

TNC
FOR HIRE VEHICLE
OPERATING AGREEMENT
BETWEEN
SPOKANE AIRPORT
AND

SAMPLE

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TNC FOR HIRE VEHICLE OPERATING AGREEMENT

THIS AGREEMENT, made and entered into, by and between SPOKANE AIRPORT, by and through its AIRPORT BOARD, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, as a joint operation of the City and County of Spokane, municipal corporations of the State of Washington, hereinafter referred to as "Airport," and _____, a company organized and existing under the laws of the State of _____, hereinafter referred to as "Operator";

WITNESSETH

WHEREAS, the Airport Board is the administrator and operator of SPOKANE INTERNATIONAL AIRPORT, hereinafter referred to as "SIA", located in the City and County of Spokane, State of Washington, and is authorized to grant leases for real property and premises at SIA for the promotion, accommodation and development of commerce, commercial and general aviation air transportation; and

WHEREAS, the Airport has the authority and power to allow and regulate ground transportation services ("services") demanded or desired by the traveling public; and

WHEREAS, on July 16, 2015, the Airport adopted Resolution No. 03-15 – In the Matter of Establishing Ground Transportation Rules and Regulations regarding Courtesy and For Hire Vehicle Operators at Spokane International Airport Spokane, Washington; and

WHEREAS, Operator is desirous of utilizing Airport property for the purpose of operating as a Transportation Network Company (TNC); and

WHEREAS, Operator agrees to operate said service under the classification of "For Hire" as outlined in Resolution No. 03-15 attached hereto and made a part hereof; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree for themselves, their successors and assigns as follows effective _____;

1. TERM

A. The term of this Agreement shall be for one (1) year commencing _____ and shall automatically renew on an annual basis, provided the Operator is in compliance with all terms and conditions of this Agreement and Resolution 03-15.

B. Either party, if not in default, shall have the right to cancel this Agreement, without cause, upon thirty (30) days notice in writing.

C. The Airport shall have the right to amend the terms of the Agreement from time to time as necessary.

2. OPERATOR PRIVILEGES AND OPERATING REQUIREMENTS

A. Operator shall utilize Airport property for the purpose of operating a service under the following category:

1. For Hire Vehicles - For Hire Vehicles shall include all vehicles used for ground transportation of passengers and baggage for compensation, including, but not limited to, taxicab operations, non-exclusive scheduled bus/van/limousine service and non-exclusive prearranged bus/van/limousine/taxi operations. Any Operator that is compensated for transporting passengers or provides transportation as an ancillary service will be considered in this classification.

2. Operator – Operator refers to itself as a ride-sharing network that uses a digital platform to connect passengers to ridesharing operators using their personal vehicles for the purpose of transportation. The Airport has referred to this form of transportation service as a For Hire Vehicle, a transportation network company and/or a ride-sharing network. Regardless of how this form of transportation service is defined now by either of the parties, it is essentially an organization that matches drivers and riders on a prearranged basis, for trips provided by drivers using their personal vehicles.

3. Operator's Drivers – Operator's Drivers shall mean an individual who uses the individual's personal vehicle to provide transportation services through Operator's platform.

4. Operator's Vehicle – Operator's Vehicle shall mean a personal vehicle that is used by an Operator's Drivers through the Operator's platform.

B. The Airport grants to the Operator the right to operate and maintain a For Hire Vehicle Service for transporting passengers and baggage to and from SIA over designated SIA roadways. The Airport has designated parking stalls in the Cell Phone Lot for Operator's Drivers to wait for their pre-arranged passengers. Operator agrees to provide its geo fence at the Cell Phone Lot. The Airport shall have the right to change the designated location and Operator agrees to provide its geo fence to any new designated area(s).

C. The issuance of this Agreement is subject to the terms and conditions of Resolution No. 03-15, and as may be amended, attached hereto and made a part hereof and any subsequent resolutions adopted or implemented by the Airport as they pertain to the Operator's business at SIA.

D. Nothing herein shall be construed to prevent the Airport from authorizing other operators of vehicles to render the same type of service as under this Agreement.

E. It is agreed and understood that this Agreement shall not affect any right the Operator may have to operate service to and from other metropolitan areas.

F. It is further understood and agreed that nothing contained herein shall permit Operator to have an office or station at the SIA Terminal.

G. Operator shall conduct its business in a professional manner continuously during the term of this Agreement. Operator, for itself and its employees, agrees it will not disturb the Airport or any other tenant, or other person using SIA, make or permit any disturbance or any unusual noise, vibration or other condition on or at SIA.

H. Operator covenants and agrees that its personnel at SIA shall be neat, clean and courteous. Operator shall not permit its agents or employees to conduct business or otherwise act in a loud, noisy, boisterous or offensive manner, or to solicit business at SIA in any manner whatsoever.

I. Operator shall maintain a website that provides a customer service telephone number and email address.

J. Operator shall maintain an agent for service of process in the city of Spokane.

K. Operator shall maintain accurate and up-to-date records of all vehicle operators providing services through the Operator's platform and shall provide such list of approved Operator's Drivers to the Airport, together with a certification that such Operator's Drivers fully comply with the requirements set forth in this Agreement.

L. Upon completion of a trip, Operator shall transmit an electronic receipt to the passenger's email address or mobile application documenting the origination and destination of the trip and a description of the total amount paid.

M. Operator and Operator's Drivers shall accept only rides booked through its own digital platform and shall not solicit or accept street-hails.

N. Operator's Drivers shall offer service for compensation only.

O. Operator's app shall display for the passenger, the name and photograph of driver as well as the make, model and license plate number of the vehicle.

P. Operator shall establish a driver-training program designed to ensure that each Operator's Driver safely operates his or her vehicle prior to the driver being able to offer service.

Q. Operator shall have a zero-tolerance policy on the use of drugs or alcohol applicable to any of Operator's Drivers on its platform, provide notice of the zero-tolerance policy on its website, as well as the procedures to report a complaint about a driver with whom the passenger was matched and for whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride, and immediately suspend said driver upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy. The suspension shall last the duration of the investigation.

R. Prior to Airport permitting a person to act as an Operator's Driver on its digital network, and annually thereafter, Operator shall obtain a criminal history report for such person and provide a copy to the Airport upon request. The criminal history and background report shall consist of both (i) a Washington State Patrol criminal history report and a (ii) Federal Bureau of Investigation fingerprint background check (FBI Identity History Summary) that includes a search

of the national sex offender database. Any person who has been convicted, within the past seven years of driving under the influence of drugs or alcohol, or who has been convicted at any time for fraud, sexual offences, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence, or acts of violence, or acts of terror shall not be permitted to be employed by the Operator. Operator shall maintain electronic records of such criminal background checks for a period of two years.

S. Prior to permitting a person to act as an Operator's Driver on its network, and quarterly thereafter, Operator shall obtain and review a driving history report for such person. Any person with: (i) more than three (3) moving violations in the three-year period prior to such check, or (ii) a major violation in the three-year period prior to such check (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license) shall not be permitted to be a driver for Operator on its platform. Operator shall maintain electronic records of such driving history research reports for a period of two (2) years.

T. Operator's Drivers shall possess a valid driver's license, proof of registration, maintain current commercial automobile liability insurance, and be a least twenty-one (21) years of age as outlined in Article 10 and permits and licenses as outlined in Exhibit A, For Hire Vehicle & Operating Licensing Requirements.

3. VEHICLES

A. All vehicles operated or offered for public service at SIA shall be in good operating order, free from mechanical defects and kept in a clean, neat and attractive condition, both inside and outside. Operator's Vehicles shall bear the company's identification in a prominent location on the exterior sides of the vehicles.

B. Operator's Driver's Vehicles shall be street-legal.

C. Operator shall ensure all of Operator's vehicles have a safety inspection prior to being used at SIA and annually thereafter, pursuant to a procedure approved by the Airport. Such inspection shall, at a minimum, include the following components: brakes, parking brakes, steering mechanism, windshield, rear window and other glass, windshield wipers, headlights, tail lights, turn signals, front seat adjustment mechanism, doors (open, close, lock), horn, speedometer, bumpers, muffler and exhaust system, condition of tires, including tread depth, interior and exterior rear view mirrors, and safety belts for driver and passenger(s).

4. PROHIBITED ACTIVITIES

Operator's Drivers shall not:

- A. Solicit passengers on Airport property;
- B. Accept curbside hails;
- C. Leave a vehicle unattended;
- D. Fail to provide information or provide false information to Airport personnel;
- E. Display to an Airport official an electronic equivalent of a waybill in an altered or fictitious form;
- F. Occupy non-commercial lots while in driver-mode e.g. hotel parking lots, Airport road right-of-ways;

- G. Use, possess or be under the influence of any legal or illegal drug;
- H. Fail to comply with posted speed limits and traffic control signs;
- I. Double park; or
- J. Engage in any criminal activity.

5. FACILITIES TO BE PROVIDED

A. The Airport shall allow the Operator and Operator's Drivers, in common with other authorized commercial ground transportation companies to pick up passengers at designated For Hire areas at Terminal A/B and Terminal C. Operator may drop-off passengers at the appropriate airline check-in area. Pick-up and drop-off designated areas are depicted on Exhibit B, attached hereto and made a part hereof.

B. The Airport shall allow the Operator and Operator's Drivers, in the conduct of services under this Agreement, to use designated parking stalls in the Airport's Cell Phone Lot to wait for passengers.

6. OPERATING FEES & CHARGES

A. Operator agrees to pay the Airport the following Operating Fees and Charges upon commencement of this Agreement:

1. A non-refundable application fee in the amount of Two Hundred Fifty Dollars (\$250.00) shall be charged related to the administration and processing of a new Operating Agreement with Operators. The application fee is due with submission of application.

2. A trip fee in the amount of Fifty Cents (\$0.50) per trip shall be assessed. The Airport shall invoice the Operator(s) for said trip fees for the preceding month's activity by the 10th of the following month, and Operators shall pay the trip fees to the Airport on or before the 20th day of the same month.

3. Effective April 1, 2016, the Airport shall re-evaluate the trip fee based upon a review of the actual number of trips recorded during the preceding six (6) month period. At the sole discretion of the Airport, the trip fee may be adjusted upward not to exceed \$1.00 per trip. The Airport shall provide Operator thirty (30) days written notice of any change in the trip fee.

4. Thereafter, it is agreed that the Operating Fees and Charges as set forth herein shall be subject to adjustment annually on January 1st based on the Rates and Charges adopted by the Airport.

5. Operator shall pay to the Airport a fee of \$35.00 for each original transponder and \$100.00 for each lost, stolen or damaged transponder issued to the Operator.

B. In the event of an automatic vehicle identification system or transponder failure, the Airport shall determine the Operator's monthly fee based upon the number of vehicle trips made in the same month of the prior year plus 2%, or if less than one full year of operation, Operator's fee shall be based upon the average of the number of vehicle trips for the total number of months in operation.

7. FAILURE TO PAY OPERATING FEES & CHARGES

A. It shall be the duty of the Operator to pay all fees and charges when due. In the event Operator fails to pay fees and charges or billings as required under this provision of the Agreement after the payments become due as described in Article 6 – OPERATING FEES & CHARGES, interest at a maximum legal rate, or 18% per annum, whichever amount is greater shall be assessed until fully paid. The implementation of this provision shall not preclude Airport from terminating this Agreement for default in the payment of fees and charges, or from enforcing any other provisions contained herein.

B. Failure to remit payment for the trip fees by the 20th day of the month shall result in the Operator's transponder(s) being deactivated in Resolution 03-15, Article 7 – Enforcement of Resolution No. 03-15. The Operator shall pay a Twenty Dollar (\$20.00) reactivation fee for each transponder. The reactivation fee must be paid in advance of the transponder(s) being reactivated.

8. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

Operator covenants and agrees that it will comply with all Airport, federal, state and local laws, ordinances, and regulations, and further covenants and agrees it will abide by all applicable rules and regulations that are now in effect or hereinafter adopted by the Airport. The Operator shall, at its own expense, obtain and keep in effect all certificates, licenses and permits necessary to conduct said services and pay all fees and taxes applicable to these services.

9. INDEMNITY AND WAIVER OF DAMAGES

A. The Operator and Operator's Drivers shall indemnify, hold harmless and defend the Airport, the City and County of Spokane, their elected and appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceeding of whatever nature, including reasonable attorney's fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Operator's or Operator's Drivers conduct of business or from any activity or other things done, permitted, or suffered by Operator or Operator's Drivers in, on or about SIA or other act or failure to act, excluding only claims or actions arising out of the sole negligence of the Airport, the City and County of Spokane, their elected and appointed officials, agents and employees, provided that the Airport shall give the Operator prompt and reasonable notice of any such claim or action made or filed against the Airport.

B. Operator and Operator's Drivers hereby agree to release and hold harmless the Airport, the City and County of Spokane, its elected and appointed officials, agents and employees, from any damages to the Operator or Operator's Drivers caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on SIA; and the Operator does hereby fully waive, remise and release any right or cause of action which it may now have or which it may have in the future against the Airport, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operation at or on SIA. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft Operators.

C. Operator and Operator's Drivers further agree to hold the Airport, the City and County of Spokane, their agents, officials and employees free and harmless for any claims arising out of damage, destruction or loss of any or all of Operator or Operator's Drivers equipment excluding any claims arising out of the sole negligence of the Airport, the City and County of Spokane, their elected officials, agents and employees.

10. INSURANCE

Operator shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability as outlined below, and insurance shall be placed with companies or underwriters authorized to issue said insurance in the State of Washington and carry a Best's rating no lower than A-. Failure to obtain and maintain such insurance shall constitute a default under this Agreement. The insurance policy(ies) shall be standard comprehensive insurance coverage to cover all operations of the Operator and Operator's Drivers. The policy(ies) shall include, but not by way of limitation, bodily injury; property damage; automobile including owned, non-owned, leased and hired; and contractual coverage, including the obligations pursuant to Article 9 – INDEMNITY AND WAIVER OF DAMAGES, herein. The Airport, the City and County of Spokane, their elected and appointed officials, agents and employees shall be named as additional insureds with respect to Operator's use of SIA which is the subject of this Agreement. The Operator's insurance shall be primary and non-contributory with any insurance maintained by the additional insureds. Operator shall promptly upon execution of this Agreement, furnish to the Airport appropriate certificates of insurance and additional insured endorsements evidencing coverage affected and to be maintained for the term of this Agreement. The coverage shall not be less than One Million Dollars (\$1,000,000), combined single limit with an annual aggregate coverage of Two Million Dollars (\$2,000,000). The automobile liability coverage shall not be less than One Million Dollars (\$1,000,000) for owned, non-owned and hired automobiles. The Operator's insurance policies shall be endorsed so that the insurance carrier will provide the Airport with at least thirty (30) days notification prior to cancellation or material change. Such notice of cancellation or material change shall be mailed to the Airport by certified mail. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written evidence or renewal shall be furnished to the Airport at least thirty (30) days prior to such expiration. Upon written request by the Airport, Operator shall permit the Airport to inspect the originals of all applicable policies. The Operator's insurance identified in this Article 10 shall include a waiver of subrogation in favor of the additional insured. This Article 10 shall be subject to periodic adjustments by the Airport. Subject to audit by the Airport, Operator shall ensure that Operator's Drivers maintain the required commercial automobile liability insurance as required herein.

11. ASSIGNMENT

Operator shall not assign this Agreement or any interest herein nor subcontract any portion of the services to be rendered hereunder, nor shall this Agreement or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any Court or otherwise.

12. AIRPORT'S RIGHTS OF CANCELLATION

In addition to any conditions as specified herein and all other remedies available to the Airport, this Agreement shall be subject to cancellations by the Airport should any one or more of the following occur:

A. If the Operator shall file a voluntary petition in bankruptcy, or proceedings in bankruptcy shall be instituted against the Operator and the Operator is thereafter adjudicated a bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of the Operator and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a Receiver for the Operator's assets are appointed, or if the Operator shall be divested of its rights, powers and privileges under this Agreement by other operation of law.

B. If the Operator shall voluntarily abandon or discontinue for thirty (30) consecutive days the conduct and operation of its business at the Airport, except when such abandonment be caused by fire, earthquake, war, strike or other calamity beyond Operator's control.

C. If the Operator shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Agreement or in Resolution No. 03-15, said Operator shall be subject to the provisions of Resolution 03-15, Article 7 – Enforcement of the Resolution.

D. Should the Operator fail to comply with any of the terms stated in this Agreement or Resolution No. 03-15, the Airport shall have the right to take Administrative action as outlined in Resolution 03-15, Article 7 – Enforcement, Paragraph B of the Resolution.

E. The failure by Operator or any of Operator's Driver(s) to comply with any condition or requirement of this Agreement including vehicle maintenance or insurance requirements shall be grounds for cancellation or suspension of this Agreement.

13. OPERATOR'S RIGHTS OF CANCELLATION

In addition to all other remedies available to the Operator, this Agreement shall be subject to cancellation by Operator should any one or more of the following occur:

A. The permanent abandonment of SIA as an air carrier airport.

B. The issuance of any order, rule or regulation by the Federal Aviation Administration or its successor federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of SIA for scheduled air transportation.

C. The breach by the Airport of any covenants, terms or conditions of this Agreement to be kept, performed and observed by the Airport and the failure to remedy such breach for a period of sixty (60) days after written notice from Operator of the existence of such breach.

D. The assumption of the United States Government, or any authorized agency of the same, of the operation, control or use of SIA and its facilities in such a manner as to substantially

restrict the Operator from conducting its business, if such restriction be continued for a period of ninety (90) continuous days or more.

14. FEDERAL NONDISCRIMINATION

A. Operator understands and acknowledges that the Airport has given to the United States of America, acting by and through the FAA, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act 1964 and by 49 CFR Part 21 as a condition precedent to the Government making grants in aid to the Airport for certain Airport programs and activities, and that Airport is required under those regulations to include in every agreement pursuant to which any person or persons, other than Airport, operates or has the right to operate any facility on SIA providing services to the public, the following covenant, to which Operator agrees:

B. Operator, in its operation at and use of SIA, covenants that:

1. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;

2. In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

3. It shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as that regulation may be amended; and

4. Operator further agrees promptly to provide the Airport, upon written request by the Airport, such information the Airport is required to obtain from Operator to show compliance with applicable nondiscrimination laws.

15. COMPLIANCE WITH SPONSOR'S AGREEMENT

Operator, in connection with its operations at SIA, covenants and agrees at all times to comply with the requirements of any agreements between the Airport and the United States of America in relation to the operation and maintenance of SIA.

16. SUBMISSION OF AGREEMENT

The submission of this document for examination and negotiation does not constitute an offer to enter into an Agreement. This document shall become effective and binding only upon execution and delivery hereof by the Airport and Operator. No act or omission of any officer, employee or agent of the Airport shall alter, change or modify any of the provisions hereof.

17. RELATIONSHIP OF THE AIRPORT AND OPERATOR

Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Operator and the Airport shall be deemed to create any relationship other than that of Operator and the Airport.

18. SURVIVAL OF INDEMNITIES

All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Operator shall, at the Airport's option, defend the Airport at Operator's expense by counsel satisfactory to the Airport.

19. WAIVER

No waiver by either party of any default by the other shall be construed as, or 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 said other party.

20. APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY

This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of Washington. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in either the United States District Court for the Eastern District of Washington at Spokane or the Spokane County Superior Court for the State of Washington, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for the purposes of determining such action and waive any right to assert a claim for inconvenient forum. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

21. ADVERTISING AND SIGNS

A. To the extent that Operator uses any electronic medium for identification and/or advertising which includes any reference to Operator's relationship with SIA, Airport shall have the right to review and approve the same.

B. Operator's Vehicles must have appropriate trade dress at all times while at SIA that identifies the Operator's business.

22. NOTICES

All payments, demands and notices required herein shall be deemed to be properly served by personal delivery, or if sent by express courier service or certified mail, to the address furnished by the parties hereto, until thereafter changed by the parties in writing, notices shall be addressed as follows:

AIRPORT: Properties & Contracts Director
Spokane Airport
9000 W. Airport Drive, Suite 204
Spokane, WA 99224

OPERATOR: _____

The date of service of such notice shall be upon personal delivery, one (1) day after such notice is deposited with reliable overnight courier or three (3) days after such notice is deposited in a Post Office of the U.S. Post Office Department.

23. RIGHT OF INSPECTION

Airport shall have the right and authority to enforce the requirements of this Agreement, including inspection of all relevant records, including but not limited to; Operator's Drivers licenses, insurance documents and background checks, Operator's Drivers vehicle registrations, inspection records, and revenue, trip and fee records of Operator.

24. PARAGRAPH HEADINGS

Paragraph headings are for convenience and reference only, and are not intended to define or limit the scope of any provisions of this Agreement.

IN TESTIMONY WHEREOF, witness the signature of the parties hereto the day and year first above written.

SPOKANE AIRPORT BOARD:

APPROVED AS TO FORM:

By: Lawrence J. Krauter
Chief Executive Officer
Date: _____

James A. McDevitt
General Counsel
Date: _____

OPERATOR

Title: _____
Date: _____

EXHIBIT A

FOR-HIRE VEHICLE AND OPERATOR LICENSING REQUIREMENTS

SAMPLE

EXHIBIT B

DESIGNATED DROP-OFF & PICK-UP AREAS

SAMPLE

SAMPLE