

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES  
AND  
EMBARQUE BOSTON, INC.  
REGARDING BACKGROUND CHECKS**

The Parties to the Memorandum of Understanding ("Memorandum") are the Commonwealth of Massachusetts, Department of Public Utilities ("Department"), 1 South Station, 5<sup>th</sup> Floor, Boston, Massachusetts 02110, acting by and through its Chairman, Angela M. O'Connor, and Embarque Boston, Inc., ("Company" or "Embarque"), a Delaware corporation, with offices at 66-72 Roc Sam Park Road, Braintree, MA 02184.

**WHEREAS**, both Embarque and the Division support protecting public safety and promoting innovation and economic growth;

**WHEREAS**, both Embarque and the Division agree that this Memorandum will not apply to reservations booked/confirmed through Embarque's traditional prearranged for-hire dispatch operations but will govern all conduct of its on-demand Digital Network (as defined below) operation in Massachusetts;

**WHEREAS**, in furtherance of these goals, the Division and Embarque agree to enter into an interim agreement governing background checks;

Now, therefore, in consideration of mutual covenants herein contained and for other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows:

- I. Definitions. As used in this Memorandum, the following definitions shall apply:
  - (a) "Background Information" means (1) Criminal Offender Record Information ("CORI") regulated by the Department of Criminal Justice Information Services ("DCJIS"), (2) Sex Offender Registry Information ("SORI"), and (3) Registry of Motor Vehicles ("RMV") vehicle records and driver history information.
  - (b) "Digital Network" means any online-enabled application, software, website, or system offered or utilized by Embarque that enables a person or rider to request transportation services from a livery or taxi driver.
  - (c) "Division" means the Division of Transportation Network Companies established by the Department to monitor and oversee TNCs operating within the Commonwealth.
  - (d) "Driver" means a livery driver or taxi driver who provides transportation services requested through Embarque's Digital Network.

2. Company Background Check.

- (a) The Company or its third-party designee shall conduct a nationwide background check on every Driver, which shall include a review of:
  - i. A multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search);
  - ii. U.S. Department of Justice National Sex Offender Public Website; and
  - iii. A check of relevant motor vehicle records.
- (b) If, after completing the Company Background Check set forth in Section 2(a), the Company learns that any of the Disqualifying Conditions listed in **Exhibit A-Disqualifying Conditions** apply to the Driver then the Company shall disqualify the Company driver from providing transportation services requested through Embarque's Digital Network, provided that nothing in this Section requires the Company, or its third-party designee, to apply a lookback period longer than seven years.

3. Division Background Check.

- (a) The Company shall electronically transmit the following information for all Drivers, if known. The information shall be provided in a format specified by the Division.
  - i. Legal First Name
  - ii. Legal Middle Name
  - iii. Legal Last Name
  - iv. Former Names
  - v. Place of Birth (City and State)
  - vi. Date of Birth
  - vii. Last Six Digits of Driver's Social Security Number
  - viii. Driver's License State
  - ix. Driver's License Number
  - x. Driver's Electronic Mail Address

- (b) The Company shall also provide an appropriate consent and authorization form for all Drivers and driver applicants to enable the Division to obtain and review Background Information for each driver. The Company shall provide an updated version of this consent and authorization form annually. The parties agree that the drivers and driver applicants may consent to the review by electronic means, and the parties agree that the form attached as **Exhibit B-CORI Consent and Authorization** is an appropriate consent and authorization form.
- (c) The Company shall inform each Driver or driver applicant that the Background Information obtained may be used by the Division in determination of suitability for performing transportation services requested through Embarque's Digital Network.
- (d) The Company shall also provide the Division with Consent to a CORI investigation to be conducted by the Division and, where applicable, to the periodic conduct of further CORI investigations during the course of a driver's affiliation with the Company.
- (e) The Division shall obtain and review the relevant Background Information for each Driver and driver applicant.

4. Determination of Suitability.

- (a) The Division shall issue a negative determination of suitability if it determines any of the Disqualifying Conditions set forth in the attached **Exhibit A-Disqualifying Conditions** apply to a Driver.
- (b) The Division may issue a negative determination of suitability if the Division Director determines that a Driver:
  - i. Made a false statement on an application to provide transportation services; or
  - ii. Acted or is likely to act in a manner resulting in substantial jeopardy to the health, safety, or welfare of any person.
- (c) If the Division issues a negative determination of suitability, the Division shall electronically notify the Company and the driver or driver applicant that the driver or driver applicant is not suitable and shall not provide transportation services requested through Embarque's Digital Network. Such notice shall include information regarding the driver or driver applicant's ability to appeal such determination.
- (d) If the Division determines that the Company driver or driver applicant is suitable, it shall issue a positive determination of suitability and electronically transmit a notice to both the Company and the Driver or driver applicant.

- (e) Nothing in this section shall prohibit the Company from disqualifying drivers according to the Company's internal procedures or policies.

5. Appeal from a Negative Determination of Suitability.

- (a) Any Driver aggrieved by a negative suitability determination by the Division shall have a right of appeal to the Division.
- (b) Such appeal shall be claimed by filing with the Secretary of the Commission, and with the Director of the Division, a written claim of appeal within 20 days from the date of the notice of negative suitability determination, which claim of appeal shall specifically set forth the grounds upon which the appellant claims to be aggrieved by the order of the Director.
- (c) It shall be the burden of the Driver to demonstrate suitability by a preponderance of the evidence.
- (d) Such appeal shall be heard on the evidence introduced at the hearing before the Division. An appeal shall not operate as a stay of the determination.
- (e) Any Driver aggrieved by a final order or decision of the Division may appeal for judicial review in the Superior Court within 30 days after receipt of such order or decision. Any proceedings in the Superior Court shall, insofar as applicable, be governed by G.L. c. 30A, § 14, and may be instituted in the Superior Court for the county: (i) where the parties or any of them reside or have their principal place of business within the Commonwealth; (ii) where the Division has its principal place of business; or (iii) Suffolk.

6. Suspension and Revocation.

- (a) If, at any time after the Division has issued a positive determination of suitability, the Company learns of any condition that would make a driver unsuitable as set forth in Section 4(a), the Company shall notify the Division within 60 hours.
- (b) If, at any time after the Division has issued a positive determination of suitability, the Division learns of any condition that would make a driver unsuitable as set forth in Section 4, the Division shall electronically notify the driver and the Company of the negative determination of suitability.
- (c) If the Division notifies the Company that a driver or driver applicant is not suitable, the Company shall suspend or revoke the driver's privileges to provide transportation services requested through Embarque's Digital Network.

7. Non-Compliance with Suspension or Revocation Notice.

If, after having been notified by the Division that a driver is unsuitable to provide transportation services, the Company fails to suspend or revoke that driver's ability to accept rides requested through Embarque's Digital Network within 60 hours, the Division may take whatever reasonable action the Division deems necessary including, without limitation, refusing to certify additional drivers, issuing a monetary penalty to the Company, or suspending or revoking the Company's privilege to offer services that connect riders to Drivers within the Commonwealth. In determining the amount of any monetary penalty, the Division shall consider, without limitation, the size of the TNC based on the TNC's intrastate operating revenues for the previous calendar year, the gravity of the violation, and the degree to which the TNC exercised good faith in attempting to achieve compliance or to remedy non-compliance.

8. Deadline for Compliance.

Notwithstanding Sections 2, 3, and 4, any Driver may provide transportation services requested through Embarque's Digital Network until **April 3, 2017**, provided that:

- (a) The Division has not determined that the Company driver is unsuitable; and
- (b) For all drivers operating in the Commonwealth as of the effective date of this Memorandum, the Company has completed the background check required by Section 2 and submitted the identifying information pursuant to Section 3 not later than **March 20, 2017**.
- (c) For all drivers who begin providing transportation services requested through Embarque's Digital Network after the effective date of this Memorandum, the Company has completed the background check required by Section 2 and submitted the identifying information pursuant to Section 3 on **March 20, 2017** or **7 days** after the driver has started providing transportation services requested through Embarque's Digital Network, whichever is later.

9. Confidentiality.

The Division shall ensure that any information provided by the Company is treated as confidential to the fullest extent permitted under the Massachusetts Public Records law, G.L. c. 66, §10, and G.L. c. 159A½, §8(e).

The Division agrees that Company's list of drivers is a trade secret of Company is exempt from disclosure under G.L. c. 4, § 7(26)(g), and further that driver personal information is private information of drivers exempt from disclosure under G.L. c. 4, §7(26)(c).

10. Amendments.

No amendment to this Memorandum shall be effective unless it is in writing and signed by duly authorized representatives of all Parties. Any such duly executed amendment shall be incorporated and made a part of this Memorandum.

11. Choice of Law.

This Memorandum has been made in, and shall be construed under and governed by the laws of the Commonwealth of Massachusetts, notwithstanding any countervailing choice of law principles that might otherwise apply. The Parties agree to commence any action arising to which the Company and the Division are parties in the Superior Court Department of the Trial Court, Suffolk County, unless requirements of jurisdiction or venue require a different forum, provided, however, that in no event may the Parties resort to a court outside the Commonwealth of Massachusetts.

12. Headings and Interpretations.

The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of this Memorandum. All terms contained herein shall be construed, whenever the context of this Memorandum so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all gender.

13. Final Expression.

The terms of this Memorandum are intended by the Parties as the final expression of their agreement and such terms may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. No extrinsic evidence may be introduced in any dispute concerning this Memorandum.

14. Waiver.

The obligations and conditions imposed by this Memorandum can be waived only by written agreement. The waiver of any breach of these conditions shall not be construed to be a continuing waiver of any subsequent breach.

15. Severability.

If any part of this Memorandum is declared or found to be illegal, void, or unenforceable, then both Parties shall be relieved of all obligations under that provision. The remainder of this Memorandum shall be enforced to the fullest extent permitted by law.

16. Counterparts.

This Memorandum may be signed in any number of counterparts, each of which shall be considered an original and all of which taken together shall form one document.

17. Exhibits.

The following exhibits are attached hereto and incorporated by reference herein and are made a part of this Memorandum for all purposes:

**Exhibit A-Disqualifying Conditions**

**Exhibit B-CORI Consent and Authorization**

18. Nothing Contrary to Statutory Authority.

Nothing in this Memorandum creates any obligations of the Parties that are inconsistent with or contrary to their statutory authority. By entering into this Memorandum, Embarque does not waive its right to contest the applicability of Chapter 187 of the Acts of 2016 to Embarque, its Digital Network, or Drivers offering services requested through the Digital Network.

19. No Third Party Rights or Benefits.

Nothing in this Memorandum shall create any benefit or right for any third party.

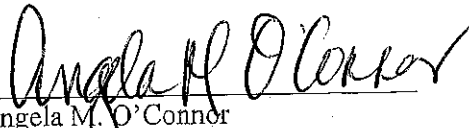
20. Effective Date and Termination.

(a) This Memorandum is effective upon signature of both Parties and shall remain in effect as to each signatory until the date of the Department's promulgation of regulations under G.L. c. 159A½.

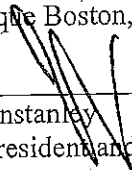
(b) This Memorandum may be terminated by either Party based on a material breach of any provision of this Memorandum.

In witness whereof, the following officials have caused their duly authorized representatives to execute this Memorandum of Understanding, as follows:

Massachusetts Department of Public  
Utilities

  
\_\_\_\_\_  
Angela M. O'Connor  
Chairman  
Date:

Embarque Boston, Inc.

  
\_\_\_\_\_  
Joe Winstanley  
Vice President and General Manager  
Date:



### Exhibit A-Disqualifying Conditions

<b>Violent Crimes</b>	
<i>Definition</i>	Any violent crime, as defined in G.L. c. 140, §121, punishable by 10 years or more in state prison, or conspiracy, solicitation, attempt, or accessory to the same.
<i>Disposition</i>	Conviction or CWOFF
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	Unlimited
<b>Violent Crimes 2</b>	
<i>Definition</i>	Any violent crime, as defined 140, §121, or any assault or assault and battery, or any threat to commit such a crime, or any violation of a G.L. c. 209A restraining order, or any crime involving the illegal use or possession of weapons.
<i>Disposition</i>	Conviction or CWOFF
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	7 years
<b>OUI</b>	
<i>Definition</i>	G.L. c. 90, §24 (Operating M/V Under the Influence)
	G.L. c. 90, §24G (OUI motor vehicle homicide)
	G.L. c. 90, §24L (OUI causing serious bodily injury)
	G.L. c. 90B, §§ 8, 8A, 8B (operating watercraft under the influence)
	G.L. c. 90F, §11 (OUI by commercial operator)
	G.L. c. 265, §13½ (OUI manslaughter)
<i>Disposition</i>	Conviction or CWOFF
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	Unlimited for OUI/motor vehicle homicide, OUI/serious bodily injury, OUI/manslaughter  7 years for all others

<b>Multiple Serious Driving Offenses</b>	
<i>Definition</i>	Two or more convictions or continuations without a finding for operating under the influence or leaving the scene, or any offense under G.L. c. 90, §24(2)(a), or any combination thereof.
<i>Disposition</i>	Conviction or CWO
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	Unlimited
<b>Reckless Operation of Motor Vehicle</b>	
<i>Definition</i>	G.L. c. 90, §24(2)(a)
	- reckless operation
	- negligent operation to endanger
	- leaving the scene of property damage
	- false statement to RMV
	- use without authority
	G.L. c. 90, §24(2)(a½)(1) (leaving the scene of an accident causing personal injury)
	G.L. c. 90, §24(2)(a½)(2) (leaving the scene of an accident causing death)
<i>Disposition</i>	Conviction or CWO
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	7 years
<b>Sex, Abuse, and Exploitation Offenses</b>	
<i>Definition</i>	"Sex Offense" as defined in G.L. c. 6, §178C (incl. conspiracy, solicitation, attempt, or accessory to same)
	G.L. c. 209A, §7 (Violation of an Abuse Prevention Order)
	G.L. c. 265, §13L (Child Endangerment)
	G.L. c. 265, §43 (stalking)
	G.L. c. 265, §43A (criminal harassment)
	G.L. c. 272, §6 (owner of place inducing or suffering person to resort in such place for sexual intercourse)
	G.L. c. 272, §7 (Support From, or Sharing, Earnings of Prostitute)

	G.L. c. 272, §8 (Soliciting for Prostitute)
	G.L. c. 272, §12 (Procuring Person to Practice, or Enter a Place for Prostitution; Employment Office Procuring Person)
	G.L. c. 272, § 13 (Detaining, or Drugging to Detain, Person in Place for Prostitution)
	G.L. c. 272, § 16 (Open and Gross Lewdness and Lascivious Behavior)
	G.L. c. 272, §53 (Indecent Exposure)
	G.L. c. 272, §53 (Accosting or Annoying a Person of the Opposite Sex)
	G.L. c. 272, §53A (Engaging in Sexual Conduct for a Fee)
	G.L. c. 272, §105 (Upskirting)
<i>Disposition</i>	Conviction or CWOFF
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	Unlimited
<b>Sex Offender Registration</b>	
<i>Definition</i>	Required to register as sex offender
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	Unlimited
<b>Felony Convictions</b>	
<i>Definition</i>	Any offense with an available maximum penalty of more than 2½ years' imprisonment.
<i>Disposition</i>	Conviction
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	7 years
<b>"Felony Robbery"</b>	
<i>Definition</i>	G.L. c. 265, §14 (armed burglary)
	G.L. c. 265, §17 (armed robbery)
	G.L. c. 265, §18 (assault to rob)
	G.L. c. 265, §19 (unarmed robbery)

	G.L. c. 265, §21 (stealing by confining or putting in fear)
	G.L. c. 265, §21A (carjacking)
	Attempt, solicitation or conspiracy to commit these offenses, or being an accessory thereto.
<i>Disposition</i>	Conviction or CWOFF
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	Unlimited
<b>“Felony Fraud”</b>	
<i>Definition</i>	<p>G.L. c. 266, §§30 (Larceny – over \$250 only), 30B (unlawful possession of theft detection shielding device or deactivator), 30C (use of counterfeit receipt with intent to defraud), 30D (organized retail crime), 31 (obtaining signature by false pretenses), 32 (fraudulent conversion of property by captain of vessel), 33 (larceny by false pretenses relating to contracts, banking transactions or credit), 35A (false material statements in connection with mortgage lending), 37 (uttering fraudulent checks), 37C (fraudulent use of credit cards – felony form only), 40 (common and notorious thief), 39 (destruction or concealment of will), 50 (fraud or embezzlement by state treasury employee), 51 (fraud or embezzlement by city, town or county employee), 52 (fraud or embezzlement by bank officer or employee), 53A (misconduct by bank officer or employee), 55 (embezzlement by liquidating agent or receiver), 56 (embezzlement by broker or agent), 57 (embezzlement by fiduciary), 60A (buying or selling stolen trade secrets), 66 (fraudulent issue of stock), 67 (false entry in corporate books), 67A (false statement in procurement), 67B (presentation of false claims), 67C (false entry in records relating to capital construction projects), 73 (obtaining goods under false pretenses), 74 (fraudulent use of corporate credit), 75 (obtaining property by trick – over \$250 only), 76 (gross fraud or cheat at common law), 110 (false invoice of cargo), 111 (false affidavit or protest), 111A, 111B, 111C (insurance fraud)</p> <p>G.L. c. 267, §§1 (false or forged records), 2 (forged tickets), 3 (forged seal of land court), 4 (forged railroad company stamp), 5 (uttering false record), 6 (uttering forged ticket), 7 (forged bill of credit issued by treasurer), 8 (forged bank bill or note), 9 (possession of ten or more counterfeit notes), 10 (uttering counterfeit note), 11 (common utterer), 12 (possession of counterfeit notes), 13 (possession of tools for counterfeiting), 17 (possession of ten or more counterfeit coins), 18 (possession of fewer than ten counterfeit coins), 19 (common utterer of counterfeit coins), 20 (tools for making counterfeit coin), 27 (possession of worthless bank notes), 28</p>

	(uttering worthless bank notes).
	G.L. c. 268, §§1 (perjury), 2 (subornation of perjury), 3 (attempt to procure perjury), 6 (report before state departments), 13 (corrupting masters, auditors, jurors, arbitrators), 13B (willfully misleading to obstruct a criminal investigation), 13E (tampering with record document for use in judicial proceeding), 36 (compounding or concealing a felony), 39 (perjury related to motor vehicle theft)
	Or Attempt, Solicitation or Conspiracy to commit these offenses, or being an Accessory thereto
<i>Disposition</i>	Conviction or CWO
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	7 years
<b>Open Cases</b>	
<i>Definition</i>	Any outstanding or unresolved criminal proceedings, the conviction for which would result in a negative suitability determination by the Division.
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	Present
<b>Open Warrants</b>	
<i>Definition</i>	Any outstanding warrant for arrest
<i>Jurisdiction</i>	Any jurisdiction
<i>Look-back period</i>	Present
<b>Habitual Traffic Offender</b>	
<i>Definition</i>	G.L. c. 90, §24 (Habitual Traffic Offender)
<i>Jurisdiction</i>	Any jurisdiction
<i>Look Back Period</i>	7 years
<b>Licensed Driver</b>	
<i>Definition</i>	If under 23 years of age, have not held a valid US driver's license for at least 3 years. If 23 years of age or older, have not held a valid US driver's license for at least 1 year.

<i>Jurisdiction</i>	Any jurisdiction
<b>Open or Unresolved Driving Infractions</b>	
<i>Definition</i>	Any outstanding or unresolved driving infractions that would result in a negative determination of suitability.
<i>Jurisdiction</i>	Any jurisdiction
<b>Suspension of Driver's License</b>	
<i>Definition</i>	Any suspension of driver's license for reasons related to the operation of a motor vehicle.
<i>Jurisdiction</i>	Any jurisdiction
<i>Look back period</i>	7 years
<b>Multiple Violations of Traffic Laws or At Fault Accidents</b>	
<i>Definition</i>	More than 4 violations of the Traffic Laws and/or At Fault Accidents (211 CMR 134).
<i>Jurisdiction</i>	Any jurisdiction
<i>Look back period</i>	3 years
<b>Interlock Device</b>	
<i>Definition</i>	Interlock device present in an applicant's vehicle.
<i>Jurisdiction</i>	Massachusetts
<i>Look back period</i>	Present

### **Exhibit B-CORI Consent and Authorization**

I understand that the Department of Public Utilities' Division of Transportation Network Companies ("Division") shall review Criminal Offender Record Information, Sex Offender Registry Information, and Registry of Motor Vehicles driving record information ("Background Information") from the Department of Criminal Justice Information Services for the purpose of evaluating whether I am suitable to perform transportation services requested through Embarque Boston, Inc. ("Embarque") digital network ("Suitability Review"). I hereby acknowledge that the Division is authorized to review Background Information and provide permission to Embarque to submit my information to the Division for the purpose of performing this Suitability Review.

This authorization is valid for one year from the date of my signature or until the conclusion of my affiliation with the Company, whichever comes first. I understand that the Division may perform a Suitability Review multiple times during this period of time.

I may withdraw this authorization at any time by providing Embarque and the Division with written notice of my intent to withdraw my consent. By withdrawing my consent, or if my Suitability Review Consent and Authorization form is not renewed after this one-year period, I understand that (1) the Division may make an adverse decision on my suitability to perform transportation services requested through Embarque's digital network, and (2) the Company may make an adverse decision on my suitability to perform transportation services requested through Embarque's digital network.

I hereby provide my consent to Embarque to submit my information to the Division, and I consent to the Division's use of this information to perform a Suitability Review. I affirm that the information I have provided to conduct a Suitability Review is true and accurate.

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Signature