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October 16, 2023

Department of Consumer and Worker Protection  
42 Broadway  
New York City, NY 10004

Subject: DCWP proposed rule for implementation of Local Law 2023-39

UL Solutions appreciates the opportunity to provide comments on the New York City Department of Consumer and Worker Protection proposed rule defining “Accredited Testing Laboratory” for the purpose of carrying out Local Law 2023-39 (Subchapter 2 of Chapter 4 of Title 20 of the New York City Administrative Code). Local Law 2023-39 took an important step toward protecting the safety of New York City residents by requiring e-bikes, e-scooters, micromobility devices, and their batteries to be certified to the proper product safety standards. The changes suggested in these comments will promote a regulatory structure that meets the intent of the legislation and promotes the highest level of safety for New York City residents.

UL Solutions is a premier global safety science company. Together with our not-for-profit parent organizations, UL Standards & Engagement (ULSE) and UL Research Institutes (ULRI), UL Solutions supports the 129-year UL enterprise mission of working for a safer world. ULSE is an ANSI-accredited standards developer who brings the latest scientific advancements into practice through the development of safety standards, like UL 2849, *Standard for Electric System of Ebikes*. ULRI performs fundamental research on a variety of safety, security, and sustainability challenges. UL Solutions’ testing, inspection, and certification services help manufacturers demonstrate their products comply with the relevant standards.

Local Law 2023-39 requires devices like e-bikes and e-scooters, and their traction batteries, be certified<sup>1</sup> to the proper safety standards. A testing laboratory accredited to ISO/IEC 17025 means the accrediting body has determined that the testing lab is competent, consistent, and impartial in providing testing services. **However, ISO/IEC 17025 is limited to testing only and does not cover the ability to certify products.** Product certification is provided by an independent third-party and the certification mark that is issued signals that the product has

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<sup>1</sup> 20 NYC Admin Code §§ 610(a)(1), (b)(1), (c)(1) (*i.e.*, “No personal shall distribute . . . a powered bicycle unless . . . [t]he electrical system for such bicycle has been certified by an accredited testing laboratory for compliance with [UL] 2849 . . .”, etc).

demonstrated compliance with the standard. Certification is necessary for compliance with Local Law 2023-239.

A certification body accredited to ISO/IEC 17065 means the accrediting body has determined that the certification body is competent, consistent, and impartial in providing certification services. For an e-bike, product certification services to UL 2849 not only requires testing by a competent laboratory, but it also requires a comprehensive engineering evaluation by a qualified individual from the certification body to verify the construction, materials, components, and other safety critical aspects comply with the requirements of the standard.<sup>2</sup> A certification body accredited to ISO/IEC 17065 must have qualified individuals who can perform this evaluation.

It is important to note, however, that ISO/IEC 17065 does not necessarily require the ongoing factory surveillance (inspection) of products certified by the certification body. In UL Solutions' view, periodic factory surveillance of products bearing the certification body's certification mark at the location where the product is manufactured is critical to the fulfillment of Local Law 2023-239.

To ensure full compliance with Local Law 2023-239, we recommend requiring the certification of products be carried out by Nationally Recognized Testing Laboratories (NRTL). The NRTL program requires the annual surveillance of certified products bearing the NRTL's certification mark at the product manufacturing/factory location. These inspections allow certifiers to verify that the product being manufactured at factory locations around the world continues to be constructed the same as the product that was evaluated by the certification body. It also allows the certification body to identify any changes that may have been made to the product that might affect the certification of the product and require the manufacturer to make corrections to assure the product's ongoing compliance with relevant standards.

The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) oversees the NRTL program, which "[r]ecognizes private sector organizations to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards."<sup>3</sup> Under the program, OSHA recognizes the scope of each NRTL based on the NRTL's demonstration of the necessary competency and equipment to test to a given standard. In 2018 and 2021, OSHA added UL 2271 (2018), UL 2272 (2022), and UL 2849 (2022) appropriate test standards.<sup>4</sup> NRTLs seeking to certify these products to meet

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<sup>2</sup> Testing provisions comprise less than half of the requirements of UL 2849, UL 2272, and UL 2271. The remaining provisions detail construction, materials, and component requirements.

<sup>3</sup> Occupational Safety and Health Administration (n.d.). *OSHA's Nationally Recognized Testing Laboratory (NRTL) Program*. [OSHA's Nationally Recognized Testing Laboratory \(NRTL\) Program | Occupational Safety and Health Administration](#) (last visited Oct. 12, 2023)

<sup>4</sup> Occupational Safety and Health Administration (n.d.). *Appropriate Test Standards*. <https://www.osha.gov/nationally-recognized-testing-laboratory-program/list-standards> (last visited Oct. 12, 2023)

OSHA requirements<sup>5</sup> must have those standards within their scope of their recognition from OSHA.

Certification by an NRTL also aligns with the New York City Fire Code, under which certain products and systems must be “listed” for code compliance.<sup>6</sup> The New York City Fire Code defines listed as:

*A material, device, equipment, or system included on a list published by a nationally recognized testing laboratory or other approved organization performing product evaluations that maintains periodic inspection of production of such listed material, device, equipment or system, and whose listing indicates compliance with nationally recognized standards and designates suitable usage.*<sup>7</sup>

FDNY has relied on NRTLs for listing to satisfy code requirements and related fire safety needs.<sup>8</sup>

To satisfy the statutory language, support the highest level of safety, and promote alignment between requirements for workplace safety and the New York City Fire Code, we would suggest adopting the following definition for this regulation:

**§ 4-150 Accredited Testing Laboratories.**

“Accredited testing laboratory,” as used in § 20-610 of the Administrative Code, shall mean ~~any laboratory that:~~

- ~~(i) is an International Organization for Standardization and International Electrotechnical Commission (ISO/IEC) 17025 Accredited Independent Testing Laboratory;~~
- ~~(ii) is an International Organization for Standardization and International Electrotechnical Commission (ISO/IEC) 17065 Accredited Certifying Body; or~~
- ~~(iii) is identified as a Nationally Recognized Testing Laboratory by the United States Department of Labor Occupational Safety and Health Administration~~

*An organization which has been recognized by the United States Department of Labor Occupational Safety and Health Administration as a Nationally Recognized Testing Laboratory (NRTL) and for which the Occupational Safety and Health Administration has included UL 2849, UL 2272, and UL 2271 within the scope of the NRTL’s recognition.*

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<sup>5</sup> Occupational Safety and Health Administration (n.d.). *Specific References to OSHA Standards Requiring NRTL Approval*. [OSHA’s Nationally Recognized Testing Laboratory \(NRTL\) Program - Specific References | Occupational Safety and Health Administration](#) (last visited Oct. 12, 2023)

<sup>6</sup> *E.g.*, 29 NYC Admin Code §FC320.1 (“ . . . when tested [in] accordance with ASTM E1354, and shall be listed and labeled as such.”), §FC605.4.2 (“Portable power taps [shall be] listed in accordance with UL 1363”).

<sup>7</sup> 29 NYC Admin Code §FC202.

<sup>8</sup> *See e.g.*, Consumer Product Safety Commission July 27, 2023, meeting on lithium-ion battery safety, comments of FDNY Chief Fire Marshal Daniel Flynn (noting FDNY’s expectation that products should be certified to UL 2849, UL 2272, and UL 2271 by NRTLs). [CPSC’s Forum on Lithium-ion Battery Safety | CPSC.gov](#) (last visited Oct. 12, 2023)

UL Solutions appreciates the opportunity to provide comments. If you have any further questions, please contact Derek Greenauer ([derek.greenauer@ul.com](mailto:derek.greenauer@ul.com); 202-296-8092).

Sincerely,

/s Derek Greenauer

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