

Drafting Autonomous Vehicle Contracts

BY JAMES D. JORDAN

During the past two years, I have drafted dozens of contracts in the autonomous vehicle (AV) industry. Regional transportation authorities and municipalities view autonomous shuttles and driverless ride-sharing vehicles as critical components of future public transportation, but they do not yet have a clear vision of how these components will complement existing fixed route systems.

For the contract drafter, the field is so new that no tested legal forms exist. In fact, the parties often do not even know what they should ask for during negotiations. Here are some of the things I have learned while drafting AV master purchase agreements, ride-sharing agreements, pilot project, and fueling and maintenance agreements.

1. The parties often have little AV contracting experience. The industry is so new that no one has legally tested templates. Few have any templates at all. In one instance, an AV manufacturer tried

to sell my client, a major transportation operator, a small fleet of cutting-edge autonomous shuttles based on a simple purchase order and invoice, as if it were merely selling a dozen garden hoses.

As I have built my own portfolio of forms, I have leaned toward simplicity. The industry includes many startup and early-stage companies that have little interest in studying or paying for 30-page templates. For now, most industry players remain focused on development of technology, not development of complex contract forms.

2. Data has value. Autonomous vehicles are capable of generating a tremendous amount of data about vehicle and route operations and passenger habits and preferences. Surprisingly, many contracting parties have not yet focused on the data as an independent value proposition. In fact, few companies currently have the data analytics firepower necessary to mine the data for anything other than quality control and operations refinement for the project at hand. Nevertheless, the data

potentially has great independent value, just like the user data Facebook or Google generates. Therefore, I always seek access rights for my clients to as much of the AV data as possible and for as many uses as possible.

3. The operational environment is important. A vehicle that can operate on cruise control on an interstate highway without the driver's hands on the wheel is significantly different from a fully autonomous shuttle whose emergency operator is sitting behind a computer screen at a remote location. All parties must clearly understand what a specific project requires and what the project's vehicles are capable of providing. Current pilot projects typically involve the low end of Level 4 automation: vehicles that generally operate autonomously but on limited, well-defined routes and under favorable weather and road conditions. These AVs still have manual controls and a human in-vehicle operator who could take over in an emergency. Nevertheless, some requests for proposals for pilot AV projects include only loosely defined operational environments that suggest a higher level of autonomy than any AV is currently capable of delivering. The contract drafter must tightly define the operational environment expected of the AV.

4. Someone must be responsible for cybersecurity. The average consumer never gives a thought to how, when, and by whom the software in a new mobile phone will be updated and patched. In many ways, an autonomous vehicle is similar to a mobile phone on

wheels. However, if someone hacks a cell phone, the consumer may end up hassled; if someone hacks an AV, the consumer may end up dead. Autonomous vehicles must promptly receive the same sorts of security patches and updates consumers take for granted in their phones. An AV contract must assign responsibility for the prompt issuance and installation of software updates and cybersecurity patches to prevent the remote hijacking of the vehicle.

5. AV accidents will rewrite automobile tort and insurance law. Where a vehicle has no human operator, no one, not even the insurance industry—knows precisely how future vehicle liability and insurance issues will evolve. For example, who will be responsible if an AV operates perfectly as designed, but its algorithms prioritize passenger safety over pedestrian safety, causing it to veer onto a crowded sidewalk to avoid a head-on collision? Conversely, what if its passenger dies because the algorithm prioritizes pedestrian over passenger safety? The law has not yet determined the answers to these questions, and insurance policies have not yet adapted to the prospect of AV-dominated roads. From a drafting standpoint, the best current solution is to require as many project parties as possible to carry as much insurance as possible, under the assumption that it will be years before the courts sort out the liability and insurance issues raised by this new technology. **HN**

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