC shall pay to the City, for the privilege of operating at HOU, an amount equal to ONE DOLLAR AND 25 CENTS (\$1.25) per customer pick up commencing anywhere inside the geofence at HOU ("HOU Pick-up Fee") and an amount equal to ONE DOLLAR AND 25 CENTS (\$1.25) per customer drop-off occurring anywhere inside the geofence at HOU ("HOU Drop-off Fee"). On the first day of the month following written notification by the Director or his representative of the completion of the HOU Improvements, TNC shall pay to the City, for the privilege of operating at HOU, a HOU Pick-up Fee of TWO DOLLARS AND 75 CENTS (\$2.75) and a HOU Drop-off Fee of TWO DOLLARS AND 75 CENTS (\$2.75).

Payment of all Pick-up and Drop-off fees ("Fees") shall be made to the City no later than the fifteenth (15th) day of each calendar month. In the event the City initiates an access fee to all vehicles entering the Airports, such access fees collected from TNC Drivers (or TNC) will be credited against the Fees due from TNC.

- B. Payments. All electronic payments by wire transfer to City shall be sent to the following, unless later changed by written notice from HAS Finance:

BANK NAME:	JP Morgan Chase
BANK ADDRESS:	707 Travis Street, 9 North Houston, TX 77002 Mail Code: TX2-N026
ABA ROUTING NUMBER:	111000614 - ACH 021000021 - Wire
SWIFT CODE:	CHASUS33
ACCOUNT NUMBER:	001-03333978

ACCOUNT NAME: City of Houston Aviation System Deposits

ADDRESS: 16930 John F. Kennedy Blvd.
Houston, TX 77032

REMITTANCE ADVICE DETAILS: HAS-WireTransfers@houstontx.gov

CONTACT NUMBERS: Office: 281-233-1387
Fax: 281-233-1574

The lockbox address to receive paper checks is as follows:

Houston Airport System
AKS-COH
PO Box 204172
Houston, Texas 77216-4172

Postage, delivery charges or wire/transfer fees for payments must be paid by TNC.

Any monies not paid on or before the 5th day following that due date may bear interest at the highest rate allowed by law until paid and entitle the City to charge TNC an administrative processing charge in an amount equal to five percent (5%) of the amount then due. The administrative processing charge is agreed by the Parties to be liquidated damages and to constitute a reasonable estimate of the extra administrative costs and expenses expected to be incurred by the City in handling a delinquency.

- C. TNC Activity Report. TNC shall, no later than the fifteenth (15th) day of each calendar month, submit to the City a report, in a form mutually agreeable by the Parties, detailing the number of pick-ups and drop-offs made at the Airports, along with other pertinent information, in the preceding calendar month ("TNC Activity Report"). The TNC Activity Report shall include the number of pick-ups and drop-offs made, listed on a daily basis, along with other mutually agreed information. If TNC fails to timely submit the monthly TNC Activity Report to the City within 3 days after the due date, TNC shall pay the City a late report charge equal to ten dollars (\$10.00) per day that each monthly TNC Activity Report is past due as liquidated damages.
- D. Liquidated Damages. City and TNC recognize that the damages which City will suffer as a result of TNC's failure to timely submit Fees and any other payment amounts under this Agreement or monthly TNC Activity Reports are difficult or impracticable to ascertain and agree that such late charges and interest are a reasonable approximation of the damages which City will suffer in the event of TNC's late payment or reporting. This provision shall not relieve TNC from payment of amounts due hereunder at the time and in the manner as specified in this Agreement.
- E. Payment Disputes. If a dispute arises between City and TNC with respect to any obligation or alleged obligation of the TNC to pay money to the City, the TNC shall make the payment under protest and the payment under protest by the TNC of the amount claimed by the City to be due shall not waive any of TNC's rights, or if any court or other body having jurisdiction determines that all or part of the protested payment was not due, then the City shall promptly reimburse the TNC any amount determined as not due. In the event that TNC makes a payment under protest, such payment shall be accompanied by a formal protest, in writing, setting forth the grounds on which TNC protests such obligation or alleged obligation. Failure by TNC to protest within fifteen (15) days from the payment due date shall be deemed a waiver by the TNC to protest the amount in the future.

**ARTICLE IX.
ACCOUNTING RECORDS**

- A. Record Retention. TNC shall keep true, accurate, and complete books and records, during the full Term of this Agreement and any extension or renewal thereof. TNC shall maintain said books and records for additional periods, until an audit of this Agreement is complete, and all issues arising from such audit are resolved, or not less than three (3) years following expiration of this Agreement, whichever is later, but in no event shall TNC be required to maintain books and records for a period longer than seven (7) years. TNC shall make all such books and records available to the City within twenty (20) days of receipt of a written request from the City, or TNC shall pay the expenses (including without limitation, travel, lodging, and meals) incurred by the City to examine the books and records in another location.
- B. Audit of Books and Records.
1. Upon written notice at any time or times during the Term of this Agreement or within three (3) years after the end of any Contract Year, the City or its authorized representatives may inspect, reproduce, and/or audit the books and records of TNC relating to payments and reports under Article VIII herein but in no event more than one (1) time per calendar year. TNC shall use commercially reasonable efforts to make such books and records available in electronic format. If, as a result of such inspection and audit, it is established that additional Fees are due the City, TNC shall, upon written notice by the City, pay such additional Fees, plus interest, calculated at the Contract Rate, within ten (10) days of written notice. If, on the other hand, such audit determines that TNC has overpaid the Fees due the City, the City shall refund to TNC the amount of such overpayment. Except at the end of the Term of this Agreement, a refund by the City under this Section shall be in the form of a credit against future Fees.
 2. If the results of such audit reveal a discrepancy of more than ten percent (10%) between Fees reported by TNC and Fees as determined by audit, TNC shall, in addition to the amount of the discrepancy, pay liquidated damages equal to ten percent (10%) of the amount of discrepancy found pursuant to such audit.

**ARTICLE X.
INSURANCE REQUIREMENTS**

- A. TNC shall, at its cost and expense, throughout the Term obtain and maintain in full force and effect the policies of insurance applicable to TNC's as set forth in Chapter 2402 of the Texas Occupations Code.
- B. TNC shall provide the City with certificates of insurance demonstrating the same, to be held by HAS, during the Term of this Agreement.

**ARTICLE XI.
INDEMNITY AND LIMITATION OF LIABILITY**

RELEASE AND INDEMNIFICATION

- A. RELEASE. EXCEPT FOR THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TNC AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE,

OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. TNC HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS ARTICLE XI. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

B. INDEMNIFICATION. TNC SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "CITY"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS"), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF

1. A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY TNC, ITS OFFICERS, AGENTS, EMPLOYEES, TNC DRIVERS, CONTRACTORS, SUCCESSORS OR ASSIGNS, (COLLECTIVELY THE "TNC PARTIES")
2. A FALSE REPRESENTATION OR WARRANTY MADE BY THE TNC PARTIES IN THIS AGREEMENT,
3. THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE TNC PARTIES IN CONNECTION WITH THIS AGREEMENT, THE OPERATION OF THE SERVICE, OR THE USE OF THE AIRPORT.

CLAIMS TO BE INDEMNIFIED UNDER THIS ARTICLE INCLUDE, WITHOUT LIMITATION, CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKER'S COMPENSATION CLAIMS.

TNC'S OBLIGATIONS UNDER THIS ARTICLE EXPRESSLY INCLUDE CLAIMS TO THE FULL EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, EXCLUDING ONLY CLAIMS CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

TNC SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR (4) YEARS AFTER THIS AGREEMENT TERMINATES FOR THE ABOVE REFERENCED MATTERS.

C. Indemnification Procedures – In General.

1. Notice of Claims. If the City receives notice of any claim or circumstances which could give rise to an indemnified loss, the City shall give written notice to TNC within one hundred and eighty (180) days. The notice must include the following:
 - (a) a description of the indemnification event in reasonable detail;
 - (b) the basis on which indemnification may be due; and
 - (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the one hundred and eighty (180)-day period, it does not waive any right to

indemnification except to the extent that TNC is prejudiced, suffers loss, or incurs expense because of the delay.

2. Defense of Claims.

- (a) Assumption of Defense. TNC may assume the defense of the claim at its own expense with counsel chosen by TNC that is reasonably satisfactory to the City Attorney. TNC shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within ten (10) days after receiving written notice of the indemnification request, TNC must advise the City as to whether or not it will defend the claim. If TNC does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- (b) Continued Participation. If TNC elects to defend the claim, the City may retain separate counsel at its sole expense to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

**ARTICLE XII.
TAXES**

- A. Taxes. TNC will pay, or cause to be paid, all applicable ad valorem, use and occupancy, and occupation taxes, excises, levies, assessments, and other charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind which are assessed, levied, or imposed from and after the Effective Date by any public or quasi-public authority (collectively "Taxes") upon or with respect to the income received by or for the account of TNC for any use or occupation of the Airport as and when they become due. TNC shall deliver to City evidence of timely payment of all Taxes, upon request.
- B. Tax Contest. TNC may, at TNC's expense, contest the validity or amount of any Tax for which TNC is responsible, in which event, the payment thereof may be deferred, as permitted by Regulations, during the pendency of such contest, if diligently prosecuted. Nothing herein contained, however, shall be construed to allow any Tax to remain unpaid for such length of time as would permit any part of City property to be sold or seized by any governmental authority for the nonpayment of the same. If at any time, in City's reasonable judgment, it shall become necessary to do so, TNC shall, at City's written request, under protest if so determined by TNC, pay such amount of the Taxes as may be required to prevent a sale or seizure of City property or foreclosure of any lien created thereon by such item. TNC shall promptly furnish City with copies of all proceedings and documents with regard to any tax contest, and City may, at its expense, participate therein.

**ARTICLE XIII.
ENVIRONMENTAL COMPLIANCE**

- A. TNC shall strictly comply with all federal, state, City, and local statutes, laws, ordinances, rules and regulations, now or hereafter in effect, and as amended from time to time, related to pollution or the protection of the environment, including those related to emissions, discharges, releases or threatened releases of or the use, handling, treatment, storage, discharge, disposal, or transportation of hazardous materials or toxic substances ("Environmental Laws") applicable to TNC or this Agreement. TNC shall comply with all Airport Environmental Policies/Procedures. TNC shall not knowingly use, store, generate,

treat, transport or dispose of any hazardous, toxic, or regulated substances or waste on or near the Airport except in strict compliance with applicable Environmental Law, and without first obtaining prior written approval from the Director and obtaining all required permits and approvals from all authorities having jurisdiction over TNC's operations. TNC shall promptly notify the City of any spills, releases, or other discharges of hazardous, toxic or regulated substances by TNC at the Airport and promptly abate, remediate, and remove any the same in accordance with applicable Environmental Laws. TNC shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries, or notices relating to the environmental condition of the Airport, or any alleged material noncompliance with Environmental Laws by TNC at the Airport within ten (10) days after such documents are generated or received by TNC. **IN ADDITION TO ANY OTHER INDEMNITIES IN THIS AGREEMENT, TNC SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, ASSIGNS, AND CONTRACTORS FROM ANY AND ALL CLAIMS (INCLUDING REASONABLE ATTORNEY'S FEES, LITIGATION AND INVESTIGATION EXPENSES, AND COURT COSTS) TO THE EXTENT ARISING OUT OF OR RESULTING FROM TNC'S USE, HANDLING, TREATMENT, STORAGE, DISPOSAL, DISCHARGE, OR TRANSPORTATION OF HAZARDOUS, TOXIC OR REGULATED SUBSTANCES ON THE AIRPORT, THE VIOLATION OF ANY ENVIRONMENTAL LAW BY TNC PERTAINING TO ITS USE OR OCCUPANCY OF THE AIRPORT , OR THE FAILURE OF TNC TO COMPLY WITH THE TERMS, CONDITIONS, AND COVENANTS OF THIS ARTICLE.** The rights and obligations set forth in this paragraph shall survive the termination of this Agreement.

ARTICLE XIV. MODIFICATION AND ASSIGNMENT

- A. Modification. No officer or employee of the City shall have the right to extend, modify, or change the terms hereof except by authority of an ordinance of the City Council.
- B. Assignment.
1. Except as explicitly authorized in this Article, TNC shall not assign, sell, convey, transfer, mortgage or pledge this Agreement or any part thereof without the Director's prior written consent. Any restrictions, which form a part of any written consent granted, shall be incorporated into a written instrument and shall form a part of this Agreement. Due to the significance of this Agreement and the nature of the services to be provided hereunder, the Director shall have the right in his sole discretion, to withhold his consent.
 2. Upon the prior written consent of the Director and TNC's assignment of this Agreement, TNC shall remain liable for the full, faithful and complete performance of this Agreement.
 3. Provided TNC is not in default pursuant to the terms of this Agreement and written notice is given to the Director, TNC may assign this Agreement to an affiliate of TNC without the Director's consent.
 4. Any assignment of this Agreement permitted under the terms hereof, shall be on the condition that the assignee accepts and agrees to all of the terms, conditions, and provisions of this Agreement, and agrees to accept and discharge all of the covenants and obligations of TNC hereunder, including but not limited to, the payment of all sums due and to become due by TNC under the terms hereof.
 5. TNC shall provide the City with a copy of any assignment of this Agreement to which TNC is a party within twenty (20) days of the effective date of the assignment.

**ARTICLE XV.
TNC DEFAULT AND CITY REMEDIES**

- A. TNC Defaults. Each of the following events shall be a TNC Default:
1. TNC fails to timely pay when due the City the Fees, and such failure continues for ten (10) days after the date of receipt of notice from the City of such non-payment.
 2. TNC tenders more than one check in payment of Fees or charges under this Agreement which is not paid upon presentment to TNC's bank.
 3. TNC makes any assignment of its property for the benefit of Creditors, or files a voluntary petition in bankruptcy, or has an involuntary petition in bankruptcy filed against it which is not discharged within ninety (90) days from the date of filing.
 4. TNC fails to perform any of its material obligations under this Agreement, other than a failure to pay Fees or other amounts due the City, and such failure continues for thirty (30) days after receipt of written notice from the City.
 5. TNC falsifies or makes a material misrepresentation in its operations, or on any reports or other documentation required to be made by TNC under this Agreement or Regulations.
- B. Remedies upon TNC Default. If a TNC Default occurs, City may at any time thereafter and without waiving any other rights hereunder or available to City at law or in equity (City's rights being cumulative), do any one or more of the following:
1. City may terminate this Agreement by giving TNC written notice thereof, in which event this Agreement and the rights and privileges hereby created and all interest of TNC, and all parties claiming by, through, or under TNC, to the Agreement shall automatically terminate upon the effective date of such notice.
 2. City may exercise any other right or remedy available to City under this Agreement, or at law or in equity.
- C. TNC Liability Continues. Termination of this Agreement under this Article shall not relieve TNC of its liability and obligations under this Agreement and such liability and obligations shall survive any such expiration or termination.
- D. In addition to any other right that the City may have, the Director at all times reserves the right to prohibit TNC Driver from servicing the Airport.

**ARTICLE XVI.
CITY DEFAULT AND TNC REMEDIES**

- A. City Default. The City shall be in default under this Agreement in the event the City fails to substantially perform any material term, covenant, or condition of this Agreement, and such default is not cured by the City within thirty (30) days after receipt of written notice from TNC.

- B. TNC Remedies. Upon the happening of a City Default, and the passage of the time periods described, should the City fail to cure such default within thirty (30) days from the receipt of written notice thereof, TNC may, in addition to other rights or remedies available under Regulations, terminate this Agreement by giving written notice thereof to the City at least thirty (30) days in advance of the date upon which termination is to be effective; provided, however, should the nature of the default be such that it is curable, but not curable within such thirty (30) day period, the City shall be deemed to have cured such default, if within such thirty (30) day period it shall commence performance and thereafter diligently prosecute the same to completion.
- C. TNC's Right to Terminate for Other Events. Provided that TNC is not itself in default under this Agreement, TNC may terminate this Agreement upon the happening of any one or more of the following events by giving the City written notice at least thirty (30) days prior to the effective date of termination:
1. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereto, in such a manner as to substantially restrict TNC for a period of at least ninety (90) days from operating thereon.
 2. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restricting the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.
 3. The inability of TNC or its customers to use, for a period of ninety (90) consecutive days, the Airport or any substantial part of it due to enactment or enforcement of any Regulations, or because of an event of Force Majeure.
 4. The permanent abandonment of the Airport by the City.
- D. Fees Due. In the event TNC terminates this Agreement under this Article, Fees due hereunder shall be payable through and up to date of termination.

ARTICLE XVII. CERTAIN FEDERAL REQUIREMENTS

- A. TNC agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If TNC transfers its obligation to another, the transferee is obligated in the same manner as TNC.
- B. During the performance of this Agreement, TNC, for itself, its assignees, and successors-in-interest, agrees as follows:
1. Compliance with Regulations. TNC (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth in Section XXII(f) ("Nondiscrimination Acts and Authorities"), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
 2. Nondiscrimination. TNC, with regard to any work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of

subcontractors, including procurements of materials and leases of equipment. TNC will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment. In all solicitations for work to be performed at the Airports, either by competitive bidding or negotiation made by TNC for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by TNC of the subcontractor's or supplier's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 4. Information and Reports. TNC will provide all information and reports required by the Nondiscrimination Acts and Authorities and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Director or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of TNC or its contractor is in the exclusive possession of another who fails or refuses to furnish the information, TNC will so certify to the Director or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
 5. Sanctions for Noncompliance. In the event of TNC's or its contractor's noncompliance with the non-discrimination provisions of this Agreement, the Director will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - (i) Withholding payments to TNC or its contractor under this Agreement or the TNC's contract with such contractor until TNC or its contractor complies; and/or
 - (ii) Cancelling, terminating, or suspending this Agreement or TNC's contract with such contractor, in whole or in part.
 6. Incorporation of Provisions. TNC will include the provisions of paragraphs (1) through (6) in every subcontract for work at the Airports, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities and directives issued pursuant thereto. TNC will take action with respect to any subcontract or procurement as the Director or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if TNC becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, TNC may request the City to enter into any litigation to protect the interests of the City. In addition, TNC may request the United States to enter into the litigation to protect the interests of the United States.
- C. TNC for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, if applicable, that in the event facilities are constructed, maintained, or otherwise operated by TNC on property at the Airports for a purpose for which an FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, TNC will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- D. TNC, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, if applicable, that, (i) no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the provision of TNC Services; (ii) in the construction of any improvements on, over, or under property at the Airports, and the furnishing of services thereon, no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) TNC will use the Airports in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Authorities.
- E. In the event of breach of any of the above nondiscrimination covenants, the Director shall have the right to terminate this Agreement. Further, TNC shall include the provisions of 49 C.F.R. Part 21 and 49 C.F.R. Part 21, Appendix C(a)(1) as amended from time to time, in subcontracts it enters into for work at the Airports pursuant to this Agreement.
- F. During the performance of this Agreement, as applicable, TNC, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d *et seq.*, 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
 - 49 C.F.R. Part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. Section 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); 49 C.F.R. Part 27 and 28 C.F.R. Parts 35 and 36;
 - The Age Discrimination Act of 1975, as amended (42 U.S.C. Section 6101 *et seq.*) (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982 (49 U.S.C. Section 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987 (P.L. 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. Sections 12131–12189) as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;

- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. Section 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. Section 1681 *et seq.*).
- G. TNC acknowledges and agrees that the provisions of all Federal-Aid Airport Program Grant Leases with the City that are applicable to the Airport are by reference made a part hereof to the same extent as though copied herein at length.
- H. Nothing herein shall be deemed to grant TNC any exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended, within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended or supplemented.
- I. This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States of America relative to the operation and maintenance of the Airport, including but not limited to the terms of the sponsor assurances that are incorporated into grants provided to the City pursuant to the Airport Improvement Program (49 U.S.C. Section 47101 *et seq.*).

ARTICLE XVIII. LAWS, AGREEMENTS AND GRANT CONDITIONS

- A. Compliance with Regulations. TNC shall comply with all Regulations governing TNC, or the operation of its TNC Services. The City may adopt and enforce reasonable rules and regulations, which TNC agrees to obey, with respect to the use of the Airport and its appurtenances, together with all facilities, improvements, equipment, and services of the Airport, for the purpose of providing for safety, good order, good conduct, sanitation, and preservation of the Airport and its facilities; provided that such rules and regulations shall be consistent with safety and with rules, regulations, and orders of the FAA or TSA; and provided, further that such are not inconsistent with the provisions of this Agreement, or other agreements with TNC at the Airport, or the procedures prescribed, or approved from time-to-time by the FAA, or the TSA, or their successors in duties, with respect to the operation of the Airport.
- B. Nonexclusive Rights. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by the Federal Aviation Administration Authorization Act of 1994, as amended.

- C. Airport Security. TNC shall comply with and cause its TNC Drivers to comply with all present and future laws, rules, regulations, or ordinances promulgated by the City, State, or the Federal Aviation Administration, Transportation Security Administration, or other governmental agencies related to the security of the Airport, including, without limitation, the Transportation Security Regulations set forth in 49 CFR Chapter XII. **TNC SHALL BE SOLELY AND FULLY RESPONSIBLE FOR, AND SHALL INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, ASSIGNS, AND CONTRACTORS HARMLESS FROM AND AGAINST ANY FINES OR PENALTIES IMPOSED ON THE CITY AS A RESULT OF ANY BREACH OF AIRPORT SECURITY BY TNC, OR ITS TNC DRIVERS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, ASSIGNS AND SUPPLIERS.**
- D. Grant Assurances. This Agreement is subject to the provisions of any agreement made between City and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the FAA's Airport Improvement Program, or in order to impose and use Passenger Facilities Charges ("PFCs") under 49 U.S.C. Section 40117 or any successor thereto.
- E. Amendment. In the event that the FAA, TSA, or other governmental authority of competent jurisdiction, shall require any modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport to use or impose Passenger Facility Charges, or if it is necessary to modify this Agreement to comply with the requirements of Regulations, including regulations, orders and decisions of the FAA or TSA, City shall notify TNC in writing. If the Parties are unable to agree upon and execute a suitable amendment within the time frame required by the governmental authority, TNC agrees that City may unilaterally modify this Agreement, upon advice of its legal counsel, as may reasonably be required to obtain such funds or comply with Regulations. Nothing herein shall preclude TNC from contesting such orders or decisions, but TNC shall abide by the unilateral modification by City until such time if any as such governmental authority's order or decision is stayed, rescinded or invalidated as long as such stay, rescission or invalidation remains in effect. In no event will TNC be required, pursuant to this subsection, to pay Fees greater than specified herein.

ARTICLE XIX. FORCE MAJEURE

- A. The failure of a party to perform its obligations hereunder shall be excused to the extent, and for the period of time, such failure is caused by the occurrence of an event of Force Majeure. Force Majeure shall mean acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, without limitation: Acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labor; epidemics, civil disturbances, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery. The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by facsimile transmission or telephone confirmed promptly thereafter in writing and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible. Nothing contained herein shall be construed to require a party to settle a strike or other labor dispute against its will.

**ARTICLE XX.
NOTICES AND CONTRACT ADMINISTRATION**

- A. Notices. Any notice required to be given hereunder must be in writing and shall be given by depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section; or overnight courier of general use in the business community of Houston, Texas. Notice given in accordance with this section shall be deemed delivered and effective on the earlier of actual receipt or three calendar-days next following deposit thereof in accordance with the requirements above. A party may, by giving written notice to the other, change the address at which its notices are to be delivered.

Notices to the City shall be sent to the following address:

Director of Aviation
Houston Airport System
16930 John F. Kennedy Blvd
Houston, Texas 77032

Notice to TNC shall be sent to the following address:

Lyft, Inc.
c/o Miranda Scott, Director, Airport Business Development
185 Berry Street, Suite 5000
San Francisco, CA 94107
w/ Copy to Legal Department
w/ electronic copy to legalnotices@lyft.com

- B. Contract Administrator. The Airport Landside Operations Manager; Houston Airport System; 16930 John F. Kennedy Blvd; Houston, Texas 77032; will act as the contact point between the City and TNC and is designated as the Contract Administrator for the City. The Contract Administrator shall be authorized to act on behalf of the City to organize, schedule, coordinate work processes, and review and approve projects for this Agreement. The Contract Administrator shall endeavor to resolve questions, expedite decisions, and facilitate management of all aspects of this Agreement.

**ARTICLE XXI.
MISCELLANEOUS**

- A. Approvals, Consents and Notices. All approvals, consents and notices called for in this Agreement must be in writing and signed by the party to be charged.
- B. National Emergencies. This Agreement shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during a time of war or national emergency.
- C. Relationship of Parties. TNC is, and shall be, an independent contractor hereunder and shall control all ways, means and details incident to the performance of its obligations under this Agreement. Except as

expressly stated herein, nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto. TNC's Employees and contractors are not employees of the City, are not subject to the personnel policies of the City, and do not participate in the benefits which accrue to City employees.

- D. Jurisdiction and Venue. This Agreement is made under and shall be governed by the laws of the State of Texas. Any and all disputes arising under this Agreement, which cannot be administratively resolved, shall be determined according to the laws of the State of Texas, without regard to conflicts of laws principles. Venue for any such dispute, either administrative or judicial, shall be proper and lie exclusively in Travis County Texas.
- E. Gratuities. The City may terminate this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by TNC or any agent or representative to any City official or employee with a view toward securing favorable treatment with respect to the performance of this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover from TNC the amount of the cost incurred by TNC in providing such gratuities.
- F. Prohibited Interests. No member, officer, or employee of the City during his or her tenure, and for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or its proceeds.
- G. Nonwaiver of Rights. No waiver of default by either party of any terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other party.
- H. Headings. The headings of the articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- I. Severability of Provisions. If any provisions of this Agreement are held invalid, illegal, or unenforceable, such provisions shall be severed and the remainder shall remain in force and effect and construed to conform to the intent of the parties.
- J. Liability of Agents and Employees. No member, officer, agent, director or employee of the City shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.
- K. Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the authorized successors and assigns of the parties hereto where permitted by this Agreement.
- L. Warranty of Authority. Each party warrants and represents to the other that the person signing this Agreement on its behalf has been duly authorized and empowered to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of such party, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditor's rights, or with respect to the City, governmental immunity under the Constitution and laws of the State of Texas. TNC shall furnish to the Director certified copies of resolutions of the Directors, By-laws, or other evidence of authority within thirty (30) days from the date of execution hereof.

- M. Time of the Essence. Time is of the essence in this Agreement.
- N. Waiver of Attorney's Fees. Each party waives any and all rights under law or equity to seek or recover attorney's fees from the other party in any civil or administrative litigation or dispute resolution proceeding for breach of this Agreement or to enforce any provision of this Agreement.
- O. Texas Public Information Act. TNC acknowledges that City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement, and documents related to this Agreement, which are in City's possession, or to which City has access, are presumed to be public and the City may release these records to the public unless an exception described in the Public Information Act applies to a document. If TNC does not desire proprietary information to be disclosed, each page and section containing proprietary information must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure; provided, however, TNC shall be solely responsible to justify its confidentiality claims to the Texas Attorney General.
- P. Interpretations. In this Agreement and any certificate or other document delivered pursuant hereto, unless otherwise expressly provided herein or therein, the following rules of interpretation shall apply:

Headings and subheadings are for convenience only and do not affect the interpretation of an agreement.

Words importing the singular include the plural and vice versa and the masculine, feminine, or neuter gender shall include all genders. The word "or" is not exclusive.

The words "hereof," "herein," and "hereunder" and words of similar import when used in any agreement shall refer to such agreement as a whole and not to any particular provision of such agreement.

Any reference to an agreement shall include a reference to each exhibit, annex, schedule, and other attachment thereto.

Any reference in an agreement to an Article, Section, Clause, subsection, sub-clause, paragraph, party, Exhibit, Annex, or Schedule is a reference to that Section, Clause, subsection, sub-clause, or paragraph of, or that party, Exhibit, Annex or Schedule to, such agreement unless otherwise specified.

Any reference to an agreement or document is to such agreement or document as amended, varied, supplemented, replaced, notated, or modified from time to time in accordance with the terms of such agreement or document.

Any reference to any Regulations shall be construed so as to include such Regulations as amended, modified, extended, reenacted, re-designated or replaced from time to time.

A reference to a person or entity includes that person's or entity's successors and permitted assigns.

The term "including" shall mean "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided.

Accounting terms shall have the respective meanings given to them under generally accepted accounting principles in the United States ("GAAP").

References to "days" shall mean calendar days and references to a time of day shall mean such time in Houston, Harris County, Texas.

This Agreement is the result of negotiations among the parties and has been reviewed by each party and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against any of them.

References to any condition or any representation by any party being to the (i) best knowledge of such party shall be deemed to be to the best knowledge of an authorized officer of such party after due inquiry and (ii) knowledge of such party shall be deemed to be to the knowledge of an authorized officer of such party.

- Q. Disputes. Any and all disputes arising under this Agreement, which cannot be administratively resolved, shall be determined according to the laws of the State of Texas, and TNC agrees that the venue of any such dispute, either administratively or judicial, shall be in Travis County, Texas. TNC agrees as a condition of this Agreement that notwithstanding the existence of any dispute between the parties, insofar as is possible under the terms of this Agreement, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a court of competent jurisdiction.
- R. State of Texas Law. This Agreement will be interpreted under and governed by the Law of the State of Texas.
- S. Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.
- T. Entire Agreement.
1. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter of this Agreement. It is further understood and agreed by TNC that the City and its agents have made no representations or promises with respect to this Agreement, except as expressly set forth herein, and that no claim or liability or cause for termination shall be asserted by TNC against the City, and the City shall not be liable by reason of the breach of any representations or promises not expressly stated in this Agreement.
 2. The City and TNC are the only parties to this Agreement and as such are the only parties to enforce its terms. Nothing in this Agreement gives, or shall be construed to give or provide, any benefit, direct or indirect, to third parties unless a third party is expressly described as an intended beneficiary of its terms.
 3. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits hereto, and have sought and received whatever advice needed for them to form a full and complete understanding of all rights and obligations herein.

- U. Prohibition on Contracts with Companies Boycotting Israel. TNC represents that, to the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent TNC is required to make this representation under) Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270, Texas Government Code, and subject to Regulations, neither TNC nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of TNC (a) currently boycotts Israel, and (b) for the duration that TNC is providing goods and services to the City under this Agreement, TNC will not boycott Israel. The terms "boycotts Israel" and "boycott Israel" as used in this Section 9.21 mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- V. Prohibition on Business with Iran, Sudan, or Any Foreign Terrorist Organization. TNC represents that, to the extent this Agreement constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252.152 of the Texas Government Code, and except to the extent otherwise required by Regulations, neither TNC nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of TNC (a) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (b) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this Section 9.22 means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.
- W. Human Trafficking. The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. TNC has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's countersignature date. TNC shall notify the City's Chief Procurement Officer, the City Attorney, and the Director of any information regarding possible violation of TNC or its subcontractors providing services or goods under this Agreement within seven (7) days of TNC becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.
- X. Electronic Signature. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.
- Y. Exhibits. The exhibits to this Agreement are as follows:
- | | |
|-----|-----------------------------|
| "A" | TNC Rules |
| "B" | Data Interface Requirements |

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, this Agreement has been entered into and effective as of the Effective Date. The Parties have executed this Agreement in multiple copies and/or counterparts, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

ATTEST/SEAL:

LYFT, INC.

By: _____

By: MSH

Name: _____

Name: Miranda Scott

Title: _____

Title: Director, Airport Business Development

20-8809830

Federal Taxpayer ID No.

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Pat J. Daniel
Interim City Secretary

Sylvester Turner
Mayor

APPROVED:

COUNTERSIGNED:

Mario C. Diaz, Director
Houston Airport System

Chris Brown
City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

DocuSigned by:
Robert W. Collins
C8E1D41C435443B

Senior Assistant City Attorney
LD File No.: 0041900219001

EXHIBIT "A"

TNC RULES

City requires that all TNC Drivers, while providing TNC Service at the Airports, shall be clean, neat in appearance, and courteous at all times.

Prohibited TNC Driver activities:

Level 1 Violations

1. Turning off or disabling the Digital Network while providing TNC Services, unless the TNC Driver is departing the airport after a drop-off or otherwise not offering or providing TNC Services
2. Picking up or dropping off customers, or their baggage, at any location other than the marked/designated areas
3. Waiting, standing, or idling on roadways
4. Failing to operate a TNC Vehicle in a safe manner
5. Failing to comply with posted speed limits and traffic control signs
6. Using profane or vulgar language
7. Operating a TNC Vehicle which is not in a safe mechanical condition or which lacks mandatory safety equipment
8. Creating a nuisance that negatively affects the customer experience
9. Obstructing traffic flow for the purpose of loading or unloading customers
10. Improperly or not displaying proper TNC trade dress while providing TNC Services
11. Littering on airport property, or causing or producing any unusual, noxious, or objectionable smoke, gases, vapors, or odors

Level 2 Violations

1. Circumventing, by any method, the Airport Geofence
2. Allowing operation of a TNC Vehicle on airport roadways by an unauthorized driver
3. Transporting a customer in an unauthorized vehicle
4. Failing to provide information, or providing false information, to police officers or airport personnel
5. Failing to immediately comply with request of airport personnel or Law Enforcement
6. Leaving TNC Vehicle or any item unattended anywhere on airport property except while in the TNC Staging Area (provided the TNC Driver also remains in the TNC Staging Area)
7. Making or causing to make any improvements, modifications, or alterations to airport property

8. Making or causing any damage or destruction to airport property
9. Abandoning containers of human waste or materials contaminated with human waste on airport property
10. Failing to provide digital identification, waybill, manifest, or confirmation that the Digital Network is activated while on airport property or within the geofence
11. Displaying, to an airport official, digital identification, waybill, manifest or other identification in an altered or fictitious form
12. Using or possessing any alcoholic beverage, illegal drug or narcotic while offering or providing TNC Services
13. Soliciting customers on airport property
14. Attempting to solicit payment in excess of the published fare
15. Soliciting for or on behalf of any hotel, club, nightclub, or other business
16. Soliciting of any activity other than the provision of TNC Services or any activity prohibited by the Regulations
17. Operating a TNC Vehicle at any time during which TNC Driver's authority is suspended or revoked
18. Engaging in criminal activity
19. Engaging in acts of violence or aggression
20. Engaging in lewd or lascivious acts
21. Carrying firearms in restricted areas
22. Attempting to bypass the Digital Network and solicit cash payment from a TNC customer

EXHIBIT "B"

DATA INTERFACE REQUIREMENTS

1. DATA REQUIREMENTS

The data exchange between the Recipient and City and any other necessary third parties as identified and required by City, shall conform to the following formats:

Name	Format	Description	Samples
uid	<Driver ID + ":" + Trip ID>	Driver ID concatenated with the Trip ID.	<Recipient to provide samples and format> Alphanumeric and special characters
tnc_id	Integer	A unique number assigned to the TNC.	<Recipient to provide samples>
license_plate	Seven-character string	Seven-character or less, numerical and alphabetic, that represents the vehicle license plate. Accepts an empty String value if there hasn't been a license plate assigned yet.	"ABC123", "ABC1234"
timestamp	[YYYY]-[MM]-[DD]T[hh]:[mm]:[ss]Z	The current time of the event or "ping" expressed in ISO 8601 combined date and time in UTC using 24-hour clock. http://en.wikipedia.org/wiki/ISO_8601#UTC	"2014-09-10T14:12:05Z"
txn_type	Literal String	The four types of events or "pings" as defined in the national standard in the terms and conditions of the system.	"ENTRY" "DROP-OFF" "PICK-UP" "EXIT"
ride_count	Integer	Whether there is an active TNC ride in the vehicle following the transaction event/ping.	"0", "1",
lon	World Geodetic System 1984 (WGS84) formatted longitude	The longitude coordinate of the event or "ping" expressed as a positive or negative number. For locations in North America, this will always be a negative number.	"-123.12345678"
lat	World Geodetic System 1984 (WGS84) formatted latitude	The latitude coordinate of the event or "ping" expressed as a positive or negative number. For locations in North America this will always be a positive number.	"123.12345678"

2. WEB SERVICE

The City or a third party designated and identified by the City and agreed to by the Recipient, shall provide a web service in order to accept data from the Recipient in the following manner:

- The web service shall use HTTPS protocol to submit all requests and posts.
- The web service shall allow HTTPS POST for all "pings" from Recipient.
- The web service shall accept the values for the following attributes as defined in the following list in the URL:
"uid", "tnc_id", "license_plate", "timestamp", "txn_type", "ride_count", "lon", "lat". Parameters must be URL encoded.
- A username and secret phrase shall be shared in order to create a basic authorization mechanism for all requests from Recipient. Base64 encoding of the <username:password> shall be provided in the HTTP Authorization Header for all HTTPS requests.
- Data from Recipient shall be posted to the following URL with the following parameters with URL encoding (based on RFC 1738: <http://www.ietf.org/rfc/rfc1738.txt>) employed:
<TBD>
Example: <TBD>