

# Late Backup

## Memorandum of Understanding Agreement

Between the City of Austin and A Transportation Network Company.

This ~~Memorandum of Understanding Agreement~~ ("MOU") is made and entered into on this \_\_\_\_ day of February, 2016, by and between the City of Austin, Texas ("City") and \_\_\_\_ ("Participating TNC"), hereinafter collectively referred to as the "Parties". The Parties hereto have agreed to the mutual obligations and performance of the conditions of this MOU as hereinafter described.

### RECITALS

WHEREAS, the City has established rules for the operation of Transportation Network Companies ("TNCs") as set forth in City Ordinance No. 20160211-002 (passed and enacted by the City Council on February 11, 2016, ~~in part with the knowledge and consideration that Participating TNC enters into this MOU~~);

WHEREAS, the Participating TNC and the City have each entered into this MOU ~~voluntarily~~ and have each agreed to abide by and comply with the additional terms set forth herein with respect to the operation and performance of the specific duties and obligations described herein;

WHEREAS, the Parties acknowledge that City Ordinance No. 20160128-092 added a new Chapter 4-17 to the City of Austin Code for Peer to Peer Enterprises and established an Incentive Program to be developed and administered by the City Manager;

WHEREAS, the Parties acknowledge that the intent of City Ordinance No. 20160128-092 was to establish an Incentive Program ~~that was consistent with, and did not undermine, City Ordinance No. 20160211-002;~~

WHEREAS, the City will not implement the Incentive Program established in City Ordinance No. 20160128-092 in any manner that is inconsistent with the rules established by City Ordinance No. 20160211-002;

WHEREAS, it is the desire of the Participating TNC and the City to ensure the public safety and general welfare of the residents of the City;

NOW, THEREFORE, in furtherance of Resolution No. \_\_\_\_\_ and in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the undersigned Parties agree as follows:

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## SECTION 1 PURPOSE OF MOU

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The Purpose of this MOU is to establish, delineate, and resolve the additional obligations and responsibilities of the Parties in connection with the operation of the Participating TNC in the City, and to establish, delineate, and resolve agreed upon additional channels, means, and measures by which the public may make informed choices concerning transportation options.

## SECTION 2 RESPONSIBILITY OF THE PARTICIPATING TNC TO MAKE AN ADDITIONAL ANNUAL PAYMENT TO THE CITY

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**2.1. *Additional Annual Payment.*** City Ordinance No. 20160211-002 requires the Participating TNC to pay to the City an annual fee of one (1) percent of the Participating TNC's annual local gross revenues. As an additional annual payment to the City, the Participating TNC hereby agrees to pay, in its sole discretion, either an additional 0.5 percent of the Participating TNC's annual local gross revenues, for a total of 1.5 percent of the Participating TNC's annual local gross revenues [OTHERS: or (ii) two hundred thousand dollars (\$200,000)]. The additional annual payment to the City set forth in this paragraph shall only apply during the time that the Participating TNC is operating in the City.

### **2.2**

**2.1. *One-Time Payment.*** Within thirty (30) days of execution of this MOU, the Participating TNC shall make a one-time payment in the amount of ~~twenty-five~~ **forty** thousand dollars (\$~~25~~**40**,000) to the City for the sole and exclusive use of the City to establish an Innovation and Safety Incubator Program to further explore innovative means to address the public health and safety challenges encountered by the City, provided that any such means are not inconsistent with City Ordinance No. 20160211-002.

**2.32. *Voluntary Nature of Payments.*** The Payments set forth in this Section 2 are voluntary and revocable as provided below, and therefore, the Parties agree that such payments are not inconsistent and shall not be construed to be inconsistent with the application of City Ordinance No. 20160211-002. If this MOU is renewed, at any time, either prior to or upon expiration of the termination date set forth under section 9, the one-time payment set forth in Section 2.2 ~~shall not be required upon such renewal; however, the Additional Annual Payment established in Section 2.1 shall be required for as long as this MOU is in effect, including any periods of~~ **shall not be required upon such** renewal.

## SECTION 3 ADDITIONAL RESPONSIBILITIES OF THE PARTICIPATING TNC

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3.1. *Driver Profiles.* In addition to the requirements set forth in Section 13-2-506 ("Identification") of City Ordinance No. 20160211-002 and to further promote rider choice, the Participating TNC shall permit a TNC driver authorized to drive for the Participating TNC to include a City-approved digital image or emblem on the TNC driver's digital profile that is visible to passengers using the platform for any TNC driver that qualifies for the Incentive Program as established by City Ordinance No. 20160128-092 and as in effect on February 8, 2016. ~~It is the responsibility of the Participating TNC to ensure that such digital image or emblem can be added to the TNC driver's profile on the Participating TNC's platform as~~ Only those drivers are identified or designated by the City will be eligible to include such an image or emblem on their profile. In carrying out its responsibilities under this Section, nothing in this Section shall require the Participating TNC to affirmatively modify, update, or otherwise make any changes to its platform, digital network, or application. If the Participating TNC is unable to add the City-approved digital image or emblem to TNC driver profiles, the Participating TNC and the City shall jointly determine an alternative channel, means, or measure that may be used to accomplish a substantially similar goal. Nothing in this section shall require, or be construed to require, a TNC driver to display any such digital image or emblem on the TNC driver's profile, or to require, or be construed to require, a TNC driver to participate in the Incentive Program established by City Ordinance No. 20160128-092.

3.2. *Additional Safety Features.* The Participating TNC's platform shall allow, as a City approved Additional Safety Feature, a TNC passenger, at his or her option, to share the passenger's route, current location, and driver identity via the TNC's digital network or online-enabled application to at least one additional third-party in order to allow that third-party the opportunity to track the ~~rider-passenger's~~ progress towards the passenger's destination. The City may designate without limitation further or different Additional Safety Features with other TNCs not party to this MOU, which shall be determined according to objective criteria established by the city manager.

3.3. *Trade Dress.* All vehicles operating under the Participating TNC's platform shall display a consistent and distinctive emblem indicating which TNC is being used at all times and that the vehicle is being used to provide the TNC's services.

3.4. — *Commitment to Safety.* The Participating TNC shall, in good faith, continue to identify and develop additional safety features that can be implemented through the Participating TNC's platform.

#### SECTION 4 RESPONSIBILITIES OF THE CITY

4.1. *Designation of Locations under City Ordinance No. 20160128-092.*

(A) *Queue Areas and Safe Loading Zones.*

(i) *In general.* Except as provided in section 4.1(B), the City may identify no more than ten (10) total preferred pick-up or drop-off locations, wait or queue areas, and safe loading zones ("Incentive Program Elements") pursuant to Sections 4-17-12(A)(2), (A)(3), (B) and (C)) of the City Code as established by City Ordinance No. 20160128-092).

(ii) *Equal Treatment for Authorized TNC Locations.* Upon identification of any Incentive Program Element made pursuant to this Section 4.1(A), the City shall concurrently establish preferred pick-up or drop-off locations, wait or queue areas, and safe loading zones for authorized TNC drivers affiliated with the Participating TNC that has a City Approved Additional Safety Feature that are either the same or ~~are separate~~ and equivalent in location as to the Incentive Program Element so identified ("Authorized TNC Locations").

(iii) *Blind Draw.* Upon identification of the common locations for Incentive Program Elements and Authorized TNC Locations, such locations will then be assigned as between Incentive Program participants and TNCs with a City Approved Additional Safety Feature by public blind draw.

(iv) *Location revision.* In order to preserve flexibility and ensure the safe flow of traffic and people throughout the City, and subject to the same requirements as set forth in this Section, the City may, not more frequently than once every 90 days, alter or relocate any Incentive Program Element identified under Section 4.1(A)(i), any Authorized TNC Location identified under Section 4.1(A)(ii), or both.

(B) *Large gatherings and special events.* Notwithstanding Section 4.1(A)(~~4i~~), for the duration of any large gathering (herein defined as any gathering of 15,000 or more people) or special event of which the City is a sponsor, including but not limited to South by Southwest Festival, Austin City Limits Festival, and the Trail of Lights, the City may identify Incentive Program Elements pursuant to City Ordinance No. 20160128-092. Upon identification of any Incentive Program Elements under this Section 4.1(B), the City shall also concurrently identify Authorized TNC Locations. Upon identification of the common locations for Incentive Program Elements and Authorized TNC Locations under this Section 4.1(B), such locations will then be assigned as between Incentive Program participants and TNCs with a City Approved Additional Safety Feature by public blind draw. Any public blind draw required under this Section 4.1(B) shall occur not later than 14 days prior to the applicable large gathering or special event.

(C) *Rule of construction regarding identification of locations.* Any identification of an Incentive Program Element made pursuant to this Section shall not deny access by a TNC driver who is not an eligible participant in the program established by City Ordinance No. 20160128-092 to a legally accessible area that was available to a TNC driver on January 28, 2016.

(D) *ABIA.* The forgoing notwithstanding, TNC activity at Austin Bergstrom International Airport is governed exclusively by City Ordinance No. 20160211-002.

4.2 *Applicability of Other Incentives.* Subject to the provisions set forth in this section 4, any incentive proposed by the City Manager in addition to the specific incentives set forth under section 4-17-12(A) through (M) of the City Code as established by City Ordinance No. 20160128-092, shall not apply to authorized drivers affiliated with the Participating TNC, unless otherwise agreed in writing by the Parties.

## SECTION 5 CONFLICT WITH OTHER ORDINANCES

To the extent, if any, that this MOU conflicts with City Ordinance No. 20160211-002, the Participating TNC agrees that it will not contest the application of the terms of this MOU. If the implementation of Chapter 4-17 of the City Code conflicts with the terms of this MOU, the Participating TNC may contest such implementation of Chapter 4-17 in a court of law. The Participating TNC and the City agree that this MOU does not prevent the City from taking additional actions to implement City Code Chapter 4-17, provided that such actions do not violate City Ordinance No. 20160211-002 or affect the application of this MOU to the participating TNCs.

## SECTION 6 NOTICES

6.1 With respect to the City:

City Manager  
City of Austin  
301 W. 2<sup>nd</sup> Street, 3<sup>rd</sup> Floor  
Austin, Texas 78701  
512-974-2200

With copies to:

City Attorney  
City of Austin  
301 W. 2<sup>nd</sup> Street, 4<sup>th</sup> Floor  
Austin, Texas 78701  
512-974-2268

6.2 With respect to the Participating TNC:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Phone

\_\_\_\_\_  
email

With copies to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

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**SECTION 7.**  
**AMENDMENTS**

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This MOU represents the entire agreement between the Parties and may be altered, amended, changed, terminated, or otherwise modified only by a writing signed by each of the Parties or their respective counsel.

## SECTION 8 REPRESENTATIONS AND WARRANTIES

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Each Party represents and warrants that it has full power and authority to enter into this MOU and to perform its obligations hereunder.

## SECTION 9 TERM AND EFFECTIVE DATE

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9.1 *Term.* This MOU shall be for two (2) years from the Effective Date, unless the Parties mutually agree in writing to terminate the MOU. The Participating TNC agrees that if another person or entity brings suit challenging the validity of this MOU, the Participating TNC shall nevertheless continue to comply with the terms of this MOU, unless and until the MOU is invalidated by final judgment, unless otherwise terminated by the parties.

9.2 *Effective Date.* The Effective Date is the date first set forth above.

9.3 *Termination.*

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(A) *Unilateral Termination.* After the initial two-year term, as set forth in Section 9.1, any Party may terminate this MOU with or without cause subject to ninety (90) days written notice to the other Party.

(B) *Termination by Agreement.* In the event the Participating TNC and the City shall mutually agree in writing, this MOU may be terminated with or without cause on the terms and dates stipulated in such writing.

## SECTION 10 MISCELLANEOUS

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10.1. *Counterparts.* The Parties understand and agree that this MOU may be executed in a number of counterparts, each of which shall be deemed an original for all purposes, and all of which together shall constitute one instrument when executed by the respective Parties.

10.2. *Choice of Law.* This MOU shall be performed and enforced in Travis County, Texas, and shall be construed in accordance with the laws of the State of Texas. Venue with respect to all disputes shall reside with any state or federal court sitting in Austin, Texas.

[SIGNATURE PAGES FOLLOW]

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~~MOU City of Austin and A Transportation Network Company~~

EXECUTED in multiple counterpart originals effective as of the date first set forth above.

CITY OF AUSTIN,

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By:

Marc A. Ott, City Manager

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{Approved as to form:

Austin City Attorney or Designee

Participating TNC}

By:

signature

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printed name and title

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MOU ~~City of Austin and A Transportation Network Company~~



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