

**PLAN OF OPERATION OF  
THE NEW YORK BLACK CAR OPERATORS' INJURY  
COMPENSATION FUND, INC.**

**September 7, 1999**

**WITH FINALIZED AMENDMENTS**

**Amendment no. 1**

**October 25, 1999**

**Amendment no. 2**

**May 16, 2000**

**Amendment no. 3**

**January 5, 2001**

**Amendment no. 4**

**June 15, 2002**

**Amendment no. 5**

**December 5, 2002**

**Amendment no. 6**

**February 26, 2003**

**Amendment no. 7**

**January 18, 2005**

**Amendment no. 8**

**December 18, 2006**

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**BY-LAWS  
AND PLAN OF OPERATION OF  
THE NEW YORK BLACK CAR OPERATORS' INJURY  
COMPENSATION FUND, INC.**

ARTICLE I

GOVERNING BOARD

1. FUNCTION AND DEFINITIONS. The New York Black Car Operators' Injury Compensation Fund, Inc. (the "Fund") shall be managed by a governing Board, which is herein referred to as the "Board of Directors" or "Board" or "directors". The word "director" or "directors" likewise herein refers to a member or to members of the governing Board notwithstanding the designation of a different official title or titles. The use of the phrase "entire Board" herein refers to the total number of directors which the Fund would have if there were no vacancies. The Board of Directors shall have the general power to manage and control the affairs and the property of the Fund. The Board of Directors shall have full power by the affirmative vote of five of its members to adopt rules and regulations governing the action of the Board of Directors. The Board of Directors shall have full authority with respect to the distribution and payment of monies received and owed by the Fund. The Fund shall submit annual certified financial statements of its financial condition to the Governor and Legislature of the State of New York no later than the first of May of each year. The Board of Directors shall ensure that the Fund adheres to the fundamental and basic purposes of the Fund, as expressed in the Workers' Compensation Law and the Executive Law of the State of New York. The Board of Directors shall not permit any part of the net earnings of the Fund to inure to the benefit of any director, officer or other private person, except as provided below.

2. QUALIFICATIONS AND NUMBER. Each director shall be at least eighteen years of age. A director need not be a citizen of the United States or a resident of the State of New York. The Board of Directors shall consist of nine persons.

3. SELECTION AND TERM. The first Board of Directors shall consist of nine directors, five of whom shall be selected by the Black Car Assistance Corporation; three of whom shall be chosen by the Governor of New York, including one chosen upon the recommendation of the temporary President of the Senate and one chosen upon the recommendation of the Speaker of the Assembly; and one of whom shall be the Secretary of State of New York (the "Secretary of State"), who shall serve ex officio. The initial terms of directors other than the Secretary of State shall be staggered, the three directors appointed by the Governor serving for initial terms of three years, three of the remaining five directors serving for initial terms of two years and two directors serving for initial terms of one year. The subsequent terms of all directors other than the Secretary of State shall be three years.

For their attendance at meetings, the directors of the Fund shall be entitled to compensation, as authorized by the directors, in an amount not to exceed two hundred dollars per meeting per director and to reimbursement of their actual and necessary expenses.

Directors of the Fund, except as otherwise provided by law, may engage in private or public employment or in a profession or business.

A vacancy occurring in a director position for which the Governor was the original appointing authority shall be filled by the Governor, upon the recommendation of the legislative official, if any, that was authorized to recommend the original appointee. A vacancy occurring in a director position for which the Black Car Assistance Corporation was the original appointing authority shall be filled by the Black Car Assistance Corporation.

At the expiration of a director's term, the authority that appointed such director shall reappoint such director for an additional term or appoint a new director for such subsequent term, provided however that no individual may serve as director for more than three successive terms.

Members of the Board of Directors shall at all times, in performing their duties as directors, including their duties as members of any committee of the Board on which the members may serve, perform such duties in good faith and in the best interests of the Fund, and shall at all times perform such duties in such a way as to implement and follow the intent, express or implied, of the Legislation creating and directing the activities of the Fund.

#### 4. MEETINGS.

(a) TIME. The annual meeting of the Board of Directors shall take place during the month that is five months after the end of the Fund's fiscal year. Adequate prior notice of the particular date shall be given by the Chair to each director. Other meetings shall be held at such time as the Board or the Chair shall fix, and the first meeting of a Board containing newly appointed directors shall be held as soon after appointment as the directors may conveniently assemble.

(b) PLACE. Meetings shall be held at the New York office of the Fund or at such place as shall be fixed by the Board or the Chair.

(c) CALL. No call shall be required for regular or annual meetings for which the time and place have been fixed. Special meetings may be called by the Chair of the Board or by any

five directors upon written notice given not less than seven days prior to the time set for such meeting.

(d) NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. Written, oral, or any other mode of notice of the time and place shall be given for meetings in sufficient time for the convenient assembly of the directors thereat unless the lack of such timely notice has been waived. The notice of any meeting shall specify the purpose of the meeting. Any requirement for furnishing notice shall be waived by any director who signs a waiver of notice before or after a meeting, or who attends a meeting without protesting, prior thereto or at its commencement, the lack of notice to such director.

(e) QUORUM AND ACTION. All of the directors shall have equal voting rights and five or more directors shall constitute a quorum. The affirmative vote of five directors shall be necessary for the transaction of any business or the exercise of any power or function of the Fund. The Fund may delegate to one or more of its directors, officers, agents or employees such powers and duties as it may deem proper.

(f) CHAIR OF THE MEETING. The Chair of the Board if present and acting, shall preside at all meetings. Otherwise, the Vice-Chair, if present and acting, or otherwise any other director chosen by the Board, shall preside.

(g) COMMUNICATIONS EQUIPMENT. Any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board, except a meeting of the Board called pursuant to Sub-Section (c) of this Section 4, or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting except a meeting of the Board called pursuant to Sub-Section (c) of this Section 4. [amended December 5, 2002]

5. WRITTEN CONSENT. Notwithstanding any other provision contained herein, any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or the committee, as the case may be, consent in writing to the adoption of a resolution authorizing such action.

6. REMOVAL OF DIRECTORS. The Board of Directors shall have the power to remove for cause any director other than the Secretary of State. Such removal must be based upon a meeting at which no less than six directors are present. No director shall be removed by the Board unless such removal is based upon the director having engaged in fraud or illegality in connection with the operations of the Fund or the performance of his or her duties as a director of the Fund.

7. RESIGNATION OF DIRECTORS. Any director may resign at any time by giving written notice to the Chair of the Board and the Secretary. Such resignation shall become effective no less than sixty (60) days from the date upon which the notice is given. However, the Board of Directors, in its discretion, may accept the resignation as effective upon an earlier date stated in such notice.

8. COMMITTEES. The Board of Directors, by resolution, may designate committees of the Board with powers to investigate, research and report back to the Board on such matters as the Board shall determine. Unless otherwise provided herein, members of such committees shall be appointed by the Chair of the Board.

There shall be a standing Audit Committee, appointed by the Board of Directors. No director who is an officer, director, investor or employee of a member of the Fund shall be a member of the Audit Committee.

## ARTICLE II

### OFFICERS

1. NUMBER AND QUALIFICATIONS. The directors shall elect annually from among their number a Chair and Vice-Chair. The Vice-Chair shall act as Chair in the Chair's absence.

The directors shall elect annually a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers and such other officers as they may determine. The Chair and Vice-Chair shall be directors. Any two or more offices may be held by the same person, except that the offices of Chair, Vice-Chair, Treasurer and Assistant Treasurer may not be held by the same person.

2. ELECTION AND TERM. Unless otherwise provided in the resolution of election or appointment, each officer shall hold office until the next annual meeting of the Board of Directors and until his or her successor shall have been elected and shall have qualified.

3. REMOVAL. Any officer of the Fund may be removed from office by the Board of Directors for cause or without cause.

4. COMPENSATION. Officers may receive compensation in such reasonable amounts as may be fixed by the Board of Directors. Any officer, except as otherwise provided by law, may engage in private or public employment, or in a profession or business.

5. FUNCTIONS, POWERS AND DUTIES OF OFFICERS.

(a) CHAIR. The Chair of the Board of Directors shall preside at all meetings of the Board of Directors and shall perform the duties of general supervision of the affairs of the Fund and shall keep the Board of Directors regularly informed with respect to the activities of the Fund. The Chair shall perform such other functions and duties as required and assigned by the Board of Directors.

(b) VICE-CHAIR. The Vice-Chair of the Board of Directors shall preside at all meetings of the Board of Directors in the Chair's absence, and in the event of vacancy for any reason in the office of Chair, shall succeed on an interim basis to the office and duties of Chair, until the successor to the Chair is elected.

(c) SECRETARY. The Secretary shall act as secretary of all meetings of the Board of Directors and shall keep the minutes of all such meetings in the books proper for that purpose. The Secretary shall attend to the giving and serving of all notices of the Fund. The Secretary shall perform all the duties customarily incident to the office of the Secretary, subject to the control of the Board of Directors, and shall perform such other duties as shall from time to time be assigned by the Board of Directors. The Secretary shall be the keeper of the Fund's seal if one exists.

(d) ASSISTANT SECRETARIES. The Assistant Secretaries shall perform the duties of the Secretary in the Secretary's absence or at the Secretary's request. The Assistant Secretaries shall perform such other duties as shall from time to time be assigned to them by the Board of Directors.

(e) TREASURER. The Treasurer shall be responsible for collecting and have the custody of all funds and securities of the Fund. The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Fund and shall deposit all monies and other valuable effects of the Fund in the name and to the credit of the Fund in such banks or depositories as the Board of Directors may designate. The Treasurer shall render a statement of accounts to any officer or director of the Fund who shall request the same and shall perform all duties incident to the position of the Treasurer subject to the control of the Board of Directors.

(f) ASSISTANT TREASURERS. The Assistant Treasurers shall perform the duties of the Treasurer in the Treasurer's absence or at the Treasurer's request. The Assistant Treasurers shall perform such other duties as shall from time to time be assigned to them by the Board of Directors.

6. OTHER AGENTS. The Board of Directors may appoint from time to time such other persons as shall be deemed necessary, each of whom shall act in the appointed capacity at the pleasure of the Board of Directors, and shall have such authority and perform such duties, for such reasonable compensation, if any, as the Board of Directors may from time to time determine.

### ARTICLE III

#### BOOKS AND RECORDS

The Fund shall keep at the office of the Fund within the State of New York correct and complete books and records of account and shall keep minutes of the proceedings of the Board of Directors and any committee which the directors may appoint. Any of the foregoing books, minutes, or lists or records may be in written form or in any other form capable of being converted into written form within a reasonable time. The books and records of the Fund shall be available in the principal office of the Fund for examination by any officer or director during normal business hours. Copies of minutes shall be provided to each director and officer when completed by the Secretary.

### ARTICLE IV

#### CORPORATE SEAL

The corporate seal shall be in such form as the Board of Directors shall prescribe.

### ARTICLE V

#### FISCAL YEAR

The fiscal year of the Fund shall be fixed, and shall be subject to change, by the Board of Directors.

## ARTICLE VI

### INDEMNIFICATION

1. SCOPE OF INDEMNIFICATION. (a) The Fund shall indemnify an indemnified person against any liability incurred in connection with any proceeding in which the indemnified person may be involved as a party or otherwise, by reason of the fact that such person is or was serving in an indemnified capacity, except to the extent that any such indemnification against a particular liability is expressly prohibited by applicable law. The rights granted by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification, contribution, or advancement of expenses may be entitled under any statute, certificate of incorporation, agreement, contract of insurance, vote of disinterested directors, vote of directors based upon the written opinion of independent legal counsel, or otherwise. However, no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(b) DERIVATIVE PROCEEDING. The Fund shall indemnify an indemnified person for any liability incurred in connection with a derivative proceeding in which the indemnified person may be involved as a party or otherwise, if such person served in an indemnified capacity and acted in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other Fund or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the Fund, except that no indemnification under this paragraph shall be made in respect of (1) a threatened proceeding, or a pending proceeding which is settled or otherwise disposed of, or (2) any claim, issue or matter as to which such person shall have been adjudged to be liable to the Fund, unless and only to the extent that the court in which the proceeding was brought, or, if no proceeding was brought, any court of competent jurisdiction, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

(c) NON-DERIVATIVE PROCEEDINGS. The Fund shall indemnify an indemnified person for any liability incurred in connection with a non-derivative proceeding in which the indemnified person may be involved as a party or otherwise, if such person served in an indemnified capacity and acted in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other Fund or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the Fund and, in criminal proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful.

(d) If the payment of indemnification is not covered under this Article or any statute, certificate of incorporation, agreement, contract of insurance, or otherwise, the Board of Directors can authorize such payment in a specific case by acting by a quorum consisting of disinterested directors:

(1) upon a finding that the indemnified person has met the standard of conduct set forth in applicable law, or,

(2) upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in applicable law has been met by the indemnified person.

(e) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the indemnified person is not entitled to indemnification.

(f) If an indemnified person is not entitled to indemnification with respect to a portion of any liabilities to which such person may be subject, the Fund shall nonetheless indemnify such indemnified person to the maximum extent for the remaining portion of the liabilities.

(g) To the extent permitted by law, the payment of indemnification provided for by this Article, including the advancement of expenses pursuant to Section 2 of this Article VI, with respect to proceedings other than those brought by or in the right of the Fund, shall be subject to the conditions that the indemnified person shall give the Fund prompt notice of any proceeding, that the Fund shall have complete charge of the defense of such proceeding and the right to select counsel for the indemnified person, and that the indemnified person shall assist and cooperate fully in all matters respecting the proceeding and its defense or settlement. The Fund may waive any or all of the conditions set forth in the preceding sentence. Any such waiver shall be applicable only to the specific payment for which the waiver is made and shall not in any way obligate the Fund to grant such waiver at any future time. In the event of a conflict of interest between the indemnified person and the Fund that would disqualify the Fund's counsel from representing the indemnified person under the rules of professional conduct applicable to attorneys, it shall be the policy of the Fund to waive any or all of the foregoing conditions subject to such limitations or conditions as the Fund shall deem to be reasonable in the circumstances.

(h) The rights of indemnification and advancement of expenses provided by or granted pursuant to this Article shall continue as to a person who has ceased to be an indemnified person in respect of matters arising prior to such time and shall inure to the benefit of the heirs, executors, administrators and personal representatives of such a person.

(i) For purposes of this Article:

(1) “indemnified capacity” means any and all past, present, or future services by an indemnified person in one or more capacities as a director, officer, employee, agent or other representative of the Fund or, at the request of the Fund, as a director, officer, employee, agent, fiduciary, or trustee of another Fund, partnership, joint venture, trust, employee benefit plan, or other entity or enterprise.

(2) “indemnified person” means any and all directors, officers, employees, agents or other representatives of the Fund, or a director, officer, employee, agent, fiduciary, or trustee of another Fund, partnership, joint venture, trust, employee benefit plan, or other entity or enterprise, who acts in furtherance of the interests of the Fund at the request of the Fund, and any other person designated as an indemnified person by the Board;

(3) “liability” means any judgment, amount paid in settlement, fine, or reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such proceeding; and

(4) “proceeding” means any threatened, pending, or completed action, suit, appeal, or other proceeding of any nature, whether civil, criminal, administrative, or investigative, whether formal or informal, whether external or internal to the Fund, and whether brought by or in the right of the Fund, or otherwise.

2. ADVANCING EXPENSES. All reasonable expenses incurred in good faith by an indemnified person in advance of the final disposition of a proceeding described in Section 1 of this Article VI shall be advanced to the indemnified person by the Fund. Before making any such advance payment of expenses, the Fund shall receive an undertaking by or on behalf of the indemnified person to repay such amount if it shall ultimately be determined that such indemnified person is not entitled to be indemnified by the Fund pursuant to this Article VI. No advance shall be made by the Fund if a determination is reasonably and promptly made by a quorum of disinterested directors, based upon the facts known to the Board or expressed in a written opinion of an independent legal counsel, that the indemnified person has acted in such a manner as to require the denial of indemnification pursuant to the provisions of Section 1 of this Article VI.

Any amount advanced by the Fund under this Section exceeding the indemnification to which such indemnified person is entitled shall be repaid by the indemnified person.

3. INSURANCE. (a) Subject to the provisions of paragraph (b) of this Section 3, the Fund shall purchase and maintain insurance:

(1) To indemnify the Fund for any obligation which it incurs as a result of the indemnification of directors and officers and other indemnified persons under the provisions of this Article to the extent permitted by law; and

(2) To indemnify directors and officers and other indemnified persons in instances in which they may be indemnified by the Fund under the provisions of this Article and as permitted by law; and

(3) To indemnify directors and officers and other indemnified persons in instances in which they may not otherwise be indemnified by the Fund under the provisions of this Article provided the contract of insurance covering such directors and officers and other indemnified persons provides, in a manner acceptable to the superintendent of insurance, for a retention amount and for co-insurance.

(b) No insurance under paragraph (a) may provide for any payment, other than cost of defense, to or on behalf of any director or officer:

(1) if a judgment or other final adjudication adverse to the insured director or officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled; or

(2) in relation to any risk the insurance of which is prohibited under the insurance law of this state.

## ARTICLE VII

### CONTROL OVER BY-LAWS

The Directors upon compliance with applicable statutes may amend or repeal the By-Laws and may adopt new By-Laws consistent with the Fund's statutory authority and purpose.

## ARTICLE VIII

### OPERATION OF THE FUND

1. PURPOSE. The purpose of the Fund is to secure the payment of workers compensation to black car operators injured while performing services for central dispatch facilities that are members of the Fund, through means including the creation and implementation of a driver safety program for black car operators in an effort to reduce the number of injuries sustained by black car operators. [added November 30, 2006]; and it is further;

2. IDENTIFICATION OF CENTRAL DISPATCH FACILITIES. (a) By August 23, 1999, the Board of the Fund shall, on the basis of information from trade papers, local licensing authorities and other sources, identify the central dispatch facilities subject to Article 6-F of the Executive Law and, on a regular and ongoing basis, confirm that all such entities have registered with the Department of State.

(b) A central facility, wherever located, that dispatches the registered owners of for-hire vehicles (as defined in Section 10 of this Article VIII) or dispatches drivers acting as the designated agents of such registered owners to both pick up and discharge passengers in the State of New York is a Central Dispatch Facility and must register as a member of the Fund; provided the central facility (i) has more than 90% of its for-hire business on a payment basis other than direct cash payment by a passenger and (ii) does not own 50% or more of the cars it dispatches.

(c) For purposes of determining whether a central facility qualifies as a Central Dispatch Facility:

(1) a central facility's ownership of vehicles other than for-hire vehicles shall not be counted in determining whether such central facility owns 50% or more of the cars it dispatches. For example, if a central facility located in the State of New York dispatches only rides for credit, dispatches 50 vehicles for pick-up and discharge in the State of New York, and of these 50 vehicles 25 are buses, 10 are cars registered to the central facility, and 15 are cars registered to independent operators, such central facility qualifies as a Central Dispatch Facility and as a member of the Fund because the central facility's ownership of 10 for-hire vehicles constitutes 40% of the cars it dispatches. Even though it is the registered owner of 25 buses, buses are not cars and the buses it owns are not included in the determination of whether the central facility is the registered owner of 50% or more of the cars it dispatches.

(2) whether a central facility has more than 90% of its for-hire business on a payment

basis other than direct cash payment by a passenger is determined for each calendar quarter by totaling the percentage of its for-hire business on a payment basis other than direct cash payment by a passenger for each month during each quarter and dividing by three. As long as the average of its for-hire business on a payment basis other than direct cash payment by a passenger is 90% or greater a central facility qualifies as a Central Dispatch Facility. [added June 15, 2002]

(3) Within five (5) business days of its ceasing to qualify as a Central Dispatch Facility, a central facility must report such event to the Fund and to its Local Licensing Authority. [added June 15, 2002]

(d) A central facility that is located outside the State of New York must be a registered member of the Fund if it qualifies as a Central Dispatch Facility as described above in Section 2(b) of this Article VIII.

(e) In order to be renewed as a registered member of the Fund after January 5, 2001, a central facility must demonstrate to the satisfaction of the Fund that it has filed with the Fund all monthly surcharge reports covering the period from such central facility's last required registration through the date of the last surcharge report due before such central facility's application is submitted, and has paid to the Fund all amounts required to be paid in accordance with such surcharge reports. Upon the Fund's satisfactory receipt of the surcharge reports and payments thereunder required by this subsection, the Fund shall certify to the Secretary of State that such central facility is eligible to be renewed as a registered member of the Fund.

(f) In order to be a registered member of the Fund after June 15, 2002, a central facility applying for registration must demonstrate to the satisfaction of the Fund that any individuals who are "Responsible Persons", as that term is defined in Section 160-oo of Article 6-F of the Executive Law, of such central facility have paid or have caused to be paid all monetary penalties assessed under Section 160-oo of Article 6-F of the Executive Law against any other Fund member (Central Dispatch Facility) of which such individuals are or were Responsible Persons". [added June 15, 2002]

3. FILE PLAN OF OPERATION, PROVIDE COPIES TO MEMBERS. By September 7, 1999, the Board shall file with the Department of State this Plan of Operation.

By September 7, 1999, the Board shall provide to its members a copy of this Plan of Operation and shall inform its members of their rights and duties pursuant to Article 6-F of the Executive Law.

4. SECURING OF COMPENSATION. The Fund shall secure the payment of workers'

compensation to all black car operators entitled thereto pursuant to the Workers' Compensation Law and the Executive Law of the State of New York by either: (a) self-insuring in accordance with Section 50(3) of the Workers' Compensation Law and the rules promulgated by the Workers Compensation Board pursuant to such section; or (b) purchasing workers' compensation insurance covering, on a blanket basis, all black car operators who are the Fund's employees pursuant to Section 2 of the Workers' Compensation Law. The Fund shall secure the payment of workers' compensation, as described above, by January 20, 2000.

The initial determination of whether to self-insure or purchase workers' compensation insurance shall be made by a majority vote of the entire Board after discussion of the relative advantages and disadvantages of both options.

If the Board initially determines that it will self-insure, the Board shall apply to the Workers' Compensation Board for such authorization by submitting its application and accompanying proof to the Workers' Compensation Board by November 21, 1999.

If the Board chooses to secure the payment of workers' compensation pursuant to the Workers' Compensation Law by purchasing an insurance policy from the State Insurance Fund or a licensed insurer, it shall file with the Department of State no later than thirty days after the commencement of a new policy year a copy of the policy it has purchased.

5. ACCOUNTING AND RECORD KEEPING. The Board of Directors shall select an accounting firm to represent the Fund. The accounting firm will be responsible for, among other things, preparing annual financial statements to the Governor and legislature of the State of New York, assessing the sufficiency of payments needed to satisfy the Fund's operating costs, and performing audits of central dispatch facilities. The accounting firm shall be responsible for such other duties and responsibilities as are assigned to it by the Board of Directors.

6. SURCHARGES. The Fund shall ascertain by reasonable estimate the total funding necessary to carry on its operations, including, paying the costs of any insurance purchased pursuant to section 160-ii(3) of Article 6-F of the Executive Law or the benefits due under the Workers' Compensation Law in the event the Fund self-insures pursuant to section 160-ii(2) of Article 6-F of the Executive Law, paying its expenses in carrying out its powers and duties under Article 6-F of the Executive Law and paying its liabilities, if any, pursuant to section 14-a of the Workers' Compensation Law, and paying its obligations, if any, in connection with the establishment and operation of the Driver Safety Program, as described in Section 15 of Article VIII hereof.[amended November 30, 2006];

Based upon its estimation of operating costs, the Fund shall establish a proposed uniform percentage surcharge to be added to (a) the invoices or billings for covered services sent to the

customers of the Fund's members by a member or its agents and (b) the credit payments for covered services received by a member or its agent. The proposed surcharge shall become effective thirty days after being filed with the Department of State.

The surcharge amount shall be calculated on gross invoices, billings and credit for covered services. The surcharge amount shall be separately identified on each invoice, bill or credit. For the purposes hereof, gross invoices, billings and credit for covered services shall include, but not be limited to, fares charged, tolls, parking, waiting time, tips, telephone use, service charges and all other miscellaneous charges. By way of example, a non-cash trip with a fare of \$50.00, a toll of \$3.50, a cellular telephone charge of \$6.50, waiting time of \$10.00 and a discount of 5% would have a bill for collected services of \$66.50 (\$70.00 less 5%). The surcharge would be based on \$66.50.

Each Central Dispatch Facility shall submit to the Fund a monthly surcharge payment, along with a detailed accounting of the charge and surcharge amounts charged to and received from customers for covered services during the previous month. The first such payment and accounting shall be due on November 15, 1999 and on the fifteenth day of each month thereafter. The surcharge shall be paid to the Fund based upon all gross collected invoices, billings and credit for covered services.

Notwithstanding the foregoing, beginning October 1, 1999, and until the Fund shall have filed with the Department of State a different surcharge amount, a two percent surcharge shall be added to every invoice or billing for covered services sent by a member or its agent to, and every credit payment for covered services received by a member or its agent from, the customers of the Fund's members.

Should the Fund determine that the surcharge amounts that have been paid to it are inadequate to meet its obligations, it shall determine the surcharge rate required to eliminate such deficiency and shall file such revised surcharge rate with the Department of State. Commencing thirty days after such filing, the members of the Fund shall charge the revised surcharge rate and shall pay to the Fund the total amount of surcharges.

A Central Dispatch Facility desiring to contest a surcharge overpayment to the Fund must contest such surcharge overpayment in writing within 180 days from the date such surcharge overpayment was required to have been submitted to the Fund.

7. AUDIT RIGHTS. The Fund shall have the power directly or through its agents to conduct financial audits of its members to verify their compliance with the requirements of Article 6-F of the Executive Law.

Each member of the Fund will be regularly audited, at least once every 36 months, by an accounting firm selected by the Board of Directors. Additional audits may be permitted by the Audit Committee where there is a reasonable basis for such additional audits.

8. NOTIFICATION OF ACCIDENTS AND INJURIES, REIMBURSEMENT OF PENALTIES. Notice of all accidents and injuries to black car operators arising out of and in the course of providing services for a Central Dispatch Facility that is a member of the Fund must be reported, by the Central Dispatch Facility for whom the black car operator was providing services at the time of the accident or injury, in writing, within ten days of its receipt of knowledge of such accident or injury, to the Secretary of the Fund. Such notice shall include the name and address of the black car operator, the black car operator's drivers license number, the name and address of the Central Dispatch Facility, the date and location of the accident or injury, a brief description of the accident or injury, the date and file number of any police reports made and the motor vehicle insurance policy number and insurer covering the black car operator.

In the event that the failure of a Central Dispatch Facility to provide such notice to the Fund results in the imposition of a penalty to the Fund by the Workers' Compensation Board, the Fund shall notify the member, in writing, of the penalty and of the Central Dispatch Facility's obligation to provide full reimbursement to the Fund. If the Central Dispatch Facility fails to reimburse the Fund within 30 days of notice thereto, the Fund shall notify the local licensing authority of such fact and, upon notice to the Fund member, a hearing shall be held by such local licensing authority to determine whether reimbursement is appropriate. In the absence of a local licensing authority, or if the local licensing authority chooses not to hold such hearings, the hearing shall be held by the Secretary of State.

9. RETENTION OF RECORDS BY MEMBERS. Each member of the Fund shall maintain for a period of four (4) years all information, in whatever form, including written and electronic, upon which calculations are based for determining the surcharge amount and the surcharge payment required pursuant to Section 6 of Article VIII hereof, and exclusions from such surcharges, if any. [Amended December 14, 2006]

Commencing March 1, 2007, each member of the Fund shall maintain full dispatch and payment records for a period of at least four (4) years, for each ride dispatched by a member of the Fund including, but not limited to, the date, the time, and the location of the passenger or package to be picked up, the driver's for-hire operator's permit, the permit number of the for-hire vehicle and the form and amount of payment. Such dispatch records may be maintained in electronic or other form and shall be made available to the Fund promptly at the Fund's request. [Added December 14, 2006]

The failure by a member of the Fund to maintain the records required under this Section or to make such records promptly available to the Fund at the Fund's request shall disqualify the

member from continued membership in the Fund. [Added December 14, 2006]

10. DEFINITION OF “FOR-HIRE VEHICLE”. The term "for-hire vehicle" shall mean “a motor vehicle carrying passengers or things for hire designed to carry fewer than nine passengers, excluding the driver, with three (3) or more doors, other than a taxicab or coach, and not permitted to accept street hails from prospective passengers in the street.” The term “car” shall mean “for-hire vehicle.”

11. WHEN AN INJURY ARISES OUT OF AND IN THE COURSE OF PROVIDING COVERED SERVICES TO A CENTRAL DISPATCH FACILITY [added February 26, 2003]

(a) In order to further implement the provisions of Section 160-cc., subdivisions 1. and 4., of the New York State Executive Law, to determine when a black car operator is providing a covered service with respect to dispatches from or by a Central Dispatch Facility located in the State of New York, the phrase “arose out of and in the course of” shall mean:

- (i) the period encompassing the time at and after which a black car operator picks-up a passenger, or package or other item, at the direction of a Central Dispatch Facility, whether such pick-up is in the State of New York or outside the State of New York, and the time at and before a black car operator discharges such passenger, or package or other item, whether such discharge is in the State of New York or outside the State of New York; and
- (ii) the period encompassing the time at and after which a black car operator is dispatched to pick-up a passenger, or package or other item, whether such pick-up is in the State of New York or outside the State of New York, and the time at and before a black car operator picks up a passenger, or package or other item, at the direction of a Central Dispatch Facility; and
- (iii) the period encompassing the time at and after which a black car operator, whether by direction of a Central Dispatch Facility or on his or her own initiative, avails him or herself for an opportunity to pick-up a passenger, or package or other item, designated by a Central Dispatch Facility, at a location in the State of New York or outside the State of New York pre-arranged by a Central Dispatch Facility for the regular pick-up of passengers, or packages or other items, designated by a Central Dispatch Facility, and the time at and before a black car operator picks-up a passenger, or package or other item, designated by a Central Dispatch Facility to be so picked-up, or a black car operator leaves such location

without a designated passenger, or package or other item; and

- (iv) the period encompassing the time at and after a black car operator discharges a passenger, or a package or other item, whether in the State of New York or outside the State of New York, whose pick-up was previously made under circumstances set forth in subsections (a)(i) or (a)(iii) of this Section 11, but where the discharge is made outside the home area of a black car operator, until the earlier of the time (A) a black car operator returns to his or her home area in a direct and immediate manner, or (B) a black car operator is dispatched by a Central Dispatch Facility to pick-up a passenger, or package or other item, whether such pick-up is in the State of New York or outside the State of New York, or (C) a black car operator avails him or herself for an opportunity to pick-up a passenger, or package or other item, at a location in the State of New York or outside the State of New York pre-arranged by a Central Dispatch Facility for the regular pick-up of passengers, or packages or other items, designated by a Central Dispatch Facility.
- (v) For the purposes of this subsection (a), the term “home area of a black car operator” means: (i) the City of New York for a black car operators dispatched by a Central Dispatch Facility located in the City of New York; or (ii) for black car operators dispatched by a Central Dispatch Facility located in the State of New York but in a county not within the City of New York, the county where the Central Dispatch Facility is located.

(b) In order to further implement the provisions of Section 160-cc., subdivisions 1 and 4 of the New York Executive Law, to determine when a black car operator is providing a covered service with respect to dispatches from or by a Central Dispatch Facility located outside the State of New York, the phrase “arose out of and in the course of” shall mean:

- (i) the period encompassing the time at and after which a black car operator picks-up a passenger, or package or other item, at the direction of a Central Dispatch Facility, where such pick-up is in the State of New York, and the time at and before a black car operator discharges such passenger, or package or other item, whether such discharge is in the State of New York or outside the State of New York; and
- (ii) the period encompassing the time at and after which a black car operator is dispatched to pick-up a passenger, or package or other item, where such pick-up is in the State of New York, and the time at and before a black car operator picks up a passenger, or package or other item, at the direction of

a Central Dispatch Facility; and

- (iii) the period encompassing the time at and after which a black car operator, whether by direction of a Central Dispatch Facility or on his or her own initiative, avails him or herself for an opportunity to pick-up a passenger, or package or other item, designated by a Central Dispatch Facility, at a location in the State of New York pre-arranged by a Central Dispatch Facility for the regular pick-up of passengers, or packages or other items, designated by a Central Dispatch Facility, and the time at and before a black car operator picks up a passenger, or package or other item, designated by a Central Dispatch Facility to be so picked-up, or a black car operator leaves such location without a designated passenger, or package or other item; and
- (iv) the period encompassing the time at and after a black car operator discharges a passenger, or a package or other item, whether in the State of New York or outside the State of New York, whose pick-up was previously made under circumstances set forth in subsections (a)(i) or (a)(iii) of this Section 11, but where the discharge is made outside the home area of a black car operator, until the earlier of the time (A) a black car operator returns to his or her home area in a direct and immediate manner, or (B) a black car operator is dispatched by a Central Dispatch Facility to pick-up a passenger, or package or other item, whether such pick-up is in the State of New York or outside the State of New York, or (C) a black car operator avails him or herself for an opportunity to pick-up a passenger, or package or other item, at a location in the State of New York or outside the State of New York pre-arranged by a Central Dispatch Facility for the regular pick-up of passengers, or packages or other items, designated by a Central Dispatch Facility.
- (v) For the purposes of this subsection (b), the term “home area of a black car operator” means the county in which the Central Dispatch Facility is located. [added February 25, 2003]

**12. WHEN A FUND MEMBER IS REQUIRED TO CHARGE, COLLECT, AND REMIT A SURCHARGE.** [Renumbered February 26, 2003] The rules set forth below in this Section 12 describe the circumstances under which a member of the Fund is required to charge, collect, and remit a surcharge.

(a) If a Central Dispatch Facility is located within the State of New York, “covered services” means all dispatches of for-hire vehicles by such Central Dispatch Facility regardless

of where the pick-up or discharge occurs. If a Central Dispatch Facility is located outside the State of New York, "covered services" means all dispatches of for-hire vehicles by such Central Dispatch Facility involving pick-up in the State of New York regardless of where the discharge occurs.

(b) If a Central Dispatch Facility that is a member of the Fund ("Member A") contracts with another Central Dispatch facility that is a member of the Fund ("Member B") to provide covered services to a customer of Member A, and Member A bills its customer for such covered service, Member A is required to surcharge its customer and Member B will have no liability to the Fund in connection with such covered service.

(c) If a Central Dispatch Facility that is a member of the Fund ("Member A") contracts with another central facility that is not a member of the Fund ("Non-Member B") to provide a pick-up or a discharge in New York to a customer of Member A, Member A shall bill its customer for such pick-up or discharge, and Member A is required to surcharge Member A's customer for the covered service.

(d) If a Central Dispatch Facility contracts with a company to perform services wholly outside of the State of New York and such services are performed by a driver unaffiliated with the Central Dispatch Facility, the Central Dispatch Facility is not required to surcharge its customer for the services performed wholly outside the State of New York because the transportation services provided are not dispatches from or by a Central Dispatch Facility. For example, if a Central Dispatch Facility contracts with an Illinois company to pick up a customer of the Central Dispatch Facility at O'Hare Airport and discharge the passenger in Chicago, and the Central Dispatch Facility bills its customer for such transportation services performed in Illinois, the Central Dispatch Facility is not required to surcharge its customer for the services performed in Illinois because the transportation services provided in Illinois are not dispatches from or by a Central Dispatch Facility since they are performed entirely outside the State of New York by a driver that is not affiliated with the Central Dispatch Facility.

(e) If a central facility that is not a member of the Fund ("Non-Member B") contracts with a Central Dispatch Facility that is a member of the Fund ("Member A") to provide covered services to a customer of Non-Member B, Member A is required to surcharge Non-Member B.

(f) If a Central Dispatch Facility that is a member of the Fund dispatches a vehicle that is not a for-hire vehicle, such as a large van or a bus, the member of the Fund is not required to surcharge its customer for such service because the bus is not a for-hire vehicle.

13. COVERED EMPLOYEES OF A CENTRAL DISPATCH FACILITY. [Renumbered February 26, 2003] For the purposes of this Plan of Operation, the term "black car operator"

means the registered owner of a for-hire vehicle, or a driver designated by such registered owner to operate the registered owner's for-hire vehicle as the registered owner's authorized designee, including a circumstance where the registered owner of a for-hire vehicle is a central dispatch facility that is a registered member of the Fund, whose injury arose out of and in the course of providing covered services to a central dispatch facility that is a registered member of the Fund.

14. COVERED EMPLOYEES OF A CENTRAL DISPATCH FACILITY LOCATED OUTSIDE THE STATE OF NEW YORK. [Renumbered February 26, 2003] If a Central Dispatch Facility located outside the State of New York is a registered member of the Fund, the black car operators it dispatches to perform covered services are employees of the Fund to the extent of the covered services performed.

15. NOTIFYING THE FUND IN THE EVENT THERE IS A CHANGE OF CONTROL AFFECTING A MEMBER.

(a) In the event a Central Dispatch Facility that is a member of the Fund is involved in any transaction or series of related transactions whereby there is a change in "control" with respect to such member, the Person or Persons who control such member shall report the change in control to the Fund in writing within 10 days after the change in control occurs. The report shall identify the name of the Central Dispatch Facility affected by the change in control, its business address, the names(s) of all Persons controlling such Central Dispatch Facility and their business addresses. The report shall be sent by certified mail, postage prepaid, return receipt requested or by recognized national overnight delivery service to the Fund at:

New York Black Car Operators' Injury Compensation Fund, Inc.  
30 Wall Street  
New York, New York 10005  
Attn: Executive Director

(b) For the purposes of this Section 15, the term "control" means the power of any Person, direct or indirect, (i) to vote twenty percent (20.00%) or more of the securities having ordinary voting power for the election of directors or managers, or general partner or partners of any Central Dispatch Facility that is a member of the Fund, or (ii) to direct or cause the direction of the management and policies of such Central Dispatch Facility that is a member of the Fund whether by contract or otherwise, or (iii) to provide the billing and/or collection services for any Central Dispatch Facility that is a member of the Fund, or (iv) to provide the billing and/or collection services in connection with the Business of any Central Dispatch Facility regardless of the Person in control of such Business.

(c) For the purposes of this Section 15, the term "Person" means any individual, sole proprietorship, partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, or other entity, and shall include such Person's successors and assigns.

(d) For the purposes of this Section 15, the term “Business” means the dispatching of one or more for-hire vehicles.

(e) Each Person who controls a Central Dispatch Facility that is a member of the Fund or which was a member of the Fund before the transaction or series of transaction giving rise to the change in control shall have occurred, shall maintain the books and records of the Central Dispatch Facility affected by the change in control, including, without limitation, all records related to the creation and payment of accounts receivable, all bank statements, all deposit records, all dispatch records, and all driver records, for a period of three years after the change of control has occurred.

(f) Failure of any Person to comply with the requirements of this Section 15 shall be referred to the Secretary of State or the Local Licensing Authority for action pursuant to the provisions of Section 160-00 of the Executive Law. [added January 18, 2005].

16. DRIVER SAFETY PROGRAM. Each black car operator shall have the opportunity to participate in the voluntary driver safety program (the “Driver Safety Program”), under such rules and procedures as may be appropriate. The purpose of the Driver Safety Program shall be to provide black car operators with driver safety training and other related educational service in an effort to reduce the number of injuries sustained by black car operators.

(a) The expenses of the Driver Safety Program shall be paid by the Fund utilizing assets of the Fund accumulated from surcharges, assessments, credit payments, fees and fines collected by the Fund from Central Dispatch Facilities and from investment income. The accounting firm described in Section 5 of this Article VIII or such other accounting firm as may be selected by the Board of Directors shall prepare and deliver to the Board of Directors on a quarterly basis (or such other period as may be determined by the Board of Directors) a detailed accounting of the expenses of the Driver Safety Program for the preceding quarter (or such other period as may be applicable).

(b) The Driver Safety Program will be implemented as soon as practicable.

(c) The Driver Safety Program shall be conducted by a vendor with expertise in driver safety training. Such vendor shall be selected by the Board of Directors following the performance of reasonable due diligence and through an arm’s length bidding process managed by an independent consulting firm familiar with such Driver Safety Programs.

(d) The Board shall assist the selected vendor in coordinating implementation of the Driver Safety Program with the members of the Fund with a view to maximizing

participation by black car operators and minimizing disruption to the business operations of Fund members.

(e) Upon selection of the vendor, the Fund and the vendor shall enter into a service agreement which shall set forth the agreement between the parties regarding the implementation of the Driver Safety Program. The Board shall approve such service agreement prior to the execution thereof. [added November 30, 2006]

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