



## SERVICE AGREEMENT NO.

### 73570 Lytx DriveCam Program

THIS **Lytx DriveCam Program Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Lytx, Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has agreed to provide Lytx DriveCam Program services pursuant to its GSA agreement, GS-35F-0623S, which is incorporated by reference as if set forth in its entirety herein.

NOW, THEREFORE, City and Contractor agree as follows:

1. **Scope.** Contractor will provide Lytx DriveCam Program ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
2. **Term.** This Agreement is for five years, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or the Contracts and Procurement Department. The parties may mutually extend the term of this Agreement for up to 00 additional 00-year periods ("Option Period(s)"), provided, the parties do so by written amendment prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
3. **Compensation and Payment.** This Agreement is for an amount not to exceed \$267,962.90, subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. Contractor shall invoice no more frequently than once per month. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices will be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi  
Attn: Accounts Payable  
P.O. Box 9277

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Gabriel Maldonado  
Department: Solid Waste Department  
Phone: (361) 826-1986  
Email: GabrielM3@cctexas.com

5. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

6. **Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and Services will not be rendered until the Contractor receives the signed purchase release order.
7. **Inspection and Acceptance.** City may inspect all Services and products supplied before acceptance. Any Services or products that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City.

**8. Warranty.**

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects and subject to Attachment D herein. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

(C) Contractor warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services.

**9. Quality/Quantity Adjustments.** Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator. Contractor shall have a right to substitute products provided hereunder with equivalent or better functionality to that specified in the Agreement upon end of life of the current model.

**10. Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30<sup>th</sup> annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

**11. Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.

**12. Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. Upon written request by the City, Contractor shall provide the City a list of the subcontractors performing work under the Agreement. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement,

including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work. The City may, at the City's sole discretion, choose not to accept Services performed by a subcontractor that was not approved in accordance with this paragraph.

- 13. Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
- 14. Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
- 15. Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
- 16. Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

**IF TO CITY:**

City of Corpus Christi  
Attn: Gabriel Maldonado  
Title: Solid Waste Department  
Address: 2525 Hygeia St., Corpus Christi, Texas 78415  
Phone: (361) 826-1986  
Fax: (361) 826-1971

**IF TO CONTRACTOR:**

Lytx, Inc.  
Attn: General Counsel  
Address: 9785 Towne Centre Drive, San Diego, CA 92121  
Phone: (858) 430-4000  
Email: notices@lytx.com

- 17. CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL THIRD PARTY LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL**

**EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE GROSSLY NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING DIRECTLY FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

**18. Termination.**

(A) The City Manager may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

**19. Owner's Manual and Preventative Maintenance.** Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such equipment and prior to receipt of the final payment by the City.

**20. Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

- 21. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 22. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
- A. this Agreement (excluding attachments and exhibits);
  - B. its attachments; then,
  - C. GSA agreement, GS-35F-0623S.
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- 23. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 24. Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 25. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.
- 26. Additional Terms and Conditions.** This Agreement is subject to the terms and conditions of the Contractor's GSA agreement, GS-35F-0623S, to the extent that such terms do not conflict with this Agreement.

**CONTRACTOR**

Signature: \_\_\_\_\_



Printed Name: Shelley E. Bennett

Title: SVP, General Counsel

Date: November 08, 2019

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Kim Baker

Director of Contracts and Procurement

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Date

**Attached and Incorporated by Reference:**

Attachment A: Scope of Work

Attachment B: Bid/Pricing Schedule

Attachment C: Insurance and Bond Requirements

Attachment D: Warranty Requirements

**Incorporated by Reference Only:**

GSA agreement, GS-35F-0623S

## **Attachment A - Scope of Work**

### **1.1. General Requirements**

- A.** The Contractor shall provide a safety program, which consist of a video-based program designed to improve driving skills and identify and correct driving habits that may increase risk behind the wheel. The safety program shall capture a short video clip (eight seconds before and four seconds after a triggering incident) with audio, recording shall commence only when activated by an unusual driving event, such as hard braking, sudden acceleration, swerving, or excessive speed, or collision.
- B.** The Contractor shall use highly trained personnel to monitor captured events and assess the risk involved in displayed behaviors. The Contractor shall notify City staff of risky behavior observed via a secure website where the coaching and monitoring software is facilitated.
- C.** The Contractor shall provide access to authorized City staff with appropriate password-protected access to go to the website to view the videos from their organization.
- D.** The Solid Waste Departments consist of Administration Office located at 2525 Hygeia, Corpus Christi, Texas, J.C. Elliott Landfill located at 7001 Ayers St., Corpus Christi, Texas, Cefe Valenzuela Landfill located at 2397 CR 20, Robstown, Texas 78380.



## ATTACHMENT B: QUOTE/PRICING SCHEDULE

### CITY OF CORPUS CHRISTI QUOTE FORM

1. Refer to "Sample Service Agreement" Contract Terms and Conditions before completing quote.
2. Quote your best price, including freight, for each item.
3. In submitting this quote, vendor certifies that the prices in this quote have been arrived at independently, without consultation, communication, or agreement with any other vendor or competitor, for the purpose of restricting competition with regard to prices.

Invitation to quote, FOB Destination, Freight Included, on the following:

DESCRIPTION	QTY	UNIT	UNIT PRICE	PRICE TOTAL
<b>First year – Upfront Cost Risk Management</b>				
Video Event Recorder (ER-SF64-0020)	30	EA	\$545	\$16,350
Provisioning Fee/Per VER	30	EA	\$47.86	\$1,435.80
DriveCam Installation Per Unit	30	EA	\$205.80	\$6,174
Annual Subscription To DriveCam DC Enterprise, DC Purchase	30	EA	\$290	\$8,700
<b>First year – Upfront Cost Solid Waste Services</b>				
Annual Subscription To DriveCam DC Enterprise, DC Purchase	91	EA	\$290	\$26,390
<b>Recurring Cost Years 2 thru 5</b>				
<b>Risk Management -</b> Annual Subscription To DriveCam DC Enterprise, DC Purchase	30	EA	\$290 Per Subscription, Per Year	\$8,700 (Annual Cost) \$34,800 Total Cost
<b>Solid Waste Services -</b> Annual Subscription To DriveCam DC Enterprise, DC Purchase	91	EA	\$290 Per Subscription, Per Year	\$26,390 (Annual Cost) \$105,560 Total Cost

<b>Contingency Plan to purchase Hardware, Services and Annual Subscriptions</b>					
<b>Risk Management</b>					
Video Event Recorder (ER-SF64-0020)	15	EA	\$545		\$8,175
Provisioning Fee/Per VER	15	EA	\$47.86		\$717.90
DriveCam Installation Per Unit	15	EA	\$205.80		\$3,087
Annual Subscription To DriveCam DC Enterprise, DC Purchase	15	EA	\$290		\$4,350 (Annual Cost) \$17,400 (Total Cost)
<b>Solid Waste Services</b>					
Video Event Recorder (ER-SF64-0020)	20	EA	\$545		\$10,900
Provisioning Fee/Per VER	20	EA	\$47.86		\$957.20
DriveCam Installation Per Unit	20	EA	\$205.80		\$4,116
Annual Subscription To DriveCam DC Enterprise, DC Purchase	20	EA	\$290		\$5,800 (Annual Cost) \$23,200 (Total Cost)
<b>TOTAL</b>					<b>\$267,962.90</b>

COMPANY: Lytx, Inc.

NAME OF PERSON AUTHORIZED TO SIGN: Shelley E. Bennett

ADDRESS: 9875 Towne Centre Drive

CITY / STATE/ZIP: San Diego, CA 92121

PHONE: 866 419 5861

EMAIL:

FAX:

DATE: September 17, 2019

SIGNATURE:

*Shelley E. Bennett*

TITLE: SVP, General Counsel

**THE CITY RESERVES THE RIGHT TO REJECT OR CANCEL ANY OR ALL QUOTES. TO WAIVE ANY INFORMALITIES OR IRREGULARITIES IN THE QUOTES RECEIVED AND TO CANCEL OR POSTPONE THIS PROJECT UNTIL A LATER DATE.**

### **Attachment C – Insurance Requirements**

Section 5. Insurance; Bond, is hereby void as no insurance is required for this service agreement.

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## Attachment D – Warranty Requirements

### 1. CERTAIN DEFINITIONS

“**Documentation**” means the written Software and Hardware related specifications Lytx provides to Client hereunder.

“**Fees**” means the prices and fees set forth in a Purchase Order that are established by Lytx and charged to Client for the Products and Services. Lytx’s published prices, if any, are subject to change without notice.

“**Hardware**” means Lytx’s VERs, Lytx Hub Adaptor and other hardware provided to Client hereunder.

“**Product(s)**” means the Software and Hardware together.

“**Purchase Order**” means a written purchase quote document prepared by Lytx, signed by an authorized representative of Client and accepted by Lytx, but only to the extent the document identifies the following: the Products and Services to be purchased, the quantity for each Product, the Fees, the delivery location for the Products (if applicable), the Subscription Term, any extended warranty, and Client’s billing address.

“**Services**” means the services Lytx makes available to Client under this Agreement, as more fully described in the applicable Service Offering Addendum(s) of this Agreement and/or the applicable Purchase Order(s).

“**Software**” means any software (in machine executable object code format only, if applicable) provided to Client under this Agreement, including, without limitation, the operating software embedded in the Hardware, installation tool software, event player software, access to the web-based client portal to access Client’s Lytx account and any other software made available by Lytx on a website hosted by or on behalf of Lytx for use by Client.

“**VER**” means a Lytx video event recorder of the make and model specified in the applicable Purchase Order and may be comprised of more than one component.

### 2. LIMITED WARRANTY

2.1 Product Warranty. For a period of two (2) years after the date of shipment with respect to VERs (or such longer period as specified in an applicable Purchase Order) (the “**Warranty Period**”), Lytx warrants to Client that the VERs, as delivered by Lytx to Client, will substantially conform to the Documentation. The Warranty Period shall be extended for the duration of any period for which Client purchases an extended warranty from Lytx as specified in an applicable Purchase Order. The foregoing warranty shall not apply if Client fails to notify Lytx in writing of such defects prior to the expiration of the Warranty Period, if the defect is not reproducible, or the defect is caused by: (a) Client’s or its representative’s negligence, misuse, neglect or intentional acts or omissions; (b) any accident, alteration, repair or improper testing in any respect by a party other than Lytx or its representatives; (c) any other events beyond Lytx’s reasonable control; (d) to the extent performed by Client or its representatives, the failure to install, maintain or use the VER in accordance with the Documentation and Lytx’s instructions; (e) except as authorized by Lytx in writing, any attempt to service the VER other than by Lytx or its representatives; or (f) third party software, hardware, or materials not approved or supplied by Lytx. Lytx shall not be responsible for any of Client’s or a third party’s software, information or data contained in, stored on, or integrated with any VER returned to Lytx pursuant to the foregoing warranty. Lytx’s and its licensors’, suppliers’, subcontractors’ and distributors’ sole liability, and Client’s exclusive remedy, under this Section 2.1 shall be, at Lytx’s option: (i) to use commercially reasonable efforts to correct any reproducible defects identified by Client in writing during the Warranty Period which renders the VER non-conforming, (ii) to replace the defective VER (with either a new or refurbished product), or (iii) to accept return of the defective VER from Client and provide Client with a pro rata refund based on the remaining portion of the Warranty Period. Replacement VERs will assume the greater of the balance of the original Warranty Period or ninety (90) days. With respect to any hardware parts or software provided hereunder other than the VERs, Client acknowledges and agrees that its use and possession of such product shall be governed by the terms of such product manufacturer’s warranty, if any, and Client may look to the third party manufacturer with respect to all applicable claims, and Lytx (to the extent it has the right) hereby grants Client a right to share in and enforce warranties made by any such manufacturer. Lytx has no obligation to provide maintenance and support for out-of-warranty VERs.

2.2 Warranty Claims. To make a return under the warranties in this Section 2, Client must first contact Lytx Technical Support and assist in a reasonable troubleshooting effort to restore the VER to service. Upon a failure determination by Lytx Technical Support, provided Client requests a Return Material Authorization number (RMA) within the Warranty Period, Lytx will provide Client an RMA number and a prepaid return label. For all warranty returns, Client must use the return label provided by Lytx to send the VER to Lytx, packaged appropriately for safe shipment. Lytx shall pay all freight charges for shipment to Client of any replacement VER covered by these warranty provisions. Prior to making any warranty return, Client shall be responsible for downloading any Data from the Product that Client desires to retain. Lytx’s practice is to delete the Data on the Product in connection with receipt of a warranty return, and Lytx disclaims all liability relating to Client’s loss of Data in connection therewith.

2.3 Service Warranty. Lytx warrants to the Client that any Services to be performed hereunder shall be performed in a professional and workmanlike manner. Lytx's and its licensors', suppliers', subcontractors', and distributors' sole liability, and Client's exclusive remedy, under this Section 2.3 shall be for Lytx to use commercially reasonable efforts to re-perform the Services. With respect to installation services provided hereunder, the foregoing warranty shall apply solely for the one (1)-year period after installation. Lytx shall retain sole control over the manner and means by which it performs its obligations hereunder, and Lytx shall be entitled to subcontract (in whole or in part) Lytx's responsibilities under this Agreement to a third party of Lytx's choice, but Lytx shall remain responsible for Lytx's subcontractor's actions in carrying out Lytx's obligations under this Agreement. The foregoing service warranty is conditioned upon normal maintenance and use in conformity with instructions furnished by Lytx from time to time and the Products not having been subjected to misuse, neglect, or accident or alteration, repair or improper testing in any respect by a party other than Lytx or its representatives.

2.4 Disclaimer of Warranty. THE LIMITED EXPRESS WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY; AND EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 2 LYTX AND ITS LICENSORS, SUPPLIERS, SUBCONTRACTORS, AND DISTRIBUTORS DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LYTX AND ITS LICENSORS, SUPPLIERS, SUBCONTRACTORS AND DISTRIBUTORS MAKE NO WARRANTY THAT THE SOFTWARE WILL WORK IN COMBINATION WITH ANY HARDWARE OR SOFTWARE PRODUCTS PROVIDED BY THIRD PARTIES, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, THAT ALL DEFECTS IN THE SOFTWARE CAN BE CORRECTED, OR THAT ANY SPECIFIC RESULT OR OUTCOME WILL BE ACHIEVED BY UTILIZING THE PRODUCTS OR SERVICES. FURTHER, NEITHER LYTX, ITS LICENSORS, SUPPLIERS, SUBCONTRACTORS NOR DISTRIBUTORS MAKE ANY WARRANTY THAT ACCESS TO THE SERVICES OR ASSOCIATED NETWORK COVERAGE (E.G. WIRELESS NETWORK COVERAGE) WILL BE CONTINUOUS OR UNINTERRUPTED. CLIENT ACKNOWLEDGES AND AGREES THAT THE VER AND ASSOCIATED SERVICES ARE A DRIVER AID ONLY. THEY ARE NOT A SUBSTITUTE FOR A SAFE, CONSCIENTIOUS DRIVER. THEY CANNOT COMPENSATE FOR A DRIVER THAT IS DISTRACTED, INATTENTIVE OR IMPAIRED BY FATIGUE, DRUGS OR ALCOHOL. WHETHER THE VER IS IN USE OR NOT, THE DRIVER IS RESPONSIBLE TO AVOID A COLLISION. CLIENT'S DRIVERS SHOULD NEVER WAIT FOR THE VER TO PROVIDE A WARNING BEFORE TAKING MEASURES TO AVOID AN ACCIDENT. FAILURE TO DO SO CAN RESULT IN SERIOUS PERSONAL INJURY OR DEATH OR SEVERE PROPERTY DAMAGE, AND LYTX DISCLAIMS ANY AND ALL LIABILITY RELATING TO ANY SUCH ACTIONS. CLIENT SHALL DEFEND, INDEMNIFY AND HOLD LYTX AND ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES HARMLESS FROM ALL DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) RELATING TO THE ACTION OR INACTION OF CLIENT'S DRIVERS.