

**NORTH CAROLINA  
CUMBERLAND COUNTY**

**NON-EXCLUSIVE  
OPERATING AGREEMENT FOR  
TRANSPORTATION NETWORK COMPANY**

**THIS NON-EXCLUSIVE OPERATING AGREEMENT** made and entered into as of this 1<sup>st</sup> day of \_\_\_\_\_, 2023, by and between the **CITY OF FAYETTEVILLE**, hereinafter called “**LESSOR**” and \_\_\_\_\_, a transportation network company (TNC) and having a principal office in \_\_\_\_\_, hereinafter called “**USER**”.

**WITNESSETH:**

**WHEREAS**, pursuant to the authority conferred by the General Assembly of the State of North Carolina under Chapter 20, Article 10A – Transportation Network Companies and as amended, the City of Fayetteville has adopted a Ground Transportation Ordinance and Rules and Regulations for governing the operation of ground transportation operators at the Fayetteville Regional Airport or FAY; and

**WHEREAS**, **USER** is a Transportation Network Company (TNC), as that term is defined in Chapter 20 Article 10A of the North Carolina General Statutes, that desires to operate a transportation network business wherein TNC will connect passengers arriving and departing from FAY with prearranged transportation services offered by individual drivers operating on TNC’s online enabled network; and

**WHEREAS**, **LESSOR** has agreed to allow TNC and Drivers operating on its application, who are in compliance with the terms of this Agreement and all applicable laws and regulations, to conduct business at FAY subject to the terms of this AGREEMENT; and

**WHEREAS**, **LESSOR** is duly empowered to operate, manage and control the Fayetteville Regional Airport and all facilities located thereon, under the **LESSOR** of N.C.G.S 63-53 (3) and Chapter 3 of the Code of Ordinances of the City of Fayetteville, North Carolina; and

**WHEREAS**, transportation network company services are necessary and desirable for the proper accommodation of passengers arriving at and departing from the Fayetteville Regional Airport; and

**WHEREAS**, **USER** is engaged in the operation of a transportation network company business and is ready, willing and able to provide TNC vehicle operators to meet passengers using the Fayetteville Regional Airport at rates comparable to those generally prevailing in the area;

**AND WHEREAS**, **USER** is authorized to operate by and within the State of North Carolina;

**NOW, THEREFORE**, **LESSOR** and **USER**, for and in consideration of the mutual covenants and agreements hereinafter set forth, do hereby agree as follows.

## ARTICLE I - CONDUCT OF OPERATIONS

- A. LESSOR is charged with and responsible for regulating the provision of ground transportation services at the Airport.
- B. USER is a Transportation Network Company ("TNC") authorized to operate by and within the State of North Carolina.
- C. USER desires to derive financial benefit by authorizing affiliated TNC Drivers to operate one or more TNC Vehicles for the purpose of transporting Passengers to and from the Airport.
- D. USER has requested LESSOR to authorize certain authorized TNC Vehicles and TNC Drivers to conduct operations at the Airport for the purpose of picking-up and dropping-off Passengers, and to use certain roadways, parking areas and curb space at the Airport for such purpose.
- E. USER, in consideration of the LESSOR granting USER authorization to enable its TNC Drivers to operate TNC Vehicles at the Airport and to use Airport roadways, parking areas and curb space at the Airport for such purpose, agrees to conduct its services at the Airport in accordance with the terms and conditions of this Agreement.
- F. The LESSOR desires to grant USER the non-exclusive right to operate authorized TNC Vehicles at the Airport for the purpose of arranging through its mobile application for affiliated TNC Drivers to drop-off, pick-up, and transport Passengers in accordance with the terms and conditions of this Agreement.

## ARTICLE II - SERVICES.

- 1. **Grant of Agreement.** By issuance of this Agreement, the LESSOR hereby grants USER the non-exclusive right, in common with others so authorized, to operate at the Airport for the purpose of arranging through its mobile application for affiliated TNC Drivers to drop-off, pick-up and transport Passengers to and from the Airport in accordance with the terms and conditions of this Agreement.
- 2. **No Representations or Warranties.** The USER hereby acknowledges and agrees that the LESSOR does not make, and has not made, any representation, warranty, assurance, or guaranty that this Agreement, or the operations conducted hereunder, will generate any minimum, maximum, or optimum volume of airline or other passenger traffic business, or that any minimum, maximum, or optimum volume of airline or other passenger traffic business or revenue will occur.

## ARTICLE III - PAYMENT.

- 1. **Fees and Charges.** In consideration of the limited rights granted by the LESSOR pursuant to this Agreement, USER hereby agrees to pay the following fees to the LESSOR during the term of this Agreement:
  - (a) A per trip pick-up fee of TWO and 00/100 Dollars (\$2.00) and per trip drop-off fee of ONE and 00/100 Dollar (\$1.00) for each Trip (defined below) conducted by a TNC Driver in a TNC Vehicle at the Airport (the "Per Trip Fee"). The term "Trip" as used in

this Section means each and every instance in which a TNC Vehicle drops-off or picks-up one or more Passengers at the Airport.

(b) The Per Trip Fees are collectively referred to herein as the “Fees.”

**2. Monthly Payment of Per Trip Fees.** All Per Trip Fees payable hereunder shall be paid monthly by USER to the LESSOR. The Monthly Payment (defined below) is due in full within thirty (30) calendar days of the close of any calendar month while this Agreement is in effect. Payments shall be made to LESSOR in legal tender of the United States, free from all claims, demands, setoffs, or counterclaims of any kind, and should be delivered to the LESSOR at the following address:

City of Fayetteville  
Attn: Real Estate  
339 Alexander Street  
Fayetteville, North Carolina 28301

The term “Monthly Payment” means the product of (a) the number of Trips conducted by USER’s TNC Vehicles in one calendar month, and (b) the Per Trip Fee then in effect. The Monthly Payment shall be accompanied by a full reporting of the USER’s operations at the Airport for the payment period, in accordance with Article III Section 6 below.

**3. Late Payments.** Monthly Payments not received by the LESSOR within thirty (30) calendar days following the close of any calendar month will be subject to a late fee in the amount of two percent (5%) of the Monthly Payment. Additionally, in the event of three (3) consecutive late payments by the USER, the LESSOR has the right, at its option, to increase the Security Deposit by up to fifteen percent (15%), and USER will provide the additional Security Deposit to the LESSOR within ten (10) days after notice of the required increase in the amount of the Security Deposit.

**4. Under Payments.** Should any examination, inspection or audit of USER’s books and records by the LESSOR disclose an underpayment by USER of the Monthly Payment due the LESSOR, USER shall promptly pay the LESSOR the amount of such undisputed underpayment within ten (10 ) days after notice thereof. In the event of any overpayment by USER, LESSOR will credit such overpayment against the next Monthly Payment.

**5. Airport Geo-Fence Downtime.** In the event of a failure (a “Downtime”) of the TNC Vehicle tracking mechanism enabled by the Airport Geo-Fence, the LESSOR shall equitably determine the amount of the USER’s Monthly Payment for such Downtime based upon the average monthly number of Trips made in the last twelve (12) months (or lesser period, if applicable) for the same amount of time, taking into account time of day and day of week.

**6. Monthly Reports.** Within thirty (30) days of the close of any calendar month while this Agreement is in effect, USER shall submit to the LESSOR, along with and at the same time as the USER’s Monthly Payment, its operations report for the previous calendar month (the “Monthly Report”). The Monthly Report shall be in an agreed-upon electronic format and shall include for each date of operation and for each Trip the following information: (a) license plate

number of the TNC Vehicle, (b) the time of drop-off or pick-up by the TNC Vehicle, and (c) the location of each drop-off or pick-up. The Monthly Report shall also include the total number of Trips for the reporting period.

#### **ARTICLE IV - SUSPENSION OR TERMINATION OF AGREEMENT.**

**Suspension or Termination by the LESSOR.** This Agreement is terminable at any time by either party by giving at least thirty (30) days' prior written notice of termination. Notwithstanding the foregoing, the LESSOR may also suspend or terminate this Agreement upon the occurrence of an Event of Default (as defined in Section 12 of the Terms and Conditions, attached hereto as Exhibit A), and upon thirty (30) days' prior written notice of termination. Should this Agreement be suspended by the LESSOR, and thereafter USER continues to instruct any of its TNC Drivers to engage in providing TNC Services at the Airport, and any such TNC Driver is found to have been operating at the Airport during the period of suspension, the LESSOR shall have the right to terminate this Agreement immediately and without prior notice to the USER.

#### **ARTICLE V - COMMENCEMENT DATE; TERM.**

1. **Commencement Date.** This Agreement shall be effective, and the "Commencement Date" shall be deemed to occur, on January 1, 2023.
2. **Term.** The term of this Agreement shall be for a period of 3 years and shall begin on the Commencement Date and shall automatically terminate on December 30, 2025.
3. **Modifications to Agreement.** All modifications and amendments to this Agreement shall be in writing and signed by both parties.

#### **ARTICLE VI - USE, CONDITIONS, RESTRICTIONS.**

1. **Limited Grant.** The limited rights granted by this Agreement do not establish or vest in USER any right to preferential use of Airport facilities. USER acknowledges and agrees that USER has no exclusive right to conduct its operations at the Airport, and the LESSOR, in its sole and absolute discretion, may arrange for or allow other TNCs to conduct similar operations at the Airport on the same terms and conditions as set forth herein.
2. **No Designated Drop-Off and Pick-Up Areas.**
  - (a) LESSOR currently provides no designated drop-off or pick-up areas for TNC Drivers. Therefore, it is expected that TNC Drivers will access the terminal frontage in a manner similar to regular passenger drop-offs and pickups.
  - (b) TNC Drivers operating under the USER's Agreement may not at any time loiter in front of the terminal, nor leave TNC vehicles unattended in hopes of gaining a fare.
3. **Digital Decal.** USER shall ensure that each TNC Driver will maintain, on his or her smartphone, a "digital decal" while using the TNC Application that will be used in lieu of a

tangible Airport transponder. The digital decal will allow the LESSOR to confirm the following information for any TNC Driver or TNC Vehicle using the TNC Application while on Airport grounds at all times: (i) the name or logo of the USER; (ii) the name and a photograph of the TNC Driver; (iii) the make, model and license plate number of each TNC Vehicle associated with the TNC Driver, and the state issuing each such license plate; and (iv) all certificates of insurance required by this Agreement or applicable law.

4. **Waybills.** All TNC Driver activity on Airport property shall be documented by a waybill prepared prior to entering Airport property or prior to leaving the Airport. The waybill shall state the TNC Driver's name, the TNC Vehicle license plate, Passenger's first name and the first letter of their last name, and the location of the drop-off or pick-up.

5. **Requests for Information.** Upon request from LESSOR-Related Personnel for any information necessary to show a driver's compliance with this Agreement (and in compliance with the non-discriminatory policies required by both parties under this Agreement), all TNC Drivers shall immediately comply with such request and provide such requested information, including but not limited to, proof of all required insurance, license and registration, prearranged waybill, digital decal, or confirmation that the TNC Application is activated while on Airport property.

6. **Complaint Reports.** In accordance with any statutory or constitutional due process or privacy requirements, the USER shall provide to the LESSOR, upon request by the LESSOR, information to investigate and resolve a complaint or respond to an incident related to TNC operations to or from FAY if the LESSOR deems that such reports and information is needed to assist LESSOR in the enforcement of this Agreement.

7. **Changes to Airport.** USER acknowledges and agrees that: (a) LESSOR shall have the right, at all times, to change, alter and expand the Airport, including the terminals, roadways and designated pick-up, drop-off and staging areas; and (b) Airport has made no representations, warranties and/or covenants to Operator regarding the design, construction, passenger or automobile traffic, or views of the Airport. Without limiting the generality of the foregoing, Operator acknowledges and agrees that: the Airport may from time to time undergo renovation, construction and other Airport modifications; and the Airport may from time to time adopt rules and regulations relating to security or other operational matters that may affect Operator's business.

## **ARTICLE VII - TNC VEHICLES.**

1. **TNC Vehicle Requirements.** USER shall ensure that each TNC Vehicle conforms to and complies with all vehicle requirements set forth in NC General Statute 20-280.5.

2. **Trade Dress.** Prior to operating at the Airport, USER shall provide the LESSOR with a photograph of USER's proposed Trade Dress, along with a description of the designated Trade Dress location, which location must be approved by the LESSOR and in accordance with the State of North Carolina. While operating at the Airport pursuant to this Agreement, whether or not carrying a Passenger, every TNC Vehicle shall display USER's approved Trade Dress in the approved Trade Dress location.

3. **TNC Vehicle Condition.** USER shall ensure that its vehicles meet the safety requirements detailed in NC § 20-280.5.

## **ARTICLE VIII - PROHIBITED ACTIVITIES.**

1. **General Prohibited Activities.** Without limiting any other provision herein, USER shall not, without the LESSOR's prior written consent:

- (a) Cause or permit anything to be done, in or about the property of the Airport, or bring or keep anything thereon, which would be reasonably likely to (i) increase, in any way, the rate of fire insurance on the Airport, (ii) create a nuisance, or (iii) obstruct or interfere with the right of others at the Airport or injure or annoy them;
- (b) Use the property for any improper, immoral, unlawful or reasonably objectionable purpose;
- (c) If applicable, place any loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways or escalators, in front of, within or adjacent to the Airport entrances, walkways, or the roadways; or
- (d) Do, or permit to be done, anything, in any way, which would be reasonably likely to materially injure the reputation or image of the LESSOR or appearance of the Airport or violate the LESSOR's Rules and Regulations.

2. **Other Prohibited Activities.** Without limiting the generality of other provisions of this Agreement, the following activities are specifically prohibited by USER and its TNC Drivers operating under its Agreement, as applicable, while on Airport property or while carrying Passengers to or from the Airport for drop-off or pick-up:

- (a) Turning off or disabling the TNC Application when a TNC Vehicle is at the Airport;
- (b) Allowing the operation of a TNC Vehicle at the Airport by an unauthorized driver;
- (c) Transporting a Passenger in an unauthorized vehicle;
- (d) Picking-up or dropping-off Passengers or their baggage at any location other than the Designated Areas;
- (e) Leaving a TNC Vehicle unattended;
- (f) Failing to maintain the TNC Vehicle interior and exterior in an appropriately clean condition or failing to maintain a neat and clean personal appearance;
- (g) Littering at the Airport or in the Designated Areas;
- (h) Failing to provide information or providing false information to the LESSOR or LESSOR-Related Personnel upon request as set forth in Article V Section 5;
- (i) Operating a TNC Vehicle without the approved Trade Dress;
- (j) Soliciting Passengers at the Airport, or any soliciting or advertising whatsoever, (except through valid use of the TNC App);
- (k) Re-circulating anywhere at the Airport, except directly in route to the Holding Area (if established) or if a Passenger is not available for pickup within a reasonable period of time;
- (l) Using profane or vulgar language in the presence of any member of the public or LESSOR-Related Personnel;



- (m) Operating a TNC Vehicle which is not in a safe mechanical condition or which lacks mandatory safety equipment as required by the State of North Carolina Motor Vehicle Code;
- (n) Operating a TNC Vehicle without the required certification or at any time during which the North Carolina certification or this Agreement is suspended or revoked;
- (o) Failing to comply with instructions or directions given by the LESSOR or LESSOR-Related Personnel, including but not limited to, failing to comply with the information-sharing requirements of Article V Section 5. Requests to inspect proof of insurance, license and registration, prearranged waybill, or confirmation that the TNC Application is activated while on Airport property and/or within the Airport Geo-Fence;
- (p) Soliciting or attempting to solicit payment in excess of that authorized by law;
- (q) Failing to give an electronic receipt from which he/she can file a report with USER, the Airport or law enforcement, if needed.
- (r) Any attempt to bypass the TNC Application and solicit cash payment for Passenger drop-offs or pick-ups.

3. **Violations of Prohibited Activities.** Violations by USER or a TNC Driver which are not addressed by USER or the TNC Driver, as applicable, within a reasonable time after a request by the LESSOR to do so, may result in suspension or termination of this Agreement.

#### **ARTICLE IX - N. C. IRAN DIVESTMENT ACT.**

As mandated by N.C.G.S. 143C-6A-5(a), USER certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143C-6A-4. USER further certifies that in accordance with N.C.G.S. 143C-6A-5(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. USER certifies that the signatory to this Agreement is authorized by the USER to make the foregoing statement.

#### **ARTICLE X - E-VERIFY.**

USER hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. USER further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). USER hereby pledges, attests and warrants through execution of this contract that USER complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by USER shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Amendment.

#### **ARTICLE XI - NOTICES.**

All notices from one party to the other under this Agreement shall be in writing, mailed by registered or certified mail, return receipt requested, to the address indicated below. Either party may change its address for notice upon written notice to the other in accordance with this Section.

All notices required or permitted to be given hereunder to LESSOR shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **433 Hay St., Fayetteville, North Carolina 28301, Attention: City Manager**. A copy of any such notice shall also be sent to: **Fayetteville Regional Airport, 400 Airport Road, Suite 1, Attention: Airport Director, Fayetteville, NC 28306**. All notices required or permitted to be given hereunder to USER shall be sufficient if sent by registered mail, postage prepaid, and addressed to: Lyft, Inc. ,c/o Don Griffin, Head of Airport Partnerships, 185 Berry Street, Suite 5000, San Francisco, CA 94107 w/ Copy to Legal Department and w/ electronic copy to legalnotices@lyft.com.

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## **ARTICLE XII - TERMS & CONDITIONS.**

**Incorporation of Exhibits.** The Terms and Conditions set forth on Exhibit A, are hereby incorporated herein by this reference and made a part hereof.

[Remainder of page intentionally left blank. Signature page follows.]



**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: \_\_\_\_\_  
DOUGLAS J. HEWETT, ICMA-CM  
City Manager

ATTEST:

\_\_\_\_\_  
Secretary

(Corporate Seal)

\_\_\_\_\_  
(Transportation Network Company)

BY: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

**STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND**

I, \_\_\_\_\_, a notary public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_, personally appeared before and acknowledged the due execution of the foregoing instrument.

Witness my hand and notaries seal this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

*Seal*

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
**STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_**

I, \_\_\_\_\_, a notary public of said County and State hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that by LESSOR duly given and as the act of the corporation, the foregoing instrument was signed in its \_\_\_\_\_, sealed with its corporate seal and attested by \_\_\_\_\_self as its \_\_\_\_\_.

Witness my hand and notaries seal, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

*Seal*

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## EXHIBIT A

### TERMS AND CONDITIONS

The following Terms and Conditions (the “Terms and Conditions”) are attached to and made a part of the Non-Exclusive Operating Agreement to Provide Transportation Network Company Services at Fayetteville Regional Airport:

#### SECTION 1. DEFINITIONS AND CONSTRUCTION.

- A. **Definitions.** The following terms, when used in this Agreement shall, unless the context requires otherwise, have the respective meanings given below:
1. **Airport:** shall mean the land and premises located in the City of Fayetteville North Carolina and lands contiguous thereto, which may be acquired from time to time by the LESSOR for Airport purposes, and which shall comprise the Fayetteville Regional Airport. The term “Airport” shall also include the General Aviation Facility, and all other tenant locations on Airport Property.
  2. **Airport Geo-Fence:** an electronic perimeter of the Airport comprised of one or more polygons whose points are geographic coordinates as defined and verified by the LESSOR and under the USER’s management. TNC Vehicles located within this Airport Geo-Fence area shall not appear on the TNC Application as being available for Passenger requests for service. The USER shall keep records of each and every Trip that begins or ends within the Airport Geo-Fence, including: a) each and every Passenger drop-off on Airport Property, and b) each and every Passenger pick-up on Airport Property. If the LESSOR desires to acquire or develop an alternative vehicle tracking mechanism, USER shall work with the LESSOR in good faith to develop such a vehicle tracking mechanism or other similar protocol for use on Airport property.
  3. **LESSOR:** shall mean the City of Fayetteville, owner and operator of the Fayetteville Regional Airport.
  4. **LESSOR-Related Personnel:** shall mean the Airport Managers, officers, officials, employees, agents, and representatives, including without limitation, the City of Fayetteville Fire Department (Operations) and Police Officers, as well as other authorized law enforcement personnel.
  5. **Designated Areas:** shall mean those certain areas selected by the LESSOR where TNC Drivers may (i) wait for requests for transportation by Passengers, as set forth on Exhibit B, or (ii) drop-off or pick-up Passengers, as set forth on Exhibit C, if applicable.
  6. **Governmental Body:** shall mean any federal, state, city or other political subdivision thereof, or any other entity, LESSOR, agency or department exercising the executive, legislative, judicial, taxing, regulatory or administrative powers or functions pertaining to government.
  7. **Passenger:** any individual who hires or enters a TNC Vehicle operated by a TNC Driver providing TNC Services to or from the Airport pursuant to this Agreement.
  8. **Agreement:** shall mean the Non-Exclusive Operating Agreement to Provide Transportation Network Company Services at Fayetteville Regional Airport, authorizing USER to provide TNC Services at the Airport, together with all Exhibits attached hereto.
  9. **Rules and Regulations:** all applicable provisions of the rules and regulations of LESSOR, and any new, modified or additional rules and regulations, which the LESSOR

now or hereafter enacts, and as may be amended from time to time. The term “Rules and Regulations” also includes all rules and regulations of any Governmental Body, including but not limited to, the Federal Aviation Administration (“FAA”) and the Transportation Security Administration (“TSA”).

10. **TNC:** shall mean a Transportation Network Company, which is an organization, whether a corporation, partnership, sole proprietor, or other form, operating under and in compliance with the General Statutes of the State of North Carolina, that uses a TNC Application to connect Passengers with TNC Drivers using their personal vehicles to provide transportation to Passengers.
  11. **TNC Application:** the mobile smartphone application or platform developed by USER that connects Passengers with TNC Drivers and TNC Vehicles. If requested by the LESSOR, and subject to a nondisclosure agreement, USER will detail to the LESSOR the functionality of the TNC Application in order to assist the LESSOR in enforcing the Agreement, including but not limited to, by demonstrating how the TNC Application is consistent with the Rules and Regulations and the terms and conditions of this Agreement.
  12. **TNC Driver:** an individual approved by the USER to use his or her privately-owned TNC Vehicle to transport passengers whose rides are arranged through the TNC Application. Each TNC Driver shall be properly authorized and credentialed by the TNC and be authorized pursuant to the terms and conditions of this Agreement to pick-up and drop-off Passengers at the Airport as an authorized TNC Driver of USER. For purposes of this Agreement, the term “TNC Driver” applies at all times that a TNC Driver is on Airport property by reason of the driver’s relationship with the USER, regardless of whether the TNC Vehicle is carrying a Passenger.
  13. **TNC Services:** shall include the USER’s authorized operations under this Agreement occurring whenever a TNC Driver is in a TNC Vehicle at the Airport or in the Designated Areas, and having: a) the TNC Application open and waiting for a match with a Passenger; b) a match accepted but not having picked up a Passenger; or c) a Passenger in the TNC Vehicle until the Passenger exits the TNC Vehicle. In all of these instances, the TNC Application shall be open when the TNC Vehicle enters Airport property and shall remain on throughout the referenced periods.
  14. **TNC Vehicle:** a vehicle driven by a TNC Driver that is authorized both by the USER and pursuant to the terms and conditions of this Agreement to pick-up and drop-off Passengers at the Airport.
  15. **Trade Dress:** a removable and distinct logo, insignia, or emblem that is attached to or visible from the exterior of a TNC Vehicle during the performance of providing TNC Services and that complies with the Code(s) of North Carolina. A copy of the Trade Dress shall be provided to and approved by the LESSOR prior to USER commencing operations at the Airport.
- B. **Construction of Certain Terms.** Except as otherwise expressly provided herein or unless the context otherwise requires, the following rules of construction shall apply:
1. The use of the masculine, feminine, or neuter gender is for convenience only and shall be deemed and construed to include correlative words of the masculine, feminine, or neuter gender, as appropriate.

2. The terms defined in this Agreement shall have the meanings assigned to them herein and include the plural as well as the singular.

**C. Table of Contents, Titles and Headings.** The table of contents, titles and headings of the sections are solely for convenience of reference, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

**D. Interpretation.** The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the LESSOR or USER. If any provision of this Agreement is determined to be void by any court or competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect.

**E. Governing Law.** The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of the State of North Carolina.

## **SECTION 2. OBLIGATIONS OF USER.**

### **USER warrants and agrees that it will:**

- A. Conduct its operation hereunder in compliance with the highest standards of providing TNC Services and will furnish all necessary fixtures, equipment, supplies, materials, facilities, and personnel (including licensed personnel as necessary) in order to adequately provide such TNC Services in accordance with the terms and conditions of this Agreement.
- B. Furnish the TNC Services promptly and efficiently on a fair, equal and non-discriminatory basis.
- C. Be responsible for obtaining all permits, licenses and certificates required by any regulatory agency to conduct the TNC Services provided hereunder.
- D. Conduct its operations in an orderly and proper manner so as not to unreasonably annoy, disturb or be offensive to others on or near the Airport. USER shall take all reasonable measures to (i) eliminate vibrations tending to damage any equipment, structures, buildings or portions of buildings on the Airport or adjacent to the Airport; and (ii) keep the sound level of its operations as low as reasonably possible, particularly during the hours of darkness.
- E. Advise TNC Drivers operating under its Agreement to not negatively impact or impede traffic flow in or out of Airport roadways and parking facilities, to not congregate on Airport access roadways or off-Airport parking areas, including retail shopping centers, churches, businesses or other parking areas established for private purpose outside the Airport Geo-Fence, or to not in any way allow its TNC Drivers or TNC Vehicles to obstruct Airport access.
- F. Advise TNC Drivers to not stage, wait or park in any areas of the Airport other than in the Holding Area, as set forth on Exhibit B (if established).
- H. Upon receipt of any complaint or objection to the conduct, demeanor or appearance of its TNC Drivers operating under its Agreement, employees, invitees or those doing business with the USER, the USER shall immediately take all reasonable steps necessary to remove

or correct the cause of the complaint or objection. USER and its TNC Drivers shall advise Passengers of the means and methods for contacting, reporting and resolving Passenger complaints.

- J. Advise TNC Drivers to place all garbage, debris and other waste materials in proper disposal containers.
- K. Not do or permit to be done anything which may interfere with free access and passage on and to the Airport.
- L. Advise Passengers of the means and methods for contacting, reporting and retrieving lost property.
- N. Maintain, in accordance with generally accepted accounting practices, throughout the term of the Agreement and for three (3) years thereafter, records and books of account, recording all Trips, as that term is defined in Article III, that occur transactions in any way connected with USER's operation at the Airport. Notwithstanding the foregoing, in no event shall USER be required to maintain such records for a period longer than seven (7) years. No more than annually, LESSOR may inspect at a mutually agreed location in the City of Fayetteville an electronic report of records from USER necessary to demonstrate that USER has paid all trip fees as required under Article III regarding Airport operations and USER will provide a report including relevant operations details. The intent and purpose of the provisions of this section are such that USER shall keep and maintain records which will enable the LESSOR to ascertain, determine and audit, if so desired by the LESSOR, clearly and accurately, the information that USER provides in the monthly reports required under Article III detailing the number of drop-offs and pick-ups conducted by USER and the Trip activity of the TNC Drivers and TNC Vehicles. Additional TNC recordkeeping and reporting requirements are set forth in Section 26 of these Terms and Conditions.
- O. USER agrees to resolve failures of the TNC Vehicle tracking mechanism enabled by its Airport Geo-Fence in a prompt and efficient manner. Failure to resolve such TNC Vehicle tracking failures within USER's control, related to the Airport Geo-Fence within five (5) days may result in a suspension or termination of this Agreement.
- P. The USER shall provide to each of its TNC Driver operating under its Agreements a credential, which shall be digitally displayed as part of the TNC Application, that includes the following information: (i) the name or logo of the USER; (ii) the name and a photograph of the TNC Driver; (iii) the make, model and license plate number of each TNC Vehicle associated with the TNC Driver and the state issuing such license plate. The TNC Driver shall carry the credential at all times during the operation of the TNC Vehicle and shall present the credential upon request to the LESSOR or LESSOR-Related Personnel. All such requests shall be in compliance with the non-discriminatory obligations of each party under this Agreement.
- Q. Any violation of paragraphs (A)-(P) of this section that is the result of a TNC Driver's conduct shall be addressed to maintain conformity with Article VIII; and Section 12.

### **SECTION 3. RIGHTS OF SELECTED USER.**

- A. The USER shall provide TNC Services only in accordance with the terms and conditions of this Agreement, and will not conduct any other type of business whatsoever on the Airport unless otherwise approved in writing by the LESSOR.

- B. USER shall not allow any TNC Driver to solicit business or engage in any manner of solicitation of business, except as permitted under this Agreement or as may be expressly permitted in writing by the LESSOR.

#### **SECTION 4. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS.**

USER shall comply with all applicable federal, state and local laws and ordinances, governmental rules, regulations and orders applicable to the operation of the Airport or to the USER's operation at the Airport. Without limiting the generality of the foregoing, USER shall comply with the applicable laws and regulations regarding: Federal Immigration; Non-Discrimination, Disability, and OSHA.

#### **SECTION 5. RULES AND REGULATIONS OF LESSOR.**

The USER covenants and agrees to advise its TNC Drivers operating under its Agreement, officers, employees, guests, invitees, and those doing business with it, to observe and obey all applicable laws as well as the Rules and Regulations of the LESSOR now in effect or hereinafter promulgated governing the conduct and operation of the Airport. The LESSOR agrees that, except in cases of emergency, it will give notice to the USER of all such new or amended Rules or Regulations adopted by it at least ten (10) days before the USER shall be required to comply therewith. Copies of the Rules and Regulations are available at the offices of the LESSOR.

#### **SECTION 6. FEDERAL AIRPORT AID.**

The LESSOR has applied for and received, and may in the future apply for and receive, grants of money for the benefit of the Airport from the Administrator of the Federal Aviation Administration ("FAA") pursuant to applicable federal law, from the Department of Aviation of the State of North Carolina, and from the City of Fayetteville. In connection therewith, the LESSOR has undertaken or may undertake certain obligations respecting its operation of the Airport and the activities of its USERS, USERS and contractors thereon. The USER covenants and agrees that, if the Administrator of the FAA or any other governmental entity having jurisdiction over the enforcement of the obligations of the LESSOR resulting from such grant or grants shall make any orders, recommendations or suggestions to the LESSOR or the USER respecting the performance of the USER, the USER will promptly comply therewith.

#### **SECTION 7. INSPECTION OF VEHICLES.**

Each TNC Vehicle shall have a valid state inspection decal in accordance with the State of North Carolina and the LESSOR shall have the right to inspect the decal to verify that a vehicle is in compliance.

#### **SECTION 8. INDEMNIFICATION; WAIVER OF CLAIMS.**

- A. **Indemnification.** The USER shall indemnify, defend and hold the LESSOR and the LESSOR-Related Personnel completely harmless from any and all liabilities, losses, suits, actions, claims, judgments, fines or demand of any character, including but not limited to,



court costs and attorneys' fees brought because of any injuries or death to persons or damage received or sustained by a third party in consequence of: (i) the operations by the USER, its TNC Drivers, successors, subcontractors, suppliers, employees, or agents or invitees, (ii) any neglect in safeguarding USER's operations at the Airport, (iii) any negligent acts or omissions or misconduct of USER, (iv) any claims for or amounts recovered by any infringement of patent, trademark or copyright, (iv) any default by USER in the observance or performance of any of the terms, conditions or covenants of this Agreement, or (vi) any other law, ordinance, order or decree, unless resulting solely from the negligence or willful misconduct of the LESSOR. The foregoing indemnity provisions shall in no way be deemed released, waived or modified in any respect by reason of any insurance or surety provided by the USER under this Agreement. Notwithstanding the foregoing, USER shall have no obligation under this Section for claims arising out of or related to any negligent act or omission of LESSOR or its officers, directors, agents, and employees. The foregoing indemnification obligation is contingent upon LESSOR providing USER with (i) sole control over the defense and settlement of each such claim (provided that USER will not settle or compromise any claim without written consent of LESSOR, which consent shall not be unreasonably withheld, conditioned or delayed), and (ii) reasonable cooperation, at USER's expense, in the defense and settlement of a claim. Indemnification of the LESSOR by USER does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.

- B. **Waiver of Claims.** USER covenants and agrees that the LESSOR shall not at any time to any extent whatsoever be liable, responsible, or in any way accountable for, and USER hereby waives and releases any claim (including any claim for contractual or implied indemnity) against the LESSOR, for any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys' fees, investigation costs, remediation costs and court costs), of any kind or nature, which (a) at any time after the date of the Agreement may be suffered or sustained by USER or any TNC Driver arising out of USER's operations, or (b) are caused in whole or in part by any act or omission (whether negligent, non-negligent or otherwise) of USER or any TNC Driver, except to the extent caused solely by the negligence or willful misconduct of the LESSOR.
- C. **Notice.** Without limiting the foregoing indemnity and waiver, each party hereto shall give to the other prompt and timely written notice of any liabilities, losses, suits, actions, claims, judgments, fines or demands of any character, coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.
- D. **USER's Assumption of Risk.** USER covenants that it voluntarily assumes any and all risk of loss, damage, or injury to the person or property of USER, its TNC Drivers, directors, officers, employees, contractors, drivers, representatives and agents which may occur in, on, or about the Airport or in any of the Designated Areas at any time and in any manner, except such loss, injury, or damage as may be caused solely by the gross negligence or willful misconduct of the LESSOR.

## SECTION 9. INSURANCE.

A. At all times during the term of this Agreement the USER shall maintain primary commercial automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident for third party bodily injury and property damage. This coverage applies to affiliated TNC Vehicles operated by TNC Drivers while:

1. The TNC Driver is located on the airport premises during the course of providing an accepted trip including the picking-up and dropping-off of passenger(s);
2. The TNC Driver is located on the airport premises immediately following the conclusion of a requested trip and while in the course of exiting the airport premises;
3. The TNC Driver has logged into the application controlled by the USER and is “available to receive requests” for transportation services from passengers using the application and the TNC Driver is located on the airport premises.

“Available to receive requests” means the application is in a state such that an applicable request would be transmitted to the TNC Driver’s smartphone for acceptance by the TNC Driver.

B. **Required Insurance.** At all times during the operation of a TNC Vehicle on Airport Property, from the date of the Agreement, the USER shall, at a minimum, keep in force such insurance policies as required by the State of North Carolina.

C. **Form of Policies.**

1. On each policy of insurance, USER shall name the LESSOR and the Airport, and their respective commissioners, agents, and employees, as blanket additional insured parties.
2. All policies of insurance shall provide that the insurance company shall provide at least thirty (30) days’ prior written notice to the LESSOR of cancellation or a reduction in coverage or limits.

D. **Proof of Insurance.** The TNC Driver shall carry at all times while operating a TNC Vehicle proof of coverage under each in-force TNC insurance policy, which may be displayed as part of the TNC Application, and each in-force automobile insurance policy covering the TNC Vehicle. The TNC Driver shall present such proof of insurance upon request to the LESSOR, or to any person involved in an accident that occurs while transporting a Passenger.

E. **Compliance with Future Code of North Carolina Amendments.** Notwithstanding anything in this Policy to the contrary, the USER’s insurance shall at all times comply with any future amendments to the State of North Carolina provisions governing TNC insurance requirements.

## SECTION 10. ASSIGNMENT OF AGREEMENT.

Neither party may assign the Agreement or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party.

Notwithstanding the foregoing, either party may assign the Agreement in its entirety without consent of the other party in connection with a merger, acquisition, corporate reorganization or

sale of all or part of USER's rights to exercise privileges within this Agreement. In the event such a merger takes place, USER shall be notified in writing of any changes of policy or procedures or any changes in personnel or points of contact LESSOR has regular contact or correspondence with.

#### **SECTION 11. CONDEMNATION.**

In the event of the acquisition by condemnation or the exercise of the power of eminent domain (which for these purposes shall not be deemed to include the LESSOR) of any interest in all or part of the Airport, the User shall not institute any action or proceeding or assert any claim against the LESSOR for compensation or consideration of any nature whatsoever, and any provision herein contained contrary to the provisions of this section shall have no force or effect. All compensation awarded or paid upon such a total or partial taking of Airport premises shall belong to and be the property of the LESSOR without any participation by the User.

#### **SECTION 12. DEFAULT AND REMEDIES.**

8.1. **Event of Default.** The occurrence of any one or more of the following events shall constitute a breach of this Agreement and an "Event of Default":

(a) Operator shall fail, duly and punctually, to pay Monthly Fees (or to submit any Monthly Report), or to make any other payment required hereunder, when due to the City, and such failure shall continue beyond the date specified in a written notice of such breach or default, which date shall be no earlier than the tenth (10<sup>th</sup>) business day after the effective date of such notice;

(b) A transfer occurs without the prior approval of the City as set forth in Section 10;

(c) Operator fails to obtain and maintain the insurance required hereunder, or to provide copies of the insurance certificates to the City as required herein; or

(d) Operator fails to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement, and such failure continues for a period of more than thirty (30) days after delivery by City of a written notice thereof.

8.2. **Remedies.** Upon the occurrence and during the continuance of an Event of Default, City shall have the following rights and remedies in addition to any and all other rights and remedies available to the City under this Agreement, at law, or in equity: (a) City may elect to terminate this Agreement; and (b) nothing herein shall be deemed to limit City's right to terminate this Agreement as provided in Article IV.

#### **SECTION 13. REPRESENTATIONS AND WARRANTIES OF USER.**

The User represents and warrants to the LESSOR that:

- A. It is duly organized and validly existing under the laws of its jurisdiction, incorporation or establishment;
- B. It has the power and the authority to enter into and perform its obligations under this Agreement and to pay the Fees in accordance herewith;

- C. This Agreement has been duly authorized, executed and delivered by it, and, assuming the due authorization, execution and delivery hereof by the other parties hereto, constitutes a legal, valid and binding obligation of User, enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency and similar laws affecting creditor's rights generally, and subject, as to enforceability, to general principles of equity regardless of whether enforcement is sought in a proceeding in equity or at law;
- D. User's execution and delivery of this Agreement and the performance of its obligations hereunder do not and will not constitute or result in a default under, a breach or violation of, or the creation of any lien or encumbrance, on any of its property under its charter or bylaws (or equivalent organizational documents), or any other agreement, instrument, law, ordinance, regulation, judgment, injunction or order applicable to it or any of its property;
- E. All consents, authorizations and approvals requisite for its execution, delivery and performance of this Agreement have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental authority or regulatory body is required for such execution, delivery or performance; and
- F. There is no proceeding pending or threatened against User at law or in equity, or before any governmental instrumentality or in any arbitration, which would materially impair its ability to perform its obligations under this Agreement, and there is no such proceeding pending against it which purports or is likely to affect the legality, validity or enforceability of this Agreement.

#### **SECTION 14. FORCE MAJEURE.**

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party, including but not limited to, strikes, boycotts, labor disputes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods riots, rebellion, sabotage or other circumstances for which such party is not responsible or which are not in its power to control.

#### **SECTION 15. USER'S DEALINGS WITH THE LESSOR.**

Whenever in this Agreement the User is required or permitted to obtain the approval of, consult with, give notice to or otherwise deal with the LESSOR, the User shall deal with the LESSOR's authorized representative, and, unless or until the LESSOR shall give User written notice to the contrary, the LESSOR's authorized representative shall be its Airport Director or Deputy Airport Director.

#### **SECTION 16. INDEPENDENT CONTRACTOR.**

It is understood and agreed that nothing herein is intended or should be construed as in any way creating or establishing the relationship of co-partners between the parties hereto or of creating a joint venture, or as establishing User as the agent, representative, or employee of the LESSOR

for any purpose or in any manner whatsoever. User is to be, and shall remain, at all times, an independent contractor with respect to all services (including the TNC Services) performed under this Agreement.

#### **SECTION 17. NO WAIVERS.**

Every provision herein imposing an obligation upon the User is a material inducement and consideration for the execution of this Agreement. No waiver by the LESSOR of any of the terms, covenants or conditions of this Agreement, or noncompliance therewith, shall be deemed as a waiver at any time thereafter of the same or any other term, covenant or condition herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the LESSOR to exercise any right, power, privilege or option arising from any default shall impair any such right, power, privilege or option, nor be construed as a waiver of any such default or acquiescence therein. No notice by the LESSOR shall be required to restore or revive time as being of the essence hereof after waiver by the LESSOR of default in one or more instances.

#### **SECTION 18. NORTH CAROLINA FREEDOM OF INFORMATION ACT.**

- A. User recognizes that books and records regarding its operations under this Agreement may be subject to disclosure under North Carolina Freedom of Information Act (“FOIA”). The LESSOR will disclose such records in accordance with FOIA and the Code of North Carolina provisions regulating TNCs. The LESSOR acknowledges that the information that User submits to the LESSOR, including but not limited to the TNC Driver identification information, the TNC Vehicle license plate information, trip reports, and information about its Mobile Application (collectively, “Confidential Information”) is a trade secret not subject to this disclosure. In the event the LESSOR lacks sufficient information to determine whether such information is a trade secret for purposes of FOIA, and if the LESSOR receives a third party request for the User’s Confidential Information under the FOIA, the LESSOR will promptly notify User of such request so that User may seek court intervention concerning the potential disclosure of such Confidential Information. The LESSOR will comply with the applicable legal disclosure requirements that are required by court order or applicable law.
- B. User agrees to indemnify and hold harmless the LESSOR and its commissioners, officers, officials, directors, employees, and agents, from any claims, liability or damages, including reasonable attorneys’ fees and court costs, against the LESSOR and to defend any actions brought against the LESSOR for the LESSOR’s refusal to disclose User’s Confidential Information to any party.

#### **SECTION 19. RECORDKEEPING AND REPORTING REQUIREMENTS.**

- A. User shall comply with the recordkeeping and reporting requirements set forth in North Carolina General Statutes, Chapter 20, Article 10A – Transportation Network Companies and the LESSOR shall have all rights conferred under those sections.
- B. The LESSOR agrees that all such information obtained by the LESSOR pursuant to NC § 20-280.3. Agreement shall be considered privileged and shall only be used by the LESSOR for the purposes of meeting statutory requirements.

- C. In accordance with NC Statutes, the User and its TNC Drivers, shall, at all times during a prearranged ride, make the following information available through its TNC Application immediately upon the request of the LESSOR: (i) the name of the User; (ii) the name of the TNC Driver and the identification number issued to the TNC Driver by the User; (iii) the license plate number of the TNC Vehicle and the state issuing such license plate; and (iv) the location, date, and approximate time that was passenger was or will be picked-up.
- D. In accordance with NC General Statutes, the User, upon completion of a prearranged ride, shall transmit to the Passenger an electronic receipt that includes: (i) a map of the route taken; (ii) the date and the times the trip began and ended; (iii) the total fare, including the base fare and any additional charges incurred for distance traveled or duration of the prearranged ride; (iv) the TNC Driver's first name and photograph; and (v) contact information by which additional support may be obtained.

## **SECTION 20. HAZARDOUS MATERIALS.**

A. **Definitions.** As used in this Section 20, the following terms shall have the meanings hereinafter set forth:

- 1. "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted.
- 2. "Hazardous Materials" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, also commonly known as the "Superfund" law, as amended (42 U.S.C. Sections 9601 et seq.) ("CERCLA"), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.
- 3. "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or any property.

B. **User's Covenants.** Neither User, nor any TNC Driver, shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Airport, or transported to or from the Airport.

C. **Environmental Indemnity.** User shall indemnify, defend, and hold harmless the LESSOR from and against any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys' fees, investigation costs, remediation costs and court costs) arising during or after the term of this Agreement as a result of or arising from: (i) a breach by User of its obligations contained in Section 20(B), or (ii) any Release of Hazardous Material from, in, on or about the Airport caused by the act or omission of User or any of its TNC Drivers.



## SECTION 21. MISCELLANEOUS.

- A. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings.
- B. **No-Third Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- C. **Survival of Indemnities.** The expiration or earlier termination of this Agreement shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Agreement, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision, even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee.
- D. **Limitation on Damages.** Notwithstanding anything to the contrary or any applicable governmental immunity, in no event will the LESSOR be liable to User or any TNC Driver for any consequential, incidental, or special damages, or lost revenues or lost profits.
- E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.
- F. **Superseding Terms.** To the extent that there are terms in any of the attachments that conflict with the terms of this Agreement, the terms of the Agreement are superseding.
- G. **Severability.** The parties agree that if any provision in this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this Agreement and the requirements of applicable law.
- H. **Morality Clause.** If, in the sole opinion of the City of Fayetteville, at any time User or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an “Actor”) engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of Fayetteville’s finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately upon written notice to User terminate this Contract, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.
- I. **Venue and Forum Clause.** The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina