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UBER TECHNOLOGIES INC., RASIER, LLC,
RASIER-CA, LLC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ULADZIMIR TABOLA, individually and
on behalf of all others aggrieved
employees,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., RASIER,
LLC AND RASIER-CA, LLC AND DOES
1 THROUGH 25,

Defendants.

CASE NO.: CGC-16-550992

Assigned for All Purposes to
Hon. Andrew Y.S. Cheng, Dept. 613

**DECLARATION OF SOPHIA BEHNIA IN
SUPPORT OF JOINT APPLICATION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: March 4, 2020
Time: 10:30 AM
Dept.: 613
Judge: Hon. Andrew Y.S. Cheng

1 I, Sophia Behnia, hereby declare and state:

2 1. I am a Shareholder at the law firm of Littler Mendelson, P.C., counsel of record for
3 Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC in the above-entitled action.
4 All of the information contained herein is based upon my personal and first-hand knowledge, and if
5 called and sworn as a witness, I could and would competently testify thereto.

6 2. Attached hereto as **Exhibit A** is a true and correct copy of the December 11, 2015
7 Rasier Technology Services Agreement.

8 3. Attached hereto as **Exhibit B** is a true and correct copy of the August 26, 2016 Portier,
9 LLC Technology Services Agreement.

10 4. Attached hereto as **Exhibit C** is a true and correct copy of the November 25, 2019 Uber
11 Technologies, Inc. Technology Services Agreement.

12 5. Attached hereto as **Exhibit D** is a true and correct copy of the December 11, 2015 Uber
13 USA, LLC Technology Services Agreement.

14 6. Attached hereto as **Exhibit E** is a sampling of federal and state agency rulings finding
15 drivers to be independent contractors.

16 7. Attached hereto as **Exhibit F** is a true and correct copy of the April 29, 2019
17 Department of Labor Opinion Letter regarding the independent contractor status of service providers
18 in a virtual marketplace company.

19 I declare under the penalty of perjury under the laws of the United States and California that
20 the foregoing is true and correct.

21 Executed at San Francisco, California, this 10th day of February, 2020.

22
23 
24 _____
25 SOPHIA BEHNIA
26

27 4840-3227-4097.2 073208.1158
28

EXHIBIT A

RASIER, LLC / RASIER-CA, LLC / RASIER-PA, LLC / RASIER-DC, LLC / RASIER-MT, LLC / HINTER-NM

TECHNOLOGY SERVICES AGREEMENT

Last update: December 11, 2015

This Technology Services Agreement (“*Agreement*”) constitutes a legal agreement between you, an individual (“*you*”) and Rasier-CA, LLC if your Territory (as defined below) is within the State of California, Rasier-PA, LLC if your Territory is within the State of Pennsylvania, Rasier-DC, LLC if your Territory is within the State of Florida, Rasier-MT, LLC if your Territory is within the State of Montana, Hinter-NM if your Territory is within the State of New Mexico, or Rasier, LLC if your Territory is anywhere else within the United States (as applicable, “*Company*”).

Company, a subsidiary of Uber Technologies, Inc. (“*Uber*”), provides lead generation to independent providers of rideshare or peer-to-peer (collectively, “*P2P*”) passenger transportation services using the Uber Services (as defined below). The Uber Services enable an authorized transportation provider to seek, receive and fulfill requests for transportation services from an authorized user of Uber’s mobile applications. You desire to enter into this Agreement for the purpose of accessing and using the Uber Services.

You acknowledge and agree that Company is a technology services provider that does not provide transportation services.

In order to use the Uber Services, you must agree to the terms and conditions that are set forth below. Upon your execution (electronic or otherwise) of this Agreement, you and Company shall be bound by the terms and conditions set forth herein.

IMPORTANT: PLEASE NOTE THAT TO USE THE UBER SERVICES, YOU MUST AGREE TO THE TERMS AND CONDITIONS SET FORTH BELOW. PLEASE REVIEW THE ARBITRATION PROVISION SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH THE COMPANY ON AN INDIVIDUAL BASIS, EXCEPT AS PROVIDED IN SECTION 15.3, THROUGH FINAL AND BINDING ARBITRATION UNLESS YOU CHOOSE TO OPT OUT OF THE ARBITRATION PROVISION. BY VIRTUE OF YOUR ELECTRONIC EXECUTION OF THIS AGREEMENT, YOU WILL BE ACKNOWLEDGING THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT (INCLUDING THE ARBITRATION PROVISION) AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT BUSINESS DECISION. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED IN THE ARBITRATION PROVISION BELOW.

1. Definitions

- 1.1 *"Affiliate"* means an entity that, directly or indirectly, controls, is under the control of, or is under common control with a party, where control means having more than fifty percent (50%) of the voting stock or other ownership interest or the majority of the voting rights of such entity.
- 1.2 *"City Addendum"* means an addendum or supplemental information to this Agreement setting forth additional Territory-specific terms, as made available and as updated by Company from time to time.
- 1.3 *"Company Data"* means all data related to the access and use of the Uber Services hereunder, including all data related to Users (including User Information), all data related to the provision of Transportation Services via the Uber Services and the Driver App, and the Driver ID.
- 1.4 *"Company Device"* means a mobile device owned or controlled by Company that is provided to you solely for your use of the Driver App to provide Transportation Services.
- 1.5 *"Device"* means a Company Device or Your Device, as the case may be.
- 1.6 *"Driver App"* means the mobile application provided by Company that enables transportation providers to access the Uber Services for the purpose of seeking, receiving and fulfilling on-demand requests for transportation services by Users, as may be updated or modified from time to time.
- 1.7 *"Driver ID"* means the identification and password key assigned by Company to you that enables you to use and access the Driver App.
- 1.8 *"Fare"* has the meaning set forth in Section 4.1.
- 1.9 *"Service Fee"* has the meaning set forth in Section 4.4.
- 1.10 *"Territory"* means the city or metro areas in the United States in which you are enabled by the Driver App to receive requests for Transportation Services.
- 1.11 *"Tolls"* means any applicable road, bridge, ferry, tunnel and airport charges and fees, including inner-city congestion, environmental or similar charges as reasonably determined by the Uber Services based on available information.
- 1.12 *"Transportation Services"* means your provision of P2P passenger transportation services to Users via the Uber Services in the Territory using the Vehicle.
- 1.13 *"Uber Services"* mean Uber's on-demand lead generation and related services licensed by Uber to Company that enable transportation providers to seek, receive and fulfill on-demand requests for transportation services by Users seeking transportation services; such Uber Services include access to the Driver App and Uber's software, websites, payment services as described in Section 4 below, and related support services systems, as may be updated or modified from time to time.
- 1.14 *"User"* means an end user authorized by Uber to use the Uber mobile application for the purpose of obtaining Transportation Services offered by Company's transportation provider customers.
- 1.15 *"User Information"* means information about a User made available to you in connection with such User's request for and use of Transportation Services, which may include the User's name, pick-up location, contact information and photo.

- 1.16 “*Vehicle*” means your vehicle that: (a) meets the then-current Company requirements for a vehicle on the Uber Services; and (b) Company authorizes for your use for the purpose of providing Transportation Services.
- 1.17 “*Your Device*” means a mobile device owned or controlled by you: (a) that meets the then-current Company specifications for mobile devices as set forth at www.uber.com/byod-devices; and (b) on which the Driver App has been installed as authorized by Company solely for the purpose of providing Transportation Services.

2. Use of the Uber Services

- 2.1 **Driver IDs.** Uber will issue you a Driver ID to enable you to access and use the Driver App on a Device in accordance with this Agreement. Company reserves the right to deactivate your Driver ID if you have not fulfilled a request for Transportation Services using the Driver App at least once a month. **You agree that you will maintain your Driver ID in confidence and not share your Driver ID with any third party. You will immediately notify Company of any actual or suspected breach or improper use or disclosure of your Driver ID or the Driver App.**
- 2.2 **Provision of Transportation Services.** When the Driver App is active, User requests for Transportation Services may appear to you via the Driver App if you are available and in the vicinity of the User. If you accept a User’s request for Transportation Services, the Uber Services will provide you with certain User Information via the Driver App, including the User’s first name and pickup location. In order to enhance User satisfaction with the Uber mobile application and your Transportation Services, it is recommended that you wait at least ten (10) minutes for a User to show up at the requested pick-up location. You will obtain the destination from the User, either in person upon pickup or from the Driver App if the User elects to enter such destination via Uber’s mobile application. You acknowledge and agree that once you have accepted a User’s request for Transportation Services, Uber’s mobile application may provide certain information about you to the User, including your first name, contact information, photo and location, and your Vehicle’s make and license plate number. You shall not contact any Users or use any User’s personal data for any reason other than for the purposes of fulfilling Transportation Services. As between Company and you, you acknowledge and agree that: (a) you shall be solely responsible for determining the most effective, efficient and safe manner to perform each instance of Transportation Services; and (b) except for the Uber Services or any Company Devices (if applicable), you shall provide all necessary equipment, tools and other materials, at your own expense, necessary to perform Transportation Services. You understand and agree that you have a legal obligation under the Americans with Disabilities Act and similar state laws to transport Users with Service Animals (as defined by applicable state and federal law), including guide dogs for the blind and visually impaired Users, and there is no exception to this obligation for allergies or religious objections. Your knowing failure to transport a User with a Service Animal shall constitute a material breach of this Agreement. You agree that a “knowing failure” to comply with this legal obligation shall constitute either: (1) a denial of a ride where you state the denial was due to a Service Animal; or (2) there is more than one (1) instance in which a User or the companion of a User alleges that you cancelled or refused a ride on the basis of a Service Animal.
- 2.3 **Your Relationship with Users.** You acknowledge and agree that your provision of Transportation Services to Users creates a direct business relationship between you and the User. Company is not responsible or liable for the actions or inactions of a User in relation to you, your activities or your Vehicle. You shall have the sole responsibility for any obligations or liabilities to Users or third parties that arise from your provision of Transportation Services. You acknowledge and

agree that you are solely responsible for taking such precautions as may be reasonable and proper (including maintaining adequate insurance that meets the requirements of all applicable laws including motor vehicle financial responsibility laws) regarding any acts or omissions of a User or third party. You acknowledge and agree that Company may release your contact and/or insurance information to a User upon such User's reasonable request. You acknowledge and agree that, unless specifically consented to by a User, you may not transport or allow inside your Vehicle individuals other than a User and any individuals authorized by such User, during the performance of Transportation Services for such User. You acknowledge and agree that all Users should be transported directly to their specified destination, as directed by the applicable User, without unauthorized interruption or unauthorized stops.

- 2.4 **Your Relationship with Company.** You acknowledge and agree that Company's provision to you of the Driver App and the Uber Services creates a direct business relationship between Company and you. Company does not, and shall not be deemed to, direct or control you generally or in your performance under this Agreement specifically, including in connection with your provision of Transportation Services, your acts or omissions, or your operation and maintenance of your Vehicle. You retain the sole right to determine when, where, and for how long you will utilize the Driver App or the Uber Services. You retain the option, via the Driver App, to attempt to accept or to decline or ignore a User's request for Transportation Services via the Uber Services, or to cancel an accepted request for Transportation Services via the Driver App, subject to Company's then-current cancellation policies. With the exception of any signage required by local law or permit/license requirements, Company shall have no right to require you to: (a) display Company's or any of its Affiliates' names, logos or colors on your Vehicle(s); or (b) wear a uniform or any other clothing displaying Company's or any of its Affiliates' names, logos or colors. You acknowledge and agree that you have complete discretion to provide services or otherwise engage in other business or employment activities. For the sake of clarity, you understand that you retain the complete right to; (i) use other software application services in addition to the Uber Services; and (ii) engage in any other occupation or business. Company retains the right to deactivate or otherwise restrict you from accessing or using the Driver App or the Uber Services in the event of a violation or alleged violation of this Agreement, your disparagement of Company or any of its Affiliates, your act or omission that causes harm to Company's or its Affiliates' brand, reputation or business as determined by Company in its sole discretion.

2.5 **Ratings.**

- 2.5.1 You acknowledge and agree that: (a) after receiving Transportation Services, a User will be prompted by Uber's mobile application to provide a rating of you and such Transportation Services and, optionally, to provide comments or feedback about you and such Transportation Services; and (b) after providing Transportation Services, you will be prompted by the Driver App to provide a rating of the User and, optionally, to provide comments or feedback about the User. You shall provide your ratings and feedback in good faith.
- 2.5.2 You acknowledge that Company desires that Users have access to high-quality services via Uber's mobile application. In order to continue to receive access to the Driver App and the Uber Services, you must maintain an average rating by Users that exceeds the minimum average acceptable rating established by Company for your Territory, as may be updated from time to time by Company in its sole discretion ("*Minimum Average Rating*"). Your average rating is intended to reflect Users' satisfaction with your

Transportation Services rather than your compliance with any of Company's policies or recommendations. In the event your average rating falls below the Minimum Average Rating, Company will notify you and may provide you, in Company's discretion, a limited period of time to raise your average rating above the Minimum Average Rating. If you do not increase your average rating above the Minimum Average Rating within the time period allowed (if any), Company reserves the right to deactivate your access to the Driver App and the Uber Services. Additionally, you acknowledge that your repeated failure to accept User requests for Transportation Services while you are logged in to the Driver App creates a negative experience for Users of Uber's mobile application. If you do not wish to accept User requests for Transportation Services for a period of time, you agree that you will log off of the Driver App.

- 2.5.3 Company and its Affiliates reserve the right to use, share and display your and User ratings and comments in any manner in connection with the business of Company and its Affiliates without attribution to you or your approval. You acknowledge and agree that Company and its Affiliates are distributors (without any obligation to verify) and not publishers of your and User ratings and comments, provided that Company and its Affiliates reserve the right to edit or remove comments in the event that such comments include obscenities or other objectionable content, include an individual's name or other personal information, or violate any privacy laws, other applicable laws or Company's or its Affiliates' content policies.

2.6 **Devices.**

- 2.6.1 Company encourages you to use Your Device in providing Transportation Services. Otherwise, if you elect to use any Company Devices, Company will supply you upon request with Company Devices and provide the necessary wireless data plan for such Devices, provided that Company will require reimbursement from you for the costs associated with the wireless data plan of each Company Device and/or request a deposit for each Company Device. You agree that: (a) Company Devices may only be used for the purpose of enabling your access to the Uber Services; and (b) Company Devices may not be transferred, loaned, sold or otherwise provided in any manner to any party other than you. Company Devices shall at all times remain the property of Company, and upon termination of this Agreement or your termination or deactivation, you agree to return to Company the applicable Company Devices within ten (10) days. You agree that failure to timely return any Company Devices, or damage to Company Devices outside of "normal wear and tear," will result in the forfeiture of related deposits.
- 2.6.2 If you elect to use Your Devices: (i) you are responsible for the acquisition, cost and maintenance of Your Devices as well as any necessary wireless data plan; and (ii) Company shall make available the Driver App for installation on Your Device. Company hereby grants you a personal, non-exclusive, non-transferable license to install and use the Driver App on Your Device solely for the purpose of providing Transportation Services. You agree to not provide, distribute or share, or enable the provision, distribution or sharing of, the Driver App (or any data associated therewith) with any third party. The foregoing license grant shall immediately terminate and you will delete and fully remove the Driver App from the Driver-Provided Device in the event that you cease to provide Transportation Services using Your Device. You agree that: (i) use of the Driver App on Your Device requires an active data plan with a wireless carrier associated with Your Device, which data plan will be provided by you at your own

expense; and (ii) use of the Driver App on Your Device as an interface with the Uber Services may consume very large amounts of data through the data plan. **COMPANY ADVISES THAT YOUR DEVICE ONLY BE USED UNDER A DATA PLAN WITH UNLIMITED OR VERY HIGH DATA USAGE LIMITS, AND COMPANY SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY FEES, COSTS, OR OVERAGE CHARGES ASSOCIATED WITH ANY DATA PLAN.**

- 2.7 **Location Based Services.** You acknowledge and agree that your geo-location information must be provided to the Uber Services via a Device in order to provide Transportation Services. You acknowledge and agree that: (a) your geo-location information may be obtained by the Uber Services while the Driver App is running; and (b) the approximate location of your Vehicle will be displayed to the User before and during the provision of Transportation Services to such User. In addition, Company and its Affiliates may monitor, track and share with third parties Driver's geo-location information obtained by the Driver App and Device for safety and security purposes.

3. You and Your Vehicle

- 3.1 **Your Requirements.** You acknowledge and agree that at all times, you shall: (a) hold and maintain (i) a valid driver's license with the appropriate level of certification to operate your Vehicle, and (ii) all licenses, permits, approvals and authority applicable to you that are necessary to provide passenger transportation services to third parties in the Territory; (b) possess the appropriate and current level of training, expertise and experience to provide Transportation Services in a professional manner with due skill, care and diligence; and (c) maintain high standards of professionalism, service and courtesy. You acknowledge and agree that you may be subject to certain background and driving record checks from time to time in order to qualify to provide, and remain eligible to provide, Transportation Services. You acknowledge and agree that Company reserves the right, at any time in Company's sole discretion, to deactivate or otherwise restrict you from accessing or using the Driver App or the Uber Services if you fail to meet the requirements set forth in this Agreement.
- 3.2 **Vehicle Requirements.** You acknowledge and agree that your Vehicle shall at all times be: (a) properly registered and licensed to operate as a passenger transportation vehicle in the Territory; (b) owned or leased by you, or otherwise in your lawful possession; (c) suitable for performing the passenger transportation services contemplated by this Agreement; and (d) maintained in good operating condition, consistent with industry safety and maintenance standards for a Vehicle of its kind and any additional standards or requirements in the applicable Territory, and in a clean and sanitary condition.
- 3.3 **Documentation.** To ensure your compliance with all requirements in Sections 3.1 and 3.2 above, you must provide Company with written copies of all such licenses, permits, approvals, authority, registrations and certifications prior to your provision of any Transportation Services. Thereafter, you must submit to Company written evidence of all such licenses, permits, approvals, authority, registrations and certifications as they are renewed. Company shall, upon request, be entitled to review such licenses, permits, approvals, authority, registrations and certifications from time to time, and your failure to provide or maintain any of the foregoing shall constitute a material breach of this Agreement. Company reserves the right to independently verify your documentation from time to time in any way Company deems appropriate in its reasonable discretion.

4. Financial Terms

- 4.1 **Fare Calculation and Your Payment.** You are entitled to charge a fare for each instance of completed Transportation Services provided to a User that are obtained via the Uber Services (“Fare”), where such Fare is calculated based upon a base fare amount plus distance (as determined by Company using location-based services enabled through the Device) and/or time amounts, as detailed at www.uber.com/cities for the applicable Territory (“Fare Calculation”). You acknowledge and agree that the Fare provided under the Fare Calculation is the only payment you will receive in connection with the provision of Transportation Services, and that neither the Fare nor the Fare Calculation includes any gratuity. You are also entitled to charge User for any Tolls, taxes or fees incurred during the provision of Transportation Services, if applicable. You: (i) appoint Company as your limited payment collection agent solely for the purpose of accepting the Fare, applicable Tolls and, depending on the region and/or if requested by you, applicable taxes and fees from the User on your behalf via the payment processing functionality facilitated by the Uber Services; and (ii) agree that payment made by User to Company (or to an Affiliate of Company acting as an agent of Company) shall be considered the same as payment made directly by User to you. In addition, the parties acknowledge and agree that as between you and Company, the Fare is a recommended amount, and the primary purpose of the pre-arranged Fare is to act as the default amount in the event you do not negotiate a different amount. You shall always have the right to: (i) charge a fare that is less than the pre-arranged Fare; or (ii) negotiate, at your request, a Fare that is lower than the pre-arranged Fare (each of (i) and (ii) herein, a “Negotiated Fare”). Company shall consider all such requests from you in good faith. Company agrees to remit, or cause to be remitted, to you on at least a weekly basis: (a) the Fare less the applicable Service Fee; (b) the Tolls; and (c) depending on the region, certain taxes and ancillary fees. If you have separately agreed that other amounts may be deducted from the Fare prior to remittance to you (e.g., vehicle financing payments, lease payments, mobile device usage charges, etc.), the order of any such deductions from the Fare shall be determined exclusively by Company (as between you and Company).
- 4.2 **Changes to Fare Calculation.** Company reserves the right to change the Fare Calculation at any time in Company’s discretion based upon local market factors, and Company will provide you with notice in the event of changes to the base fare, per mile, and/or per minute amounts that would result in a change in the recommended Fare. Continued use of the Uber Services after any such change in the Fare Calculation shall constitute your consent to such change.
- 4.3 **Fare Adjustment.** Company reserves the right to: (i) adjust the Fare for a particular instance of Transportation Services (e.g., you took an inefficient route, you failed to properly end a particular instance of Transportation Services in the Driver App, technical error in the Uber Services, etc.); or (ii) cancel the Fare for a particular instance of Transportation Services (e.g., User is charged for Transportation Services that were not provided, in the event of a User complaint, fraud, etc.). Company’s decision to reduce or cancel the Fare in any such manner shall be exercised in a reasonable manner.
- 4.4 **Service Fee.** In consideration of Company’s provision of the Driver App and the Uber Services for your use and benefit hereunder, you agree to pay Company a service fee on a per Transportation Services transaction basis calculated as a percentage of the Fare determined by the Fare Calculation (regardless of any Negotiated Fare), as provided to you via email or otherwise made available electronically by Company from time to time for the applicable Territory (“Service Fee”). In the event regulations applicable to your Territory require taxes to be calculated on the Fare, Company shall calculate the Service Fee based on the Fare net of such taxes. Company reserves the right to change the Service Fee at any time in Company’s discretion

based upon local market factors, and Company will provide you with notice in the event of such change. Continued use of the Uber Services after any such change in the Service Fee calculation shall constitute your consent to such change.

- 4.5 **Cancellation Charges.** You acknowledge and agree that Users may elect to cancel requests for Transportation Services that have been accepted by you via the Driver App at any time prior to your arrival. In the event that a User cancels an accepted request for Transportation Services, Company may charge the User a cancellation fee on your behalf. If charged, this cancellation fee shall be deemed the Fare for the cancelled Transportation Services for the purpose of remittance to you hereunder ("*Cancellation Fee*"). The parties acknowledge and agree that as between you and Company, this Cancellation Fee is a recommended amount, and the primary purpose of such Cancellation Fee is to act as the default amount in the event you do not negotiate a different amount. You shall always have the right to: (i) charge a cancellation fee that is less than the Cancellation Fee; or (ii) negotiate, at your request, a cancellation fee that is lower than the Cancellation Fee (each of (i) and (ii) herein, a "*Negotiated Cancellation Fee*"). If charged, the Cancellation Fee (regardless of any Negotiated Cancellation Fee) shall be deemed the Fare for the cancelled Transportation Services for the purpose of remittance to you hereunder.
- 4.6 **Receipts.** As part of the Uber Services, Company provides you a system for the delivery of receipts to Users for Transportation Services rendered. Upon your completion of Transportation Services for a User, Company prepares an applicable receipt and issues such receipt to the User via email on your behalf. Such receipts are also provided to you via email or the online portal available to you through the Uber Services. Receipts include the breakdown of amounts charged to the User for Transportation Services and may include specific information about you, including your name, contact information and photo, as well as a map of the route you took. Any corrections to a User's receipt for Transportation Services must be submitted to Company in writing within three (3) business days after the completion of such Transportation Services. Absent such a notice, Company shall not be liable for any mistakes in or corrections to the receipt or for recalculation or disbursement of the Fare.
- 4.7 **No Additional Amounts.** You acknowledge and agree that, for the mutual benefit of the parties, through advertising and marketing, Company and its Affiliates may seek to attract new Users to Uber and to increase existing Users' use of Uber's mobile application. You acknowledge and agree such advertising or marketing does not entitle you to any additional monetary amounts beyond the amounts expressly set forth in this Agreement.
- 4.8 **Taxes.** You acknowledge and agree that you are required to: (a) complete all tax registration obligations and calculate and remit all tax liabilities related to your provision of Transportation Services as required by applicable law; and (b) provide Company with all relevant tax information. You further acknowledge and agree that you are responsible for taxes on your own income arising from the performance of Transportation Services. Notwithstanding anything to the contrary in this Agreement, Company may in its reasonable discretion based on applicable tax and regulatory considerations, collect and remit taxes resulting from your provision of Transportation Services and/or provide any of the relevant tax information you have provided pursuant to the foregoing requirements in this Section 4.8 directly to the applicable governmental tax authorities on your behalf or otherwise.

5. **Proprietary Rights; License**

- 5.1 **License Grant.** Subject to the terms and conditions of this Agreement, Company hereby grants you a non-exclusive, non-transferable, non-sublicensable, non-assignable license, during the term of this Agreement, to use the Uber Services (including the Driver App on a Device) solely for the purpose of providing Transportation Services to Users and tracking resulting Fares and Fees. All rights not expressly granted to you are reserved by Company, its Affiliates and their respective licensors.
- 5.2 **Restrictions.** You shall not, and shall not allow any other party to: (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise provide or make available to any other party the Uber Services, Driver App or any Company Device in any way; (b) modify or make derivative works based upon the Uber Services or Driver App; (c) improperly use the Uber Services or Driver App, including creating Internet “links” to any part of the Uber Services or Driver App, “framing” or “mirroring” any part of the Uber Services or Driver App on any other websites or systems, or “scraping” or otherwise improperly obtaining data from the Uber Services or Driver App; (d) reverse engineer, decompile, modify, or disassemble the Uber Services or Driver App, except as allowed under applicable law; or (e) send spam or otherwise duplicative or unsolicited messages. In addition, you shall not, and shall not allow any other party to, access or use the Uber Services or Driver App to: (i) design or develop a competitive or substantially similar product or service; (ii) copy or extract any features, functionality, or content thereof; (iii) launch or cause to be launched on or in connection with the Uber Services an automated program or script, including web spiders, crawlers, robots, indexers, bots, viruses or worms, or any program which may make multiple server requests per second, or unduly burden or hinder the operation and/or performance of the Uber Services; or (iv) attempt to gain unauthorized access to the Uber Services or its related systems or networks.
- 5.3 **Ownership.** The Uber Services, Driver App and Company Data, including all intellectual property rights therein, and the Company Devices are and shall remain (as between you and Company) the property of Company, its Affiliates or their respective licensors. Neither this Agreement nor your use of the Uber Services, Driver App or Company Data conveys or grants to you any rights in or related to the Uber Services, Driver App or Company Data, except for the limited license granted above. Other than as specifically permitted by the Company in connection with the Uber Services, you are not permitted to use or reference in any manner Company’s, its Affiliates’, or their respective licensors’ company names, logos, products and service names, trademarks, service marks, trade dress, copyrights or other indicia of ownership, alone and in combination with other letters, punctuation, words, symbols and/or designs (the “UBER Marks and Names”) for any commercial purposes. You agree that you will not try to register or otherwise use and/or claim ownership in any of the UBER Marks and Names, alone or in combination with other letters, punctuation, words, symbols and/or designs, or in any confusingly similar mark, name or title, for any goods and services.

6. Confidentiality

- 6.1 Each party acknowledges and agrees that in the performance of this Agreement it may have access to or may be exposed to, directly or indirectly, confidential information of the other party (“*Confidential Information*”). Confidential Information includes Company Data, Driver IDs, User Information, and the transaction volume, marketing and business plans, business, financial, technical, operational and such other non-public information of each party (whether disclosed in writing or verbally) that such party designates as being proprietary or confidential or of which the other party should reasonably know that it should be treated as confidential.

- 6.2 Each party acknowledges and agrees that: (a) all Confidential Information shall remain the exclusive property of the disclosing party; (b) it shall not use Confidential Information of the other party for any purpose except in furtherance of this Agreement; (c) it shall not disclose Confidential Information of the other party to any third party, except to its employees, officers, contractors, agents and service providers ("*Permitted Persons*") as necessary to perform under this Agreement, provided Permitted Persons are bound in writing to obligations of confidentiality and non-use of Confidential Information no less protective than the terms hereof; and (d) it shall return or destroy all Confidential Information of the disclosing party, upon the termination of this Agreement or at the request of the other party (subject to applicable law and, with respect to Company, its internal record-keeping requirements).
- 6.3 Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (a) is or becomes part of the public domain through no act or omission on the part of the receiving party; (b) was possessed by the receiving party prior to the date of this Agreement without an obligation of confidentiality; (c) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto; or (d) is required to be disclosed pursuant to law, court order, subpoena or governmental authority, provided the receiving party notifies the disclosing party thereof and provides the disclosing party a reasonable opportunity to contest or limit such required disclosure.

7. Privacy

- 7.1 **Disclosure of Your Information.** Subject to applicable law, Company and its Affiliates may, but shall not be required to, provide to you, a User, an insurance company and/or relevant authorities and/or regulatory agencies any information (including personal information (*e.g.*, information obtained about you through any background check) and any Company Data) about you or any Transportation Services provided hereunder if: (a) there is a complaint, dispute or conflict, including an accident, between you and a User; (b) it is necessary to enforce the terms of this Agreement; (c) it is required, in Company's or any Affiliate's sole discretion, by applicable law or regulatory requirements (*e.g.*, Company or its Affiliates receive a subpoena, warrant, or other legal process for information); (d) it is necessary, in Company's or any Affiliate's sole discretion, to (1) protect the safety, rights, property or security of Company or its Affiliates, the Uber Services or any third party; (2) to protect the safety of the public for any reason including the facilitation of insurance claims related to the Uber Services; (3) to detect, prevent or otherwise address fraud, security or technical issues; (4) to prevent or stop activity which Company or any of its Affiliates, in their sole discretion, may consider to be, or to pose a risk of being, an illegal, unethical, or legally actionable activity); or (e) it is required or necessary, in Company's or any Affiliate's sole discretion, for insurance or other purposes related to your ability to qualify, or remain qualified, to use the Uber Services. You understand that Company may retain your personal data for legal, regulatory, safety and other necessary purposes after this Agreement is terminated.
- 7.2 Company and its Affiliates may collect your personal data during the course of your application for, and use of, the Uber Services, or may obtain information about you from third parties. Such information may be stored, processed, transferred, and accessed by Company and its Affiliates, third parties, and service providers for business purposes, including for marketing, lead generation, service development and improvement, analytics, industry and market research, and such other purposes consistent with Company's and its Affiliates' legitimate business needs. You expressly consent to such use of personal data.

8. Insurance

- 8.1 You agree to maintain during the term of this Agreement on all Vehicles operated by you under this Agreement automobile liability insurance that provides protection against bodily injury and property damage to third parties at levels of coverage that satisfy the minimum requirements to operate a private passenger vehicle on the public roads within the Territory. This coverage must also include any no-fault coverage required by law in the Territory that may not be waived by an insured. You agree to provide Company and its Affiliates a copy of the insurance policy, policy declarations, proof of insurance identification card and proof of premium payment for the insurance policy required in this Section 8.1 upon request. Furthermore, you must provide Company with written notice of cancellation of any insurance policy required by Company. Company shall have no right to control your selection or maintenance of your policy. You must be a named insured or individually rated driver, for which a premium is charged, on the insurance policy required in this Section 8.1 at all times.
- 8.2 **You agree to maintain during the term of this Agreement workers' compensation insurance as required by all applicable laws in the Territory. If permitted by applicable law, you may choose to insure yourself against industrial injuries by maintaining occupational accident insurance in place of workers' compensation insurance. Furthermore, if permitted by applicable law, you may choose not to insure yourself against industrial injuries at all, but do so at your own risk.**
- 8.3 You understand and acknowledge that your personal automobile insurance policy may not afford liability, comprehensive, collision, medical payments, personal injury protection, uninsured motorist, underinsured motorist, or other coverage for the Transportation Services you provide pursuant to this Agreement. If you have any questions or concerns about the scope or applicability of your own insurance coverage, it is your responsibility, not that of Company, to resolve them with your insurer(s).
- 8.4 Company may maintain during the term of this Agreement insurance related to your provision of Transportation Services as determined by Company in its reasonable discretion or as described in a City Addendum, provided that Company and its Affiliates are not required to provide you with any specific insurance coverage for any loss to you or your Vehicle. You are required to promptly notify Company of any accidents that occur while providing Transportation Services and to cooperate and provide all necessary information related thereto.

9. Representations and Warranties; Disclaimers

- 9.1 **By You.** You hereby represent and warrant that: (a) you have full power and authority to enter into this Agreement and perform your obligations hereunder; (b) you have not entered into, and during the term will not enter into, any agreement that would prevent you from complying with this Agreement; and (c) you will comply with all applicable laws in your performance of this Agreement, including holding and complying with all permits, licenses, registrations and other governmental authorizations necessary to provide (i) Transportation Services using the Vehicles pursuant to this Agreement, and (ii) passenger transportation services to third parties in the Territory generally.
- 9.2 **Disclaimer of Warranties.** COMPANY AND ITS AFFILIATES PROVIDE, AND YOU ACCEPT, THE UBER SERVICES, DRIVER APP AND THE COMPANY DEVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS. COMPANY AND ITS AFFILIATES DO NOT REPRESENT, WARRANT OR GUARANTEE THAT YOUR ACCESS TO OR USE OF THE UBER SERVICES, DRIVER APP OR THE COMPANY DEVICES: (A) WILL BE UNINTERRUPTED OR ERROR FREE; OR (B) WILL RESULT IN ANY REQUESTS FOR TRANSPORTATION

SERVICES. COMPANY AND ITS AFFILIATES FUNCTION AS AN ON-DEMAND LEAD GENERATION AND RELATED SERVICE ONLY AND MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AS TO THE ACTIONS OR INACTIONS OF THE USERS WHO MAY REQUEST OR RECEIVE TRANSPORTATION SERVICES FROM YOU, AND COMPANY AND ITS AFFILIATES DO NOT SCREEN OR OTHERWISE EVALUATE USERS. BY USING THE UBER SERVICES AND DRIVER APP, YOU ACKNOWLEDGE AND AGREE THAT YOU MAY BE INTRODUCED TO A THIRD PARTY THAT MAY POSE HARM OR RISK TO YOU OR OTHER THIRD PARTIES. YOU ARE ADVISED TO TAKE REASONABLE PRECAUTIONS WITH RESPECT TO INTERACTIONS WITH THIRD PARTIES ENCOUNTERED IN CONNECTION WITH THE USE OF THE UBER SERVICES OR DRIVER APP. NOTWITHSTANDING COMPANY'S APPOINTMENT AS THE LIMITED PAYMENT COLLECTION AGENT OF YOU FOR THE PURPOSE OF ACCEPTING PAYMENT FROM USERS ON YOUR BEHALF AS SET FORTH IN SECTION 4 ABOVE, COMPANY AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL LIABILITY FOR ANY ACT OR OMISSION OF YOU, ANY USER OR OTHER THIRD PARTY.

- 9.3 **No Service Guarantee.** COMPANY AND ITS AFFILIATES DO NOT GUARANTEE THE AVAILABILITY OR UPTIME OF THE UBER SERVICES OR DRIVER APP. YOU ACKNOWLEDGE AND AGREE THAT THE UBER SERVICES OR DRIVER APP MAY BE UNAVAILABLE AT ANY TIME AND FOR ANY REASON (*e.g.*, DUE TO SCHEDULED MAINTENANCE OR NETWORK FAILURE). FURTHER, THE UBER SERVICES OR DRIVER APP MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND COMPANY AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES, LIABILITIES OR LOSSES RESULTING FROM SUCH PROBLEMS.
10. **Indemnification.** You shall indemnify, defend (at Company's option) and hold harmless Company and its Affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, expenses (including legal fees), damages, penalties, fines, social security contributions and taxes arising out of or related to: (a) your breach of your representations, warranties or obligations under this Agreement; or (b) a claim by a third party (including Users, regulators and governmental authorities) directly or indirectly related to your provision of Transportation Services or use of the Uber Services. This indemnification provision shall not apply to your breach of any representations regarding your status as an independent contractor.
11. **Limits of Liability.** COMPANY AND ITS AFFILIATES SHALL NOT BE LIABLE UNDER OR RELATED TO THIS AGREEMENT FOR ANY OF THE FOLLOWING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES: (i) ANY INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES OF ANY TYPE OR KIND; OR (ii) YOUR OR ANY THIRD PARTY'S PROPERTY DAMAGE, OR LOSS OR INACCURACY OF DATA, OR LOSS OF BUSINESS, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE. EXCEPT FOR COMPANY'S OBLIGATIONS TO PAY AMOUNTS DUE TO YOU PURSUANT TO SECTION 4 ABOVE, BUT SUBJECT TO ANY LIMITATIONS OR OTHER PROVISIONS CONTAINED IN THIS AGREEMENT WHICH ARE APPLICABLE THERETO, IN NO EVENT SHALL THE LIABILITY OF COMPANY OR ITS AFFILIATES UNDER THIS AGREEMENT EXCEED THE AMOUNT OF SERVICE FEES ACTUALLY PAID TO OR DUE TO COMPANY HEREUNDER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.
12. **Term and Termination**
- 12.1 **Term.** This Agreement shall commence on the date accepted by you and shall continue until terminated as set forth herein.

- 12.2 **Termination.** Either party may terminate this Agreement: (a) without cause at any time upon seven (7) days prior written notice to the other party; (b) immediately, without notice, for the other party's material breach of this Agreement; or (c) immediately, without notice, in the event of the insolvency or bankruptcy of the other party, or upon the other party's filing or submission of request for suspension of payment (or similar action or event) against the terminating party. In addition, Company may terminate this Agreement or deactivate your Driver ID immediately, without notice, with respect to you in the event you no longer qualify, under applicable law or the standards and policies of Company and its Affiliates, to provide Transportation Services or to operate the Vehicle, or as otherwise set forth in this Agreement.
- 12.3 **Effect of Termination.** Upon termination of the Agreement, you shall: (a) promptly return to Company all Company Devices; and (b) immediately delete and fully remove the Driver App from any of Your Devices. Outstanding payment obligations and Sections 1, 2.3, 2.5.3, 4.7, 4.8, 5.3, 6, 7, 9, 10, 11, 12.3, 13, 14 and 15 shall survive the termination of this Agreement.

13. Relationship of the Parties

- 13.1 **Except as otherwise expressly provided herein with respect to Company acting as the limited payment collection agent solely for the purpose of collecting payment from Users on your behalf, the relationship between the parties under this Agreement is solely that of independent contracting parties. The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship, between Company and you; and (b) no joint venture, partnership, or agency relationship exists between Company and you.**
- 13.2 You have no authority to bind Company or its Affiliates and you undertake not to hold yourself out as an employee, agent or authorized representative of Company or its Affiliates. Where, by implication of mandatory law or otherwise, you may be deemed an agent or representative of Company, you undertake and agree to indemnify, defend (at Company's option) and hold Company and its Affiliates harmless from and against any claims by any person or entity based on such implied agency or representative relationship.

14. Miscellaneous Terms

- 14.1 **Modification.** In the event Company modifies the terms and conditions of this Agreement at any time, such modifications shall be binding on you only upon your acceptance of the modified Agreement. Company reserves the right to modify any information referenced at hyperlinks from this Agreement from time to time. You hereby acknowledge and agree that, by using the Uber Services, or downloading, installing or using the Driver App, you are bound by any future amendments and additions to information referenced at hyperlinks herein, or documents incorporated herein, including with respect to Fare Calculations. Continued use of the Uber Services or Driver App after any such changes shall constitute your consent to such changes. Unless changes are made to the arbitration provisions herein, you acknowledge and agree that modification of this Agreement does not create a renewed opportunity to opt out of arbitration.
- 14.2 **Supplemental Terms.** Supplemental terms may apply to your use of the Uber Services, such as use policies or terms related to certain features and functionality, which may be modified from time to time ("*Supplemental Terms*"). You may be presented with certain Supplemental Terms from time to time. Supplemental Terms are in addition to, and shall be deemed a part of, this Agreement. Supplemental Terms shall prevail over this Agreement in the event of a conflict.

- 14.3 **Severability.** If any provision of this Agreement is or becomes invalid or non-binding, the parties shall remain bound by all other provisions hereof. In that event, the parties shall replace the invalid or non-binding provision with provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this Agreement.
- 14.4 **Assignment.** Neither party shall assign or transfer this Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of the other party; provided that Company may assign or transfer this Agreement or any or all of its rights or obligations under this Agreement from time to time without consent: (a) to an Affiliate; or (b) to an acquirer of all or substantially all of Company's business, equity or assets.
- 14.5 **Entire Agreement.** This Agreement, including all Supplemental Terms, constitutes the entire agreement and understanding of the parties with respect to its subject matter and replaces and supersedes all prior or contemporaneous agreements or undertakings regarding such subject matter. In this Agreement, the words "including" and "include" mean "including, but not limited to." The recitals form a part of this Agreement.
- 14.6 **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement, except as expressly set forth in the Arbitration Provision in Section 15.3. Nothing contained in this Agreement is intended to or shall be interpreted to create any third-party beneficiary claims.
- 14.7 **Notices.** Any notice delivered by Company to you under this Agreement will be delivered by email to the email address associated with your account or by posting on the portal available to you on the Uber Services. Any notice delivered by you to Company under this Agreement will be delivered by contacting Company at <http://partners.uber.com> in the "Contact Us" section. Additional Territory-specific notices may be required from time to time.

15. Governing Law; Arbitration

- 15.1 The choice of law provisions contained in this Section 15.1 do not apply to the arbitration clause contained in Section 15.3, such arbitration clause being governed by the Federal Arbitration Act. Accordingly, and except as otherwise stated in Section 15.3, the interpretation of this Agreement shall be governed by California law, without regard to the choice or conflicts of law provisions of any jurisdiction. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Uber Services that are not subject to the arbitration clause contained in Section 15.3 shall be subject to the exclusive jurisdiction of the state and federal courts located in the City and County of San Francisco, California. However, neither the choice of law provision regarding the interpretation of this Agreement nor the forum selection provision is intended to create any other substantive right to non-Californians to assert claims under California law whether that be by statute, common law, or otherwise. These provisions, and except as otherwise provided in Section 15.3, are only intended to specify the use of California law to interpret this Agreement and the forum for disputes asserting a breach of this Agreement, and these provisions shall not be interpreted as generally extending California law to you if you do not otherwise reside or provide services in California. The foregoing choice of law and forum selection provisions do not apply to the arbitration clause in Section 15.3 or to any arbitrable disputes as defined therein. Instead, as described in Section 15.3, the Federal Arbitration Act shall apply to any such disputes. The failure of Company to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless

acknowledged and agreed to by Uber in writing.

- 15.2 Other than disputes regarding the intellectual property rights of the parties and other claims identified in Section 15.3.ii, any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Uber Services shall be subject to arbitration pursuant to Section 15.3.

15.3 Arbitration Provision

Important Note Regarding this Arbitration Provision:

- Except as provided below, arbitration does not limit or affect the legal claims you may bring against the Company. Agreeing to arbitration only affects where any such claims may be brought and how they will be resolved.
- Arbitration is a process of private dispute resolution that does not involve the civil courts, a civil judge, or a jury. Instead, the parties' dispute is decided by a private arbitrator selected by the parties using the process set forth herein. Other arbitration rules and procedures are also set forth herein.
- Unless the law requires otherwise, as determined by the Arbitrator based upon the circumstances presented, you will be required to split the cost of any arbitration with the Company.
- **IMPORTANT:** This Arbitration Provision will require you to resolve any claim that you may have against the Company or Uber on an individual basis, except as provided below, pursuant to the terms of the Agreement unless you choose to opt out of the Arbitration Provision. Except as provided below, this provision will preclude you from bringing any class, collective, or representative action (other than actions under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code § 2698 et seq. ("PAGA")) against the Company or Uber, and also precludes you from participating in or recovering relief under any current or future class, collective, or representative (non-PAGA) action brought against the Company or Uber by someone else.
 - **Cases have been filed against Company or Uber and may be filed in the future involving claims by users of the Service, including by drivers. You should assume that there are now, and may be in the future, lawsuits against the Company or Uber alleging class, collective, and/or representative (non-**

PAGA) claims on your behalf, including but not limited to claims for tips, reimbursement of expenses, and employment status. Such claims, if successful, could result in some monetary recovery to you. (THESE CASES NOW INCLUDE, FOR EXAMPLE, YUCESOY ET AL. V. UBER TECHNOLOGIES, INC., ET AL., CASE NO. 3:15-CV-00262(NORTHERN DISTRICT OF CALIFORNIA); IN RE UBER FCRA LITIGATION, CASE NO. 14-CV-05200-EMC (NORTHERN DISTRICT OF CALIFORNIA); AND O'CONNOR V. UBER TECHNOLOGIES, INC., ET AL., CASE NO. CV 13-03826-EMC (NORTHERN DISTRICT OF CALIFORNIA). The contact information for plaintiffs' counsel in the O'Connor matter is as follows: Shannon Liss-Riordan, Lichten & Liss-Riordan, P.C., 100 Cambridge Street, 20th Floor, Boston, MA 02114, Telephone: (617) 994-5800, Fax: (617) 994-5801, email: sliss@llrlaw.com.)

- The mere existence of such class, collective, and/or representative lawsuits, however, does not mean that such lawsuits will ultimately succeed. But if you do agree to arbitration with the Company, you are agreeing in advance, except as otherwise provided, that you will not participate in and, therefore, will not seek to recover monetary or other relief under any such class, collective, and/or representative (non-PAGA) lawsuit, except as provided below.
- However, as discussed above and except as provided below, if you agree to arbitration, you will not be precluded from bringing your claims against the Company or Uber in an individual arbitration proceeding. If successful on such claims, you could be awarded money or other relief by an arbitrator (subject to splitting the cost of arbitration as mentioned above).

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT BUSINESS DECISION. IT IS YOUR DECISION TO MAKE, AND YOU SHOULD NOT RELY SOLELY UPON THE INFORMATION PROVIDED IN THIS AGREEMENT AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER

RESEARCH AND TO CONSULT WITH OTHERS — INCLUDING BUT NOT LIMITED TO AN ATTORNEY — REGARDING THE CONSEQUENCES OF YOUR DECISION, JUST AS YOU WOULD WHEN MAKING ANY OTHER IMPORTANT BUSINESS OR LIFE DECISION.

i. How This Arbitration Provision Applies.

This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the “FAA”) and evidences a transaction involving interstate commerce. This Arbitration Provision applies to any dispute arising out of or related to this Agreement or termination of the Agreement and survives after the Agreement terminates. Nothing contained in this Arbitration Provision shall be construed to prevent or excuse you from utilizing any informal procedure for resolution of complaints established in this Agreement (if any), and this Arbitration Provision is not intended to be a substitute for the utilization of such procedures.

Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before any forum other than arbitration, with the exception of proceedings that must be exhausted under applicable law before pursuing a claim in a court of law or in any forum other than arbitration. Except as it otherwise provides, this Arbitration Provision requires all such disputes to be resolved only by an arbitrator through final and binding arbitration on an individual basis only and not by way of court or jury trial, or by way of class, collective, or representative action.

Except as provided in Section 15.3(v), below, regarding the Class Action Waiver, such disputes include without limitation disputes arising out of or relating to interpretation or application of this Arbitration Provision, including the enforceability, revocability or validity of the Arbitration Provision or any portion of the Arbitration Provision. All such matters shall be decided by an Arbitrator and not by a court or judge. However, as set forth below, the preceding sentences shall not apply to disputes relating to the interpretation or application of the Class Action Waiver or PAGA Waiver below, including their enforceability, revocability or validity.

Except as it otherwise provides, this Arbitration Provision also applies, without limitation, to all disputes between You and the Company or Uber, as well as all disputes between You and the Company’s or Uber’s fiduciaries, administrators, affiliates, subsidiaries, parents, and all successors and assigns of any of them, including but not limited to any disputes arising out of or related to this Agreement and disputes arising out of or related to your relationship with the Company, including termination of the relationship. This Arbitration Provision also applies, without limitation, to disputes regarding any city, county, state or federal wage-hour law, trade secrets, unfair competition, compensation, breaks and rest periods, expense reimbursement, termination, harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act (except for individual claims for employee benefits under any benefit plan sponsored by the Company and covered by the Employee Retirement Income Security Act of 1974 or funded by insurance), Genetic Information Non-Discrimination Act, and state statutes, if any, addressing the same or similar subject matters, and all other similar federal and state statutory and common law claims.

This Agreement is intended to require arbitration of every claim or dispute that lawfully can be arbitrated, except for those claims and disputes which by the terms of this Agreement are expressly excluded from the Arbitration Provision.

Uber Technologies, Inc. is an intended, third party beneficiary of this Agreement.

ii. Limitations On How This Agreement Applies.

The disputes and claims set forth below shall not be subject to arbitration and the requirement to arbitrate set forth in this Arbitration Provision shall not apply:

A representative action brought on behalf of others under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code § 2698 et seq., to the extent waiver of such a claim is deemed unenforceable by a court of competent jurisdiction;

Claims for workers compensation, state disability insurance and unemployment insurance benefits;

Regardless of any other terms of this Agreement, nothing prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, Securities Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs, and nothing in this Agreement or Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Arbitration Provision. Nothing in this Arbitration Provision shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's obligation to exhaust administrative remedies before making a claim in arbitration;

Disputes that may not be subject to a predispute arbitration agreement pursuant to applicable Federal law or Executive Order are excluded from the coverage of this Arbitration Provision;

Disputes regarding your, the Company's, or Uber's intellectual property rights;

This Arbitration Provision shall not be construed to require the arbitration of any claims against a contractor that may not be the subject of a mandatory arbitration agreement as provided by section 8116 of the Department of Defense ("DoD") Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118), section 8102 of the Department of Defense ("DoD") Appropriations Act for Fiscal Year 2011 (Pub. L. 112-10, Division A), and their implementing regulations, or any successor DoD appropriations act addressing the arbitrability of claims.

iii. Selecting The Arbitrator and Location of the Arbitration.

The Arbitrator shall be selected by mutual agreement of the Company and you. Unless you and the Company mutually agree otherwise, the Arbitrator shall be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration will be conducted. If the Parties cannot agree on an Arbitrator, then an arbitrator will be selected using the alternate strike method from a list of five (5) neutral arbitrators provided by JAMS (Judicial Arbitration & Mediation Services). You will have the option of making the first strike. If a JAMS arbitrator is used, then the JAMS Streamlined Arbitration Rules & Procedures rules will apply; however, if there is a conflict between the JAMS Rules and this Agreement, this Agreement shall govern. Those rules are available here:

<http://www.jamsadr.com/rules-streamlined-arbitration/>

The location of the arbitration proceeding shall be no more than 45 miles from the place where you last provided transportation services under this Agreement, unless each party to the arbitration agrees in writing otherwise.

iv. Starting The Arbitration.

All claims in arbitration are subject to the same statutes of limitation that would apply in court. The party bringing the claim must demand arbitration in writing and deliver the written demand by hand or first class mail to the other party within the applicable statute of limitations period. The demand for arbitration shall include identification of the Parties, a statement of the legal and factual basis of the claim(s), and a specification of the remedy sought. Any demand for arbitration made to the Company or Uber shall be provided to Legal, Rasier, LLC, 1455 Market St., Ste. 400, San Francisco CA 94103. The arbitrator shall resolve all disputes regarding the timeliness or propriety of the demand for arbitration. A party may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that party may be entitled may be rendered ineffectual without such provisional relief.

v. How Arbitration Proceedings Are Conducted.

In arbitration, the Parties will have the right to conduct adequate civil discovery, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses, and any disputes in this regard shall be resolved by the Arbitrator.

You and the Company agree to resolve any dispute that is in arbitration on an individual basis only, and not on a class, collective action, or representative basis (“Class Action Waiver”). The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on any basis other than an individual basis. The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on a class, collective, or representative basis. Notwithstanding any other provision of this Agreement, the Arbitration Provision or the JAMS Streamlined Arbitration Rules & Procedures, disputes regarding the enforceability, revocability or validity of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver unenforceable, the class, collective, and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

While the Company will not take any retaliatory action in response to any exercise of rights you may have under Section 7 of the National Labor Relations Act, if any, the Company shall not be precluded from moving to enforce its rights under the FAA to compel arbitration on the terms and conditions set forth in this Agreement.

Private Attorneys General Act.

Notwithstanding any other provision of this Agreement or the Arbitration Provision, to the extent permitted by law, (1) **You and Company agree not to bring a representative action on behalf of others under the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 et seq., in any court or in arbitration,** and (2) for any claim brought on a private attorney general basis—i.e., where

you are seeking to pursue a claim on behalf of a government entity—both you and Company agree that any such dispute shall be resolved in arbitration on an individual basis only (i.e., to resolve whether you have personally been aggrieved or subject to any violations of law), and that such an action may not be used to resolve the claims or rights of other individuals in a single or collective proceeding (i.e., to resolve whether other individuals have been aggrieved or subject to any violations of law) (“PAGA Waiver”). Notwithstanding any other provision of this Agreement or the Arbitration Provision, the validity of the PAGA Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. If any provision of the PAGA Waiver is found to be unenforceable or unlawful for any reason, (1) the unenforceable provision shall be severed from this Agreement; (2) severance of the unenforceable provision shall have no impact whatsoever on the Arbitration Provision or the Parties’ attempt to arbitrate any remaining claims on an individual basis pursuant to the Arbitration Provision; and (3) any representative action brought under PAGA on behalf of others must be litigated in a civil court of competent jurisdiction and not in arbitration. To the extent that there are any claims to be litigated in a civil court of competent jurisdiction because a civil court of competent jurisdiction determines that the PAGA Waiver is unenforceable with respect to those claims, the Parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

vi. Paying For The Arbitration.

Each party will pay the fees for his, her or its own attorneys, subject to any remedies to which that party may later be entitled under applicable law (i.e., a party prevails on a claim that provides for the award of reasonable attorney fees to the prevailing party). In all cases where required by law, the Company will pay the Arbitrator's and arbitration fees. If under applicable law the Company is not required to pay all of the Arbitrator's and/or arbitration fees, such fee(s) will be apportioned equally between the Parties or as otherwise required by applicable law. However, you will not be required to bear any type of fee or expense that you would not be required to bear if you had filed the action in a court of law. Any disputes in that regard will be resolved by the Arbitrator as soon as practicable after the Arbitrator is selected, and Company shall bear all of the Arbitrator's and arbitration fees until such time as the Arbitrator resolves any such dispute.

vii. The Arbitration Hearing And Award.

The Parties will arbitrate their dispute before the Arbitrator, who shall confer with the Parties regarding the conduct of the hearing and resolve any disputes the Parties may have in that regard. Within 30 days of the close of the arbitration hearing, or within a longer period of time as agreed to by the Parties or as ordered by the Arbitrator, any party will have the right to prepare, serve on the other party and file with the Arbitrator a brief. The Arbitrator may award any party any remedy to which that party is entitled under applicable law, but such remedies shall be limited to those that would be available to a party in his or her individual capacity in a court of law for the claims presented to and decided by the Arbitrator, and no remedies that otherwise would be available to an individual in a court of law will be forfeited by virtue of this Arbitration Provision. The Arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. A court of competent jurisdiction shall have the authority to enter a judgment upon the award made pursuant to the arbitration. The Arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.

viii. Your Right To Opt Out Of Arbitration.

Arbitration is not a mandatory condition of your contractual relationship with the Company. If you do not want to be subject to this Arbitration Provision, you may opt out of this Arbitration Provision by notifying the Company in writing of your desire to opt out of this Arbitration Provision, either by (1) sending, within 30 days of the date this Agreement is executed by you, electronic mail to optout@uber.com, stating your name and intent to opt out of the Arbitration Provision or (2) by sending a letter by U.S. Mail, or by any nationally recognized delivery service (e.g, UPS, Federal Express, etc.), or by hand delivery to:

Legal
Rasier, LLC
1455 Market St., Ste. 400
San Francisco CA 94103

In order to be effective, the letter under option (2) must clearly indicate your intent to opt out of this Arbitration Provision, and must be dated and signed. The envelope containing the signed letter must be received (if delivered by hand) or post-marked within 30 days of the date this Agreement is executed by you. Your writing opting out of this Arbitration Provision, whether sent by (1) or (2), will be filed with a copy of this Agreement and maintained by the Company. Should you not opt out of this Arbitration Provision within the 30-day period, you and the Company shall be bound by the terms of this Arbitration Provision. You have the right to consult with counsel of your choice concerning this Arbitration Provision. You understand that you will not be subject to retaliation if you exercise your right to assert claims or opt-out of coverage under this Arbitration Provision.

ix. Full and Complete Agreement Related to Formal Resolution of Disputes; Enforcement Of This Agreement.

This Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes arising out of this Agreement. Except as stated in subsection v, above, in the event any portion of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable.

By clicking "I accept", you expressly acknowledge that you have read, understood, and taken steps to thoughtfully consider the consequences of this Agreement, that you agree to be bound by the terms and conditions of the Agreement, and that you are legally competent to enter into this Agreement with Company.

EXHIBIT B

PORTIER, LLC

TECHNOLOGY SERVICES AGREEMENT

Last update: August 26, 2016

This Technology Services Agreement ("*Agreement*") constitutes a legal agreement between you, an individual ("*you*") and Portier, LLC ("*Company*").

Company, a subsidiary of Uber Technologies, Inc. ("*Uber*"), provides lead generation to independent providers of delivery services using the Uber Services (as defined below). The Uber Services enable an authorized delivery provider to seek, receive and fulfill requests for delivery services from an authorized user of Uber's technology platform (e.g., mobile application). You desire to enter into this Agreement for the purpose of accessing and using the Uber Services. For clarity, these terms apply to your use of the Uber Services for your provision of delivery services. If you are authorized by an Affiliate of Company (e.g., Rasier, LLC, Rasier-CA, LLC, or Uber USA, LLC, etc.) to use its or Uber's services to provide passenger transportation services, those passenger transportation services and related use of Uber's or its Affiliate's services are separate and independent of this Agreement and are subject to separate terms with the applicable Company Affiliate.

You acknowledge and agree that Company is a technology services provider that does not provide delivery services.

In order to use the Uber Services, you must agree to the terms and conditions that are set forth below. Upon your execution (electronic or otherwise) of this Agreement, you and Company shall be bound by the terms and conditions set forth herein.

IMPORTANT: PLEASE NOTE THAT TO USE THE UBER SERVICES AND THE ASSOCIATED SOFTWARE, YOU MUST AGREE TO THE TERMS AND CONDITIONS SET FORTH BELOW. PLEASE REVIEW THE ARBITRATION PROVISION SET FORTH BELOW IN SECTION 15.3 CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH THE COMPANY ON AN INDIVIDUAL BASIS, EXCEPT AS OTHERWISE PROVIDED IN SECTION 15.3, THROUGH FINAL AND BINDING ARBITRATION UNLESS YOU CHOOSE TO OPT OUT OF THE ARBITRATION PROVISION. BY VIRTUE OF YOUR EXECUTION OF THIS AGREEMENT, YOU WILL BE ACKNOWLEDGING THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT (INCLUDING THE ARBITRATION PROVISION IN SECTION 15.3) AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT BUSINESS DECISION. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED IN SECTION 15.3 BELOW.

1. Definitions

- 1.1 "*Addendum*" means an addendum to this Agreement setting forth additional Territory-specific and/or service-specific terms, as made available and as updated by Company from time to time.

- 1.2 *"Affiliate"* means an entity that, directly or indirectly, controls, is under the control of, or is under common control with a party, where control means having more than fifty percent (50%) of the voting stock or other ownership interest or the majority of the voting rights of such entity.
- 1.3 *"Cancellation Fee"* has the meaning set forth in Section 4.5.
- 1.4 *"Company Data"* means all data related to the access and use of the Uber Services hereunder, including all data related to Users (including User Information), all data related to Delivery Recipients (including Delivery Recipient Information), all data related to the provision of Delivery Services via the Uber Services and the Provider App, and the Provider ID.
- 1.5 *"Company Device"* means a mobile device owned or controlled by Company that is provided to you solely for your use of the Provider App to provide Delivery Services.
- 1.6 *"Delivery Fee"* has the meaning set forth in Section 4.1.
- 1.7 *"Delivery Recipient"* means, with respect to *UberRUSH*, the intended recipient of goods being delivered by you in connection with your Delivery Services.
- 1.8 *"Delivery Recipient Information"* means information about a Delivery Recipient made available to you in connection with a request for and use of Delivery Services, which may include delivery drop-off location, a Delivery Recipient's name, a Delivery Recipient's contact information, a Delivery Recipient's signature, and a Delivery Recipient's photo, as well as any other relevant details specific to the items to be delivered.
- 1.9 *"Delivery Services"* means your provision of delivery services to or on behalf of Users via the Uber Services in the Territory using the applicable Transportation Method.
- 1.10 *"Device"* means a Company Device or Your Device, as the case may be.
- 1.11 *"Negotiated Cancellation Fee"* has the meaning set forth in Section 4.5.
- 1.12 *"Provider App"* means the mobile application provided by Company that enables delivery providers to access the Uber Services for the purpose of seeking, receiving and fulfilling on-demand requests for delivery services by Users, as may be updated or modified from time to time.
- 1.13 *"Provider ID"* means the identification and password key assigned by Company to you that enables you to use and access the Provider App.
- 1.14 *"Service Fee"* has the meaning set forth in Section 4.4.
- 1.15 *"Territory"* means the city or metro areas in the United States in which you are enabled by the Provider App to receive requests for Delivery Services.
- 1.16 *"Tolls"* means any applicable road, bridge, ferry, tunnel and airport charges and fees, including inner-city congestion, environmental or similar charges as reasonably determined by the Uber Services based on available information.
- 1.17 *"Transportation Method"* means a mode of transportation that: (a) meets the then-current Company requirements for the delivery of the applicable items by you when using the Uber Services (*e.g.*, if Delivery Services require a motor vehicle, then "Transportation Method" shall mean a motor vehicle); and (b) Company authorizes for your use for the purpose of providing Delivery Services.
- 1.18 *"Uber Services"* mean Uber's on-demand lead generation and related services licensed by Uber to Company that enable delivery providers to seek, receive and fulfill on-demand requests for

delivery services by or on behalf of Users seeking delivery services; such Uber Services include access to the Provider App and Uber's software, websites, payment services as described in Section 4 below, and related support services systems, as may be updated or modified from time to time.

- 1.19 *"User"* means an end user (an individual or an entity) authorized by Uber to use the Uber technology platform for the purpose of requesting Delivery Services offered by Company's delivery provider customers (for clarity, such Delivery Services may be obtained in either of the following ways by a User: (a) to receive specific goods **from** a third party (including goods purchased from a third party (e.g., a restaurant)), or (b) to deliver specific goods **to** a third party).
- 1.20 *"User Information"* means information about a User made available to you in connection with a request for and use of Delivery Services, which may include delivery pick-up location, delivery drop-off location, the User's name, the User's contact information, the User's signature, and the User's photo, as well as any other relevant details specific to the items to be delivered.
- 1.21 *"Your Device"* means a mobile device owned or controlled by you: (a) that meets the then-current Provider App specifications for mobile devices as set forth at www.uber.com/byod-devices; and (b) on which the Provider App has been installed as authorized by Company solely for the purpose of providing Delivery Services.

2. Use of the Uber Services

- 2.1 **Provider IDs.** Company will issue you a Provider ID to enable you to access and use the Provider App on a Device in accordance with this Agreement. **To prevent fraud and ensure Delivery Recipient and User safety, you agree that you will maintain your Provider ID in confidence and not share your Provider ID with any third party. You will immediately notify Company of any actual or suspected breach or improper use or disclosure of your Provider ID or the Provider App.**
- 2.2 **Provision of Delivery Services.** When the Provider App is active, User requests for Delivery Services may appear to you via the Provider App if you are available and in the vicinity of the User. The User request may also specify the User's required deadline for your completion of the Delivery Services. If you accept a User's request for Delivery Services, the Uber Services will provide you with certain User Information, Delivery Recipient Information, and User instructions via the Provider App, including (as applicable) the User's first name and the pickup and drop-off location of the applicable goods to be delivered. In order to enhance User satisfaction with the Provider App and your Delivery Services, you agree to follow the User instructions for pickup and drop-off details (e.g., the location within the building address to pick-up/drop-off a package, etc.). You further agree to wait a reasonable amount of time for a User or Delivery Recipient to appear at the requested pick-up or drop-off location. You acknowledge and agree that once you have accepted a User's request for Delivery Services, Uber's technology platform may provide certain information about you to the User and Delivery Recipient, including your first name, contact information, photo and location, and as applicable, information about your Transportation Method. You agree not to contact any Users or Delivery Recipients or use any User's personal data for any reason other than for the purposes of fulfilling Delivery Services. As between Company and you, you acknowledge and agree that: (a) you shall be solely responsible for determining the most effective, efficient and safe manner to perform each instance of Delivery Services; and (b) except for the Uber Services or any Company Devices (if applicable), you shall provide all necessary equipment, tools and other materials, at your own expense,

necessary to perform Delivery Services. Additionally, depending on the type of Delivery Services you are providing, you acknowledge that you may need to acquire third party inventory (e.g., food in the case of *UberEATS*) from various locations from time to time in order to fulfill certain requests for Delivery Services. Additional terms may apply to your provision of Delivery Services as set forth in an Addendum.

- 2.3 **Your Relationship with Users and Delivery Recipients.** You acknowledge and agree that your provision of Delivery Services to Users creates a direct business relationship between you and the User. Company is not responsible or liable for the actions or inactions of a User or Delivery Recipient in relation to your activities or your Transportation Method. You shall have the sole responsibility for any obligations or liabilities to Users, Delivery Recipients or other third parties that arise from your provision of Delivery Services. You acknowledge and agree that: (a) you are solely responsible for taking such precautions as may be reasonable and proper (including maintaining adequate insurance that meets the requirements of all applicable laws including motor vehicle financial responsibility laws) regarding any acts or omissions of a User, a Delivery Recipient or other third party; and (b) Company may release your contact and/or insurance information to a User or Delivery Recipient upon such User or Delivery Recipient's reasonable request (e.g., in connection with an accident).
- 2.4 **Your Relationship with Company.** You acknowledge and agree that Company's provision to you of the Provider App and the Uber Services creates a direct business relationship between Company and you. Company shall not, and has no right to, supervise, direct or control you generally or in your performance under this Agreement specifically, including in connection with your provision of Delivery Services, your acts or omissions, or your operation and maintenance of your Transportation Method. You retain the sole right to determine (i) when, where, and for how long you will utilize the Provider App or the Uber Services and (ii) the manner in which Delivery Services are completed, subject only to User or Delivery Recipient specifications. You retain the option, via the Provider App, to attempt to accept or to decline or ignore a User's request for Delivery Services via the Uber Services, or, when necessary or appropriate to do so in the exercise of your business judgment, to cancel an accepted request for Delivery Services via the Provider App, subject to Company's then-current cancellation policies. With the exception of any signage required by local law or permit/license requirements, Company shall have no right to require you to: (a) display Company's or any of its Affiliates' names, logos or colors on your Transportation Method; or (b) wear a uniform or any other clothing displaying Company's or any of its Affiliates' names, logos or colors. You acknowledge and agree that you have complete discretion to provide services or otherwise engage in other business or employment activities. For the sake of clarity, you understand that you retain the complete right to: (i) use other software application services in addition to the Uber Services; (ii) provide delivery services to your own customers, provided such business activities do not interfere with your completion of Delivery Services you have accepted via the Provider App; and (iii) engage in any other occupation or business. Company retains the right to deactivate or otherwise restrict you from accessing or using the Provider App or the Uber Services in the event of a violation of this Agreement, your disparagement of Company or any of its Affiliates, fraudulent activity, or your act or omission that causes harm to Company's or its Affiliates' brand, reputation or business as determined by Company.
- 2.5 **Ratings.**
- 2.5.1 You acknowledge and agree that: (a) after completion of an instance of Delivery Services, a User and/or Delivery Recipient may be prompted by Uber's technology

platform to provide a rating of you and related to such Delivery Services and, optionally, to provide comments or feedback about you and related to such Delivery Services; and (b) after providing Delivery Services, you will be prompted by the Provider App to provide a rating of the User and, optionally, to provide comments or feedback about the User. You shall provide your ratings and feedback in good faith.

- 2.5.2 You acknowledge that Company desires that Users have access to high-quality Delivery Services via Uber's technology platform. In order to continue to receive access to the Provider App and the Uber Services, you must maintain an average rating that exceeds the minimum average acceptable rating established by Company for your Territory, as may be updated from time to time by Company in its sole discretion ("*Minimum Average Rating*"). Your average rating is intended to reflect Users' satisfaction with your Delivery Services rather than your compliance with any of Uber's policies or recommendations. In the event your average rating falls below the Minimum Average Rating, Company will notify you and may provide you, in Company's discretion, a reasonable opportunity to raise your average rating above the Minimum Average Rating. If you do not increase your average rating above the Minimum Average Rating within the reasonable time period provided, Company may deactivate your access to the Provider App and the Uber Services. Additionally, you acknowledge that your repeated failure to accept User requests for Delivery Services while you are logged in to the Provider App creates a negative experience for Users of Uber's technology platform. If you do not wish to accept User requests for Delivery Services for a period of time, you agree that you will log off of the Provider App.
- 2.5.3 Company and its Affiliates reserve the right to use, share and display your, User and Delivery Recipient ratings and comments in any manner in connection with the business of Company and its Affiliates without attribution to you or your approval. You acknowledge and agree that Company and its Affiliates are distributors (without any obligation to verify) and not publishers of your, User and Delivery Recipient ratings and comments, provided that Company and its Affiliates reserve the right to edit or remove comments in the event that such comments include obscenities or other objectionable content, include an individual's name or other personal information, or violate any privacy laws, other applicable laws, or Company's or its Affiliates' content policies.

2.6 **Devices.**

- 2.6.1 Company encourages you to use Your Device in providing Delivery Services. Otherwise, if you elect to use any Company Devices, Company will supply you upon request with Company Devices and provide the necessary wireless data plan for such Devices, provided that Company will require reimbursement from you for the costs associated with the wireless data plan of each Company Device and/or request a deposit for each Company Device. You agree that: (a) Company Devices may only be used for the purpose of enabling your access to the Uber Services; and (b) Company Devices may not be transferred, loaned, sold or otherwise provided in any manner to any party other than you. Upon termination of this Agreement or your deactivation, you agree to return to Company the applicable Company Devices within ten (10) days. You agree that failure to timely return any Company Devices, or damage to Company Devices outside of "normal wear and tear", will result in the forfeiture of related deposits.
- 2.6.2 If you elect to use Your Device: (i) you are solely responsible for the acquisition, cost and maintenance of Your Device as well as any necessary wireless data plan; and (ii)

Company shall make available the Provider App for installation on Your Device. Company hereby grants you a personal, non-exclusive, non-transferable license to install and use the Provider App on Your Device solely for the purpose of providing Delivery Services. You agree to not provide, distribute or share, or enable the provision, distribution or sharing of, the Provider App (or any data associated therewith) with any third party. The foregoing license grant shall immediately terminate and you will delete and fully remove the Provider App from Your Device in the event that you cease to provide Delivery Services using Your Device. You agree that: (i) use of the Provider App on Your Device requires an active data plan with a wireless carrier associated with Your Device, which data plan will be provided by you at your own expense; and (ii) use of the Provider App on Your Device as an interface with the Uber Services may consume very large amounts of data through the data plan. **COMPANY ADVISES THAT YOUR DEVICE ONLY BE USED UNDER A DATA PLAN WITH UNLIMITED OR VERY HIGH DATA USAGE LIMITS, AND COMPANY SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY FEES, COSTS, OR OVERAGE CHARGES ASSOCIATED WITH ANY DATA PLAN.**

- 2.7 **Location Based Services.** You acknowledge and agree that your geo-location information must be provided to the Uber Services via a Device in order to provide Delivery Services. You acknowledge and agree that: (a) your geo-location information may be obtained by the Uber Services while the Provider App is running; and (b) your approximate location will be displayed to the User and Delivery Recipient before and during the provision of Delivery Services to the User. In addition, Company and its Affiliates may monitor, track and share with third parties your geo-location information obtained by the Provider App and Device for safety and security purposes.

3. **You and Your Transportation Method**

- 3.1 **Your Requirements.** You acknowledge and agree that at all times, you shall: (a) hold and maintain (i) a valid applicable license with the appropriate level of certification to operate your Transportation Method (*e.g.*, a driver's license if your Transportation Method is a motor vehicle), and (ii) all licenses, permits, approvals and authority applicable to you that are necessary to provide delivery services to third parties in the Territory; (b) possess the appropriate and current level of training, expertise and experience to provide Delivery Services in a professional manner with due skill, care and diligence; and (c) provide Delivery Services with professionalism, service and courtesy consistent with industry standards for the delivery services industry. You acknowledge and agree that, subject to your consent to the extent required by applicable law, you may be subject to certain background and driving record checks from time to time in order to qualify to provide, and remain eligible to provide, Delivery Services. You acknowledge and agree that Company reserves the right to deactivate or otherwise restrict you from accessing or using the Provider App or the Uber Services if you fail to meet the requirements set forth in this Agreement.
- 3.2 **Transportation Method.** You acknowledge and agree that your Transportation Method will at all times be: (a) properly registered and licensed to operate as a delivery vehicle in the Territory (if your Transportation Method is a vehicle); (b) owned or leased by you, or otherwise in your lawful possession; (c) suitable for performing the Delivery Services contemplated by this Agreement; and (d) maintained in good operating condition, consistent with industry safety and maintenance standards for a Transportation Method of its kind and any additional standards or requirements in the applicable Territory.

- 3.3 **Documentation.** To ensure your compliance with all requirements in Sections 3.1 and 3.2 above, you must provide Company with written copies of all such licenses, permits, approvals, authority, registrations and certifications prior to your provision of any Delivery Services. Thereafter, you must submit to Company written evidence of all such licenses, permits, approvals, authority, registrations and certifications as they are renewed. Company shall, upon request, be entitled to review such licenses, permits, approvals, authority, registrations and certifications from time to time, and your failure to provide or maintain any of the foregoing shall constitute a material breach of this Agreement. Company reserves the right to independently verify your Documentation from time to time in any way Company deems appropriate in its reasonable discretion.

4. Financial Terms

- 4.1 **Delivery Fee Calculation and Your Payment.** You are entitled to charge a delivery fee for each instance of completed Delivery Services provided to a User that are obtained via the Uber Services (“*Delivery Fee*”), where such Delivery Fee is, as applicable: (a) calculated based upon a base delivery fee amount plus mileage and/or time amounts; or (b) a flat fee, each as detailed for the applicable Territory (“*Delivery Fee Calculation*”). You acknowledge that the Delivery Fee is the only payment you will receive in connection with provision of Delivery Services and that neither the Delivery Fee nor the Delivery Fee Calculation includes any gratuity. You are also entitled to charge User for any Tolls, taxes or fees incurred during the provision of Delivery Services, if applicable. You: (i) appoint Company as your limited payment collection agent solely for the purpose of accepting the Delivery Fee, applicable Tolls and, depending on the region and/or if requested by you, applicable taxes and fees from the User on your behalf via the payment processing functionality facilitated by the Uber Services that are related to your provision of Delivery Services; and (ii) agree that payment made by User to Company (or to an Affiliate of Company acting as an agent of Company) shall be considered the same as payment made directly by User to you.

In addition, the parties acknowledge and agree that as between you and Company, the Delivery Fee is a recommended amount, and the primary purpose of the pre-arranged Delivery Fee is to act as the default amount in the event you do not negotiate a different amount. You shall always have the right to: (i) charge a delivery fee that is less than the pre-arranged Delivery Fee; or (ii) negotiate, at your request, a Delivery Fee that is lower than the pre-arranged Delivery Fee (each of (i) and (ii) herein, a “*Negotiated Delivery Fee*”). Company shall consider all such requests from you in good faith.

Company agrees to remit, or cause to be remitted, to you on at least a weekly basis: (a) the Delivery Fee less the applicable Service Fee; (b) the Tolls; and (c) depending on the region, certain taxes and ancillary fees. If you have separately agreed that other amounts may be deducted from the Delivery Fee prior to remittance to you (e.g., vehicle financing payments, lease payments, mobile device usage charges, etc.), the order of any such deductions from the Delivery Fee is to be determined exclusively by Company (as between you and Company).

- 4.2 **Changes to Delivery Fee Calculation.** Company reserves the right to change the Delivery Fee Calculation at any time in Company’s discretion based upon local market factors, and Company will provide you with notice in the event of changes to the base delivery fee, per mile, and/or per minute amounts that would result in a change in the recommended Delivery Fee. Continued use of the Uber Services after any such change in the Delivery Fee Calculation shall constitute your consent to such change.

- 4.3 **Delivery Fee Adjustment.** Company reserves the right to: (i) adjust the Delivery Fee for a particular instance of Delivery Services (*e.g.*, if you take an inefficient route, if you fail to properly end a particular instance of Delivery Services in the Provider App, if there is a technical error in the Uber Services, etc.); or (ii) cancel the Delivery Fee for a particular instance of Delivery Services (*e.g.*, if you fail to meet a communicated User deadline for completion, if a User is charged for Delivery Services that are not provided, in the event of a User complaint, fraud, etc.). Company's decision to reduce or cancel the Delivery Fee in any such manner shall be exercised in a reasonable manner.
- 4.4 **Service Fee.** In consideration of Company's provision of the Provider App and the Uber Services for your use and benefit hereunder, you agree to pay Company a service fee on a per Delivery Services transaction basis calculated as a percentage of the Delivery Fee determined by the Delivery Fee Calculation (irrespective of whether any Negotiated Delivery Fee is separately negotiated), as provided to you via email or otherwise made available electronically by Company from time to time for the applicable Territory ("*Service Fee*"). In the event regulations applicable to your Territory require taxes to be calculated on the Delivery Fee, Company shall calculate the Service Fee based on the Delivery Fee net of such taxes. Company reserves the right to change the Service Fee at any time in Company's discretion based upon local market factors, and Company will provide you with notice in the event of such change. Continued use of the Uber Services after any such change in the Service Fee calculation shall constitute your consent to such change.
- 4.5 **Cancellation Charges.** You acknowledge and agree that Users may elect to cancel requests for Delivery Services that have been accepted by you via the Provider App at any time prior to your arrival at the drop-off location. In the event that a User cancels an accepted request for Delivery Services or the package is not available for your pick-up based on Company's then-current policies with respect to the foregoing, Company may charge the User a cancellation fee on your behalf. If charged, this cancellation fee shall be deemed the Delivery Fee for the cancelled Delivery Services for the purpose of remittance to you hereunder ("*Cancellation Fee*"). The parties acknowledge and agree that as between you and Company, this Cancellation Fee is a recommended amount, and the primary purpose of such Cancellation Fee is to act as the default amount in the event you do not negotiate a different amount. You shall always have the right to: (i) charge a cancellation fee that is less than the Cancellation Fee; or (ii) negotiate, at your request, a cancellation fee that is lower than the Cancellation Fee (each of (i) and (ii) herein, a "*Negotiated Cancellation Fee*"). If charged, the Cancellation Fee (regardless of any Negotiated Cancellation Fee) shall be deemed the Delivery Fee for the cancelled Delivery Services for the purpose of remittance to you hereunder.
- 4.6 **Receipts.** As part of the Uber Services, Company provides you a system for the delivery of receipts to Users for Delivery Services rendered. Upon your completion of Delivery Services for a User, Company prepares an applicable receipt and issues such receipt to the User via email on your behalf. Such receipts are also provided to you via email or the online portal available to you through the Uber Services. Receipts include the breakdown of amounts charged to the User for Delivery Services and may include specific information about you, including your name, contact information and photo, as well as a map of the route you took. Any corrections to a User's receipt for Delivery Services must be submitted to Company in writing within three (3) business days after the completion of such Delivery Services. Absent such a notice, Company shall not be liable for any mistakes in or corrections to the receipt or for recalculation or disbursement of the Delivery Fee.

- 4.7 **No Additional Amounts.** You acknowledge and agree that, for the mutual benefit of the parties, through advertising and marketing, Company and its Affiliates may seek to attract new Users to Company and its Affiliates and to increase existing Users' use of Uber's technology platform. You acknowledge and agree such advertising or marketing does not entitle you to any additional monetary amounts beyond the amounts expressly set forth in this Agreement. You acknowledge that the Delivery Fees are intended as full compensation for your Delivery Services. However, in the event that a User pays Company a gratuity on your behalf, Company will transmit such gratuity to you and will not retain any portion of that gratuity. With regard to cash gratuities provided by a User or Delivery Recipient directly to you, no portion of that gratuity is owed to or will be paid to Company.
- 4.8 **Taxes.** You acknowledge and agree that you are required to: (a) complete all tax registration obligations and calculate and remit all tax liabilities related to your provision of Delivery Services as required by applicable law; and (b) provide Company with all relevant tax information. You further acknowledge and agree that you are responsible for taxes on your own income arising from the performance of Delivery Services. Notwithstanding anything to the contrary in this Agreement, Company may in its reasonable discretion based on applicable tax and regulatory considerations, collect and remit taxes resulting from your provision of Delivery Services and/or provide any of the relevant tax information you have provided pursuant to the requirement mentioned above, directly to the applicable governmental tax authorities on your behalf or otherwise.

5. Proprietary Rights; License

- 5.1 **License Grant.** Subject to the terms and conditions of this Agreement, Company hereby grants you a non-exclusive, non-transferable, non-sublicensable, non-assignable license, during the term of this Agreement, to use the Uber Services (including the Provider App on a Device) solely for the purpose of providing Delivery Services to Users and tracking resulting Delivery Fees and fees. All rights regarding the use of the Uber Services, Provider App or Company Device (if applicable) not expressly granted to you are reserved by Company, its Affiliates and their respective licensors.
- 5.2 **Restrictions.** You shall not, and shall not allow any other party to: (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise provide or make available to any other party the Uber Services, Provider App or any Company Device in any way; (b) modify or make derivative works based upon the Uber Services or Provider App; (c) improperly use the Uber Services or Provider App, including creating Internet "links" to any part of the Uber Services or Provider App, "framing" or "mirroring" any part of the Uber Services or Provider App on any other websites or systems, or "scraping" or otherwise improperly obtaining data from the Uber Services or Provider App; (d) reverse engineer, decompile, modify, or disassemble the Uber Services or Provider App, except as allowed under applicable law; or (e) send spam or otherwise duplicative or unsolicited messages. In addition, you shall not, and shall not allow any other party to, access or use the Uber Services or Provider App to: (i) design or develop a competitive or substantially similar product or service; (ii) copy or extract any features, functionality, or content thereof; (iii) launch or cause to be launched on or in connection with the Uber Services an automated program or script, including web spiders, crawlers, robots, indexers, bots, viruses or worms, or any program which may make multiple server requests per second, or unduly burden or hinder the operation and/or performance of the Uber Services; or (iv) attempt to gain unauthorized access to the Uber Services or its related systems or networks.

- 5.3 **Ownership.** The Uber Services, Provider App and Company Data, including all intellectual property rights therein, and the Company Devices are and shall remain (as between you and Company) the property of Company, its Affiliates or their respective licensors. Neither this Agreement nor your use of the Uber Services, Provider App or Company Data conveys or grants to you any rights) in or related to the Uber Services, Provider App or Company Data, except for the limited license granted above. Other than as specifically permitted by the Company in connection with the Uber Services, you are not permitted to use or reference in any manner Company's, its Affiliates', or their respective licensors' company names, logos, products and service names, trademarks, service marks, trade dress, copyrights, or other indicia of ownership, alone and in combination with other letters, punctuation, words, symbols and/or designs (the "UBER Marks and Names") for any commercial purposes. You agree that you will not try to register or otherwise use and/or claim ownership in any of the UBER Marks and Names, alone or in combination with other letters, punctuation, words, symbols and/or designs, or in any confusingly similar mark, name or title, for any goods and services.

6. Confidentiality

- 6.1 Each party acknowledges and agrees that in the performance of this Agreement it may have access to or may be exposed to, directly or indirectly, confidential information of the other party ("*Confidential Information*"). Confidential Information includes Company Data, Provider IDs, User Information, Delivery Recipient Information, package information, and the transaction volume, marketing and business plans, business, financial, technical, operational and such other non-public information of each party (whether disclosed in writing or verbally) that such party designates as being proprietary or confidential or of which the other party should reasonably know that it should be treated as confidential.
- 6.2 Each party acknowledges and agrees that: (a) all Confidential Information shall remain the exclusive property of the disclosing party; (b) it shall not use Confidential Information of the other party for any purpose except in furtherance of this Agreement; (c) it shall not disclose Confidential Information of the other party to any third party, except to its employees, officers, contractors, agents and service providers ("*Permitted Persons*") as necessary to perform under this Agreement, provided Permitted Persons are bound in writing to obligations of confidentiality and non-use of Confidential Information no less protective than the terms hereof; and (d) it shall return or destroy all Confidential Information of the disclosing party, upon the termination of this Agreement or at the request of the other party (subject to applicable law and, with respect to Company, its internal record-keeping requirements).
- 6.3 Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (a) is or becomes part of the public domain through no act or omission on the part of the receiving party; (b) was possessed by the receiving party prior to the date of this Agreement without an obligation of confidentiality; or (c) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto.

7. Privacy

- 7.1 **Disclosure of Your Information.** Subject to applicable law, and notwithstanding Section 6.2, Company and its Affiliates may, but shall not be required to, provide to you, a User, a Delivery Recipient, an insurance company and/or relevant authorities and/or regulatory agencies any information (including personal information (e.g., information obtained about you through any background check), Confidential Information, and any Company Data) about you or any Delivery Services provided hereunder if: (a) there is a complaint, dispute or conflict, including an

accident, between you and a User or you and a Delivery Recipient; (b) it is necessary to enforce the terms of this Agreement; (c) it is required, in Company's or any Affiliate's sole discretion, by applicable law or regulatory requirements (e.g., Company or its Affiliates receive a subpoena, warrant, or other legal process for information); or (d) it is necessary, in Company's or any Affiliate's sole discretion, to (1) protect the safety, rights, property or security of Company or its Affiliates, the Uber Services or any third party; (2) to protect the safety of the public for any reason including the facilitation of insurance claims related to the Uber Services; (3) to detect, prevent or otherwise address fraud, security or technical issues; (4) to prevent or stop activity which Company or any of its Affiliates, in their sole discretion, may consider to be, or to pose a risk of being, an illegal, unethical, or legally actionable activity); or (e) it is required or necessary, in Company's or any Affiliate's sole discretion, for insurance or other purposes related to your ability to qualify, or remain qualified, to use the Uber Services. You understand that Company may retain your personal data for legal, regulatory, safety and other necessary purposes after this Agreement is terminated.

- 7.2 Company and its Affiliates may collect your personal data during the course of your registration for, and use of, the Uber Services, or may obtain information about you from third parties. Such information may be stored, processed, transferred, and accessed by Company and its Affiliates, third parties, and service providers for business purposes, including for marketing, lead generation, service development and improvement, analytics, industry and market research, and such other purposes consistent with Company's and its Affiliates' legitimate business needs. You expressly consent to such use of personal data.
- 7.3 Company and its Affiliates collect and use your personal information as provided in the privacy statement located at www.uber.com/legal/privacy/drivers-us.

8. Insurance

- 8.1 This Section 8.1 applies only if you use a motor vehicle to provide the Delivery Services. You agree to maintain during the term of this Agreement on all motor vehicles operated by you under this Agreement automobile liability insurance that provides protection against bodily injury and property damage to third parties at levels of coverage that satisfy the minimum requirements to operate a motor vehicle on the public roads within the Territory. This coverage must also include any no-fault coverage required by law in the Territory that may not be waived by an insured. You agree to provide Company and its Affiliates a copy of the insurance policy, policy declarations, proof of insurance identification card and proof of premium payment for the insurance policy required in this Section 8.1 upon request. Furthermore, you must provide Company with written notice of cancellation of any insurance policy required by Company. Company shall have no right to control your selection or maintenance of your policy. You must be a named insured or individually rated driver, for which a premium is charged, on the insurance policy required in this Section 8.1 at all times.
- 8.2 **You agree to maintain during the term of this Agreement workers' compensation insurance as required by all applicable laws in the Territory. If permitted by applicable law, you may choose to insure yourself against industrial injuries by maintaining occupational accident insurance in place of workers' compensation insurance. Furthermore, if permitted by applicable law, you may choose not to insure yourself against industrial injuries at all, but do so at your own risk.**
- 8.3 You understand and acknowledge that your own insurance policy (e.g., automobile or other liability insurance policy) may not afford liability, comprehensive, collision, medical payments,

personal injury protection, uninsured motorist, underinsured motorist, damage to property in your care, custody and control, or other coverage for the Delivery Services you provide pursuant to this Agreement. If you have any questions or concerns about the scope or applicability of your own insurance coverage, it is your responsibility, not that of Company, to resolve them with your insurer(s).

- 8.4 Company may maintain during the term of this Agreement insurance related to your provision of Delivery Services as determined by Company in its reasonable discretion, provided that Company and its Affiliates are not required to provide you with any specific insurance coverage for any loss to your Transportation Method or injury to you. You are required to promptly notify Company of any accidents that occur while providing Delivery Services and to cooperate and provide all necessary information related thereto.

9. Representations and Warranties; Disclaimers

- 9.1 **By You.** You hereby represent and warrant that: (a) you have full power and authority to enter into this Agreement and perform your obligations hereunder; (b) you have not entered into, and during the term will not enter into, any agreement that would prevent you from complying with this Agreement; and (c) you will comply with all applicable laws in your performance of this Agreement, including holding and complying with all permits, licenses, registrations and other governmental authorizations necessary to provide (i) Delivery Services using the Transportation Method pursuant to this Agreement, and (ii) delivery services to third parties in the Territory generally.
- 9.2 **Disclaimer of Warranties.** COMPANY AND ITS AFFILIATES PROVIDE, AND YOU ACCEPT, THE UBER SERVICES, PROVIDER APP AND THE COMPANY DEVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS. COMPANY AND ITS AFFILIATES DO NOT REPRESENT, WARRANT OR GUARANTEE THAT YOUR ACCESS TO OR USE OF THE UBER SERVICES, PROVIDER APP OR THE COMPANY DEVICES: (A) WILL BE UNINTERRUPTED OR ERROR FREE; OR (B) WILL RESULT IN ANY REQUESTS FOR DELIVERY SERVICES. COMPANY AND ITS AFFILIATES FUNCTION AS AN ON-DEMAND LEAD GENERATION AND RELATED SERVICE ONLY AND MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AS TO THE ACTIONS OR INACTIONS OF USERS OR DELIVERY RECIPIENTS WHO MAY REQUEST OR RECEIVE DELIVERY SERVICES FROM YOU, AND COMPANY AND ITS AFFILIATES DO NOT SCREEN OR OTHERWISE EVALUATE USERS OR DELIVERY RECIPIENTS. BY USING THE UBER SERVICES AND PROVIDER APP, YOU ACKNOWLEDGE AND AGREE THAT YOU MAY BE INTRODUCED TO A THIRD PARTY THAT MAY POSE HARM OR RISK TO YOU OR OTHER THIRD PARTIES. YOU ARE ADVISED TO TAKE REASONABLE PRECAUTIONS WITH RESPECT TO INTERACTIONS WITH THIRD PARTIES ENCOUNTERED IN CONNECTION WITH THE USE OF THE UBER SERVICES OR PROVIDER APP. COMPANY DOES NOT REPRESENT, WARRANT OR GUARANTEE THE SAFETY OF ANY ITEMS PROVIDED TO YOU FOR DELIVERY SERVICES. NOTWITHSTANDING COMPANY'S APPOINTMENT AS THE LIMITED PAYMENT COLLECTION AGENT OF YOU FOR THE PURPOSE OF ACCEPTING PAYMENT FROM USERS ON YOUR BEHALF AS SET FORTH IN SECTION 4 ABOVE, COMPANY AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL LIABILITY FOR ANY ACT OR OMISSION OF YOU, ANY USER, ANY DELIVERY RECIPIENT OR OTHER THIRD PARTY.
- 9.3 **No Service Guarantee.** COMPANY AND ITS AFFILIATES DO NOT GUARANTEE THE AVAILABILITY OR UPTIME OF THE UBER SERVICES OR PROVIDER APP. YOU ACKNOWLEDGE AND AGREE THAT

THE UBER SERVICES OR PROVIDER APP MAY BE UNAVAILABLE AT ANY TIME AND FOR ANY REASON (e.g., DUE TO SCHEDULED MAINTENANCE OR NETWORK FAILURE). FURTHER, THE UBER SERVICES OR PROVIDER APP MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND COMPANY AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES, LIABILITIES OR LOSSES RESULTING FROM SUCH PROBLEMS.

10. **Indemnification.** You shall indemnify, defend (at Company's option) and hold harmless Company and its Affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, expenses (including legal fees), damages, penalties, fines, social security contributions and taxes arising out of or related to: (a) your breach of your representations, warranties or obligations under this Agreement; or (b) a claim by a third party (including Users, Delivery Recipients, regulators and governmental authorities) directly or indirectly related to your provision of Delivery Services or use of the Uber Services. This indemnification provision shall not apply to your breach of any representations regarding your status as an independent contractor.
11. **Limits of Liability.** COMPANY AND ITS AFFILIATES SHALL NOT BE LIABLE UNDER OR RELATED TO THIS AGREEMENT FOR ANY OF THE FOLLOWING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES: (i) ANY INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES OF ANY TYPE OR KIND; OR (ii) YOUR OR ANY THIRD PARTY'S PROPERTY DAMAGE OR LOSS, OR LOSS OR INACCURACY OF DATA, OR LOSS OF BUSINESS, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE. EXCEPT FOR COMPANY'S OBLIGATIONS TO PAY AMOUNTS DUE TO YOU PURSUANT TO SECTION 4 ABOVE, BUT SUBJECT TO ANY LIMITATIONS OR OTHER PROVISIONS CONTAINED IN THIS AGREEMENT WHICH ARE APPLICABLE THERETO, IN NO EVENT SHALL THE LIABILITY OF COMPANY OR ITS AFFILIATES UNDER THIS AGREEMENT EXCEED THE AMOUNT OF SERVICE FEES ACTUALLY PAID TO OR DUE TO COMPANY HEREUNDER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

12. Term and Termination

- 12.1 **Term.** This Agreement shall commence on the date executed by you and shall continue until terminated as set forth herein. The parties acknowledge that the term of this Agreement does not reflect an uninterrupted service arrangement, as this Agreement guarantees you the right to choose when to make yourself available and each Delivery Service request you accept via the Provider App is treated as a separate service arrangement.
- 12.2 **Termination.** Either party may terminate this Agreement: (a) for failure to timely cure a breach of this Agreement, upon seven (7) days prior written notice to the other party; (b) immediately, without notice, for the other party's material breach of this Agreement; or (c) immediately, without notice, in the event of the insolvency or bankruptcy of the other party, or upon the other party's filing or submission of request for suspension of payment (or similar action or event) against the terminating party. In addition, Company may terminate this Agreement or deactivate your Provider ID immediately, without notice, with respect to you in the event you no longer qualify, under applicable law or the standards and policies of Company and its Affiliates, to provide Delivery Services or to operate your Transportation Method, or as otherwise set forth in this Agreement.
- 12.3 **Effect of Termination.** Upon termination of the Agreement, you shall: (a) promptly return to Company all Company Devices; and (b) immediately delete and fully remove the Provider App

from any of Your Devices. Outstanding payment obligations and Sections 1, 2.3, 2.5.3, 4.7, 4.8, 5.3, 6, 7, 9, 10, 11, 12.3, 13, 14 and 15 (including, but not limited to, Section 15.3) shall survive the termination of this Agreement.

13. Relationship of the Parties

- 13.1 Except as otherwise expressly provided herein with respect to Company acting as the limited payment collection agent solely for the purpose of collecting payment from Users on your behalf, **the relationship between the parties under this Agreement is solely that of independent contracting parties. The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship, between Company and you; and (b) no joint venture, partnership, or agency relationship exists between Company and you.**
- 13.2 You have no authority to bind Company or its Affiliates and you undertake not to hold yourself out as an employee, agent or authorized representative of Company or its Affiliates. Where, by implication of mandatory law or otherwise, you may be deemed an agent or representative of Company, you undertake and agree to indemnify, defend (at Company's option) and hold Company and its Affiliates harmless from and against any claims by any person or entity based on such implied agency or representative relationship.

14. Miscellaneous Terms

- 14.1 **Modification.** Any modifications that the Company makes to the terms and conditions of this Agreement shall be binding on you only upon your execution of the modified Agreement, except as otherwise specifically provided herein.
- However, Company reserves the right to modify any information referenced at hyperlinks from this Agreement from time to time. You hereby acknowledge and agree that, by continuing to use the Uber Services, or downloading, installing or using the Provider App after such modifications are made, you are bound by any future modifications to information referenced in those hyperlinks.
- 14.2 **Supplemental Terms.** Supplemental terms may apply to your use of the Uber Services, such as use policies or terms related to certain features and functionality, which may be modified from time to time ("*Supplemental Terms*"). You may be presented with certain Supplemental Terms from time to time. Supplemental Terms are in addition to, and shall be deemed a part of, this Agreement. Supplemental Terms shall prevail over this Agreement in the event of a conflict.
- 14.3 **Severability.** If any provision of this Agreement is or becomes invalid or non-binding, the parties shall remain bound by all other provisions hereof. Any invalid or non-binding provision shall be severed or restricted, in order to preserve as much of the parties' Agreement as possible and in light of the contents and purpose of this Agreement.
- 14.4 **Assignment.** Neither party shall assign or transfer this Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of the other party; provided that Company may assign or transfer this Agreement or any or all of its rights or obligations under this Agreement from time to time without consent: (a) to an Affiliate; or (b) to an acquirer of all or substantially all of Company's business, equity or assets.
- 14.5 **Entire Agreement.** This Agreement, including all Supplemental Terms, constitutes the entire agreement and understanding of the parties with respect to its subject matter and replaces and

supersedes all prior or contemporaneous agreements or undertakings regarding such subject matter. In this Agreement, the words “including” and “include” mean “including, but not limited to.” The recitals form a part of this Agreement.

- 14.6 **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement, except as expressly set forth in the Arbitration Provision in Section 15.3. Other than as provided in Section 15.3, nothing contained in this Agreement is intended to or shall be interpreted to create any third-party beneficiary claims.
- 14.7 **Notices.** Any notice delivered by Company to you under this Agreement will be delivered by email to the email address associated with your account, by posting on the portal available to you on the Uber Services, or via the Provider App. Any notice delivered by you to Company under this Agreement will be delivered by contacting Company at <http://partners.uber.com> in the “Contact Us” section. Additional Territory-specific notices may be required from time to time.

15. Governing Law; Arbitration

- 15.1 Except as otherwise stated in Section 15.3, the interpretation of this Agreement shall be governed by the law of the state in which you perform the majority of the Delivery Services (or if you have never performed Delivery Services, the law of the state in which you reside), without regard to the choice or conflicts of law provisions of any jurisdiction.

Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Uber Services that are not subject to the arbitration clause contained in Section 15.3 shall be subject to the exclusive jurisdiction of the state and federal courts located in those jurisdictions where you perform the majority of the Delivery Services (or if you have never performed Delivery Services, the jurisdiction in which you reside).

These provisions do not apply to the arbitration clause in Section 15.3, the delegation clause in Section 15.3, or any arbitrable disputes defined in Section 15.3. Instead, as described in Section 15.3, the Federal Arbitration Act shall apply to such disputes or, if the FAA is found not to apply to such disputes, the state law governing arbitration agreements in the state in which the majority of your Delivery Services are provided shall apply (or if you have never performed Delivery Services, the state in which you reside).

The failure of Company to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Company in writing.

- 15.2 Other than disputes regarding the intellectual property rights of the parties and other claims identified in Section 15.3.ii, any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Uber Services shall be subject to arbitration pursuant to Section 15.3.

15.3 Arbitration Provision

Important Note Regarding this Arbitration Provision:

- Except as otherwise provided below, arbitration does not limit or affect the legal claims you may bring against the Company. Agreeing to arbitration only affects where any such claims may be brought and how they will be resolved.
- Arbitration is a process of private dispute resolution that does not involve the civil courts, a civil judge, or a jury. Instead, the parties' dispute is decided by a private arbitrator selected by the parties using the process set forth herein. Other arbitration rules and procedures are also set forth herein.
- In arbitration, you will not be required to bear any type of fee or expense that you would not be required to bear if you filed the action in a court of law.
- **IMPORTANT:** Except as otherwise provided below, this Arbitration Provision will require you to resolve any claim that you may have against the Company or Uber on an individual basis. Except as otherwise provided below, this provision will also preclude you from initiating, participating in, or recovering any relief in a class, collective, or representative action against the Company, Uber, or Uber's Affiliates. The availability of claims or actions under the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. ("PAGA") is addressed separately below in the "Private Attorneys General Act" section.
- If you do not wish to be subject to this Arbitration Provision, you may opt out of the Arbitration Provision by following the instructions provided in Section 15.3(viii).
- **Cases have been filed against Uber and its Affiliates and may be filed in the future involving claims by Users of Uber Services. You should assume that there are now, and may be in the future, lawsuits against the Company, Uber, or Uber's Affiliates alleging class, collective, and/or representative claims on your behalf, including but not limited to claims related to tips, reimbursement of expenses, and employment status. Such claims, if successful, could result in some monetary recovery to you.**

- These cases now include, for example: *Zawada v. Uber Technologies, Inc. et al.*, Case No. 2:16-cv-11334 (Eastern District of Michigan); *Suarez v. Uber Technologies, Inc.*, Case No. 16-13263 (United States Court of Appeals for the 11th Circuit), District Court Case No. 8:16-cv-00166 (Middle District of Florida); *Carey v. Uber Technologies, Inc.*, Case No. 1:16-cv-01058 (Northern District of Ohio); *Lamour v. Uber Technologies, Inc.*, Case No. 16-cv-21449 (Southern

District of Florida); *Olivares v. Uber Technologies, Inc.*, Case No. 16-cv-06062 (Northern District of Illinois); *In re Uber FCRA Litig.*, Case No. 3:14-CV-05200-EMC (Northern District of California); and *Yucesoy v. Uber Technologies, Inc., et al.*, Case No. 3:15-cv-00262-EMC (Northern District of California). **This is not an exhaustive list, but is intended only to illustrate that cases have been or may be filed in the future that allege class, collective, and/or representative claims on your behalf.**

- o The mere existence of these class, collective, and/or representative lawsuits does not mean that such lawsuits will ultimately succeed. But if you do agree to and do not opt out of this Arbitration Provision, you are agreeing in advance, except as otherwise provided in Sections 15.3(ii) and 15.3(v), that you will not participate in and therefore, will not seek to recover monetary or other relief under any such lawsuit. If you agree to this Arbitration Provision, you will not be precluded from bringing your claims against the Company or Uber in an individual arbitration proceeding.

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT BUSINESS DECISION. IT IS YOUR DECISION TO MAKE, AND YOU SHOULD NOT RELY SOLELY UPON THE INFORMATION PROVIDED IN THIS AGREEMENT AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS — INCLUDING BUT NOT LIMITED TO AN ATTORNEY — REGARDING THE CONSEQUENCES OF YOUR DECISION, JUST AS YOU WOULD WHEN MAKING ANY OTHER IMPORTANT BUSINESS OR LIFE DECISION.

i. How This Arbitration Provision Applies.

This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the “FAA”). Except as it otherwise provides, this Arbitration Provision applies to any dispute, past, present or future, arising out of or related to this Agreement or formation or termination of the Agreement and survives after the Agreement terminates. Nothing contained in this Arbitration Provision shall be construed to prevent or excuse you from utilizing any informal procedure for resolution of complaints established in this Agreement (if any), and this Arbitration Provision is not intended to be a substitute for the utilization of such procedures. This agreement shall be governed by the FAA even in the event this Arbitration Provision is found to be exempt from the FAA as a matter of law. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the majority of your Delivery Services are provided shall apply (or if you have never performed Delivery Services, the state in which you reside).

Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before any forum other than arbitration, with the exception of proceedings that must be exhausted under applicable law before

pursuing a claim in a court of law or in any forum other than arbitration. Except as it otherwise provides, this Arbitration Provision requires all such disputes to be resolved only by an arbitrator through final and binding arbitration on an individual basis only and not by way of court or jury trial, or by way of class, collective, or representative action.

Except as provided in Section 15.3(v), below, regarding the Class Action Waiver and PAGA Waiver, such disputes include disputes arising out of or relating to interpretation, application, enforceability, revocability or validity of this Arbitration Provision, or any portion of the Arbitration Provision. This also includes disputes regarding whether the Arbitration Provision is governed by the FAA. All such matters shall be decided by an Arbitrator and not by a court or judge. As set forth in Section 15.3(v), the preceding sentences in this paragraph shall not apply to disputes relating to the Class Action Waiver or PAGA Waiver, defined below, including their interpretation, enforceability, revocability or validity.

Except as it otherwise provides, this Arbitration Provision also applies to all disputes between you and the Company or Uber, as well as all disputes between you and the Company's or Uber's fiduciaries, administrators, affiliates, subsidiaries, parents, and all successors and assigns of any of them, including but not limited to any disputes arising out of or related to this Agreement and disputes arising out of or related to your relationship with the Company or Uber, including the formation or termination of the relationship. Except as it otherwise provides, this Arbitration Provision also applies to disputes regarding any city, county, state or federal wage-hour law, trade secrets, unfair competition, compensation, breaks and rest periods, expense reimbursement, termination, harassment, retaliation, discrimination, and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act (except for individual claims for employee benefits under any benefit plan sponsored by the Company and covered by the Employee Retirement Income Security Act of 1974 or funded by insurance), Genetic Information Non-Discrimination Act, and state statutes, if any, addressing the same or similar subject matters, and all other similar federal, state and/or local statutory and common law claims.

This Arbitration Provision is intended to require arbitration of every claim or dispute that lawfully can be arbitrated, except for those claims and disputes which by the terms of this Arbitration Provision are expressly excluded from arbitration.

Uber Technologies, Inc. is an intended third-party beneficiary of this Agreement and the Arbitration Provision. As used in this Arbitration Provision, "the Company" shall be deemed to include Uber Technologies, Inc.

ii. Limitations On How This Arbitration Provision Applies.

The disputes, claims, and requests for relief set forth below shall not be subject to arbitration and the requirement to arbitrate set forth in this Arbitration Provision shall not apply:

- Claims for workers compensation, state disability insurance and unemployment insurance benefits;
- Disputes that are not permitted to be subject to a pre-dispute arbitration agreement pursuant to applicable Federal law or Executive Order;

- If a court of competent jurisdiction finds the PAGA Waiver set forth below in Section 15.3(v) to be unenforceable or invalid for any reason, representative claims brought under the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. (“PAGA”);
- Disputes regarding your, the Company’s, or Uber’s intellectual property rights.

Furthermore, nothing in this Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, Securities Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs, and nothing in this Agreement or Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Arbitration Provision. Nothing in this Arbitration Provision shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's obligation to exhaust administrative remedies before making a claim in arbitration.

iii. Selecting The Arbitrator and Location of the Arbitration.

The Arbitrator shall be selected by mutual agreement of the Company and you. Unless you and the Company mutually agree otherwise, the Arbitrator shall be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration will be conducted. If the parties cannot agree on an Arbitrator, then an arbitrator will be selected using the alternate strike method from a list of five (5) neutral arbitrators provided by JAMS (Judicial Arbitration & Mediation Services). You will have the option of making the first strike. If a JAMS arbitrator is used, then the JAMS Streamlined Arbitration Rules & Procedures rules will apply; however, if there is a conflict between the JAMS Rules and this Arbitration Provision, this Arbitration Provision shall govern. Those rules are available here:

<http://www.jamsadr.com/rules-streamlined-arbitration/>

The location of the arbitration proceeding shall be no more than 45 miles from the place where you provide the majority of your Delivery Services under this Agreement (or if you have never performed Delivery Services, from the city in which you reside), unless each party to the arbitration agrees in writing otherwise.

iv. Starting The Arbitration.

All claims in arbitration are subject to the same statutes of limitation that would apply in court. The party bringing the claim must demand arbitration in writing and deliver the written demand by hand or first class mail to the other party within the applicable statute of limitations period. The demand for arbitration shall include identification of the parties, a statement of the legal and factual basis of the claim(s), and a specification of the remedy sought. Any demand for arbitration made to the Company or Uber shall be provided to the following address: Legal, Portier, LLC, 1455 Market St., Ste. 400, San Francisco CA 94103. The arbitrator shall resolve all disputes regarding the timeliness or propriety of the demand for arbitration. A party may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that party may be entitled may be rendered ineffectual without such provisional relief.

v. How Arbitration Proceedings Are Conducted.

In arbitration, the parties will have the right to conduct adequate civil discovery, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses, and any disputes in this regard shall be resolved by the Arbitrator.

You and the Company agree to resolve any dispute that is in arbitration and subject to this Arbitration Provision on an individual basis only, and not on a class, collective action, or representative basis (“Class Action Waiver”). The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on any basis other than an individual basis. The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on a class, collective, or representative basis. The term “representative” in this paragraph includes all representative actions that are subject to this Arbitration Provision, except for claims or actions under the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. (“PAGA”). Your ability to assert, participate in, or obtain recovery for PAGA claims or actions is addressed separately below in the subsection entitled “Private Attorneys General Act.” Notwithstanding any other provision of this Arbitration Provision, the Agreement, or the JAMS Streamlined Arbitration Rules & Procedures, disputes regarding the enforceability, revocability or validity of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective, and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

While the Company will not take any retaliatory action in response to any exercise of rights you may have under Section 7 of the National Labor Relations Act, if any, the Company shall not be precluded from moving to enforce its rights under the FAA to compel arbitration on the terms and conditions set forth in this Arbitration Provision.

Private Attorneys General Act.

To the extent permitted by law, you and Company agree not to bring a representative action on behalf of others under the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. (“PAGA”), in any court or in arbitration. This waiver shall be referred to as the “PAGA Waiver.”

Notwithstanding any other provision of this Agreement or the Arbitration Provision, the validity of the PAGA Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator.

If the PAGA Waiver is found to be unenforceable or unlawful for any reason, (1) the unenforceable provision shall be severed from this Arbitration Provision; (2) severance of the unenforceable provision shall have no impact whatsoever on the Arbitration Provision or the Parties’ attempts to arbitrate any remaining claims on an individual basis pursuant to the Arbitration Provision; and (3) any representative actions brought under the PAGA must be litigated in a civil court of competent jurisdiction in accordance with Section 15.3(ii) of this Arbitration Provision. If the PAGA Waiver is found to be unenforceable or unlawful for any reason, the Parties agree that the litigation of any representative PAGA claims in a civil court of competent jurisdiction shall be stayed, pending the outcome of any individual claims in arbitration.

vi. Paying For The Arbitration.

Each party will pay the fees for his, her or its own attorneys, subject to any remedies to which that party may later be entitled under applicable law (i.e., a party prevails on a claim that provides for the award of reasonable attorney fees to the prevailing party). In all cases where required by law or by agreement of Company or its Affiliates, the Company will pay the Arbitrator's and arbitration fees. If under applicable law the Company is not required to pay all of the Arbitrator's and/or arbitration fees, you will not be required to bear any type of fee or expense that you would not be required to bear if you had filed the action in a court of law. Any disputes in that regard will be resolved by the Arbitrator as soon as practicable after the Arbitrator is selected, and Company shall bear all the Arbitrator's and arbitration fees until such time as the Arbitrator resolves any such dispute.

vii. The Arbitration Hearing And Award.

The parties will arbitrate their dispute before the Arbitrator, who shall confer with the parties regarding the conduct of the hearing and resolve any disputes the parties may have in that regard. Within 30 days of the close of the arbitration hearing, or within a longer period of time as agreed to by the parties or as ordered by the Arbitrator, any party will have the right to prepare, serve on the other party and file with the Arbitrator a brief. The Arbitrator may award any party any remedy to which that party is entitled under applicable law, but such remedies shall be limited to those that would be available to a party in his or her individual capacity in a court of law for the claims presented to and decided by the Arbitrator, and no remedies that otherwise would be available to an individual in a court of law will be forfeited by virtue of this Arbitration Provision. The Arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. A court of competent jurisdiction shall have the authority to enter a judgment upon the award made pursuant to the arbitration.

viii. Your Right To Opt Out Of Arbitration.

Arbitration is not a mandatory condition of your contractual relationship with the Company. If you do not want to be subject to this Arbitration Provision, you may opt out of this Arbitration Provision by notifying the Company in writing of your desire to opt out of this Arbitration Provision, either by (1) sending, within 30 days of the date this Agreement is executed by you, electronic mail to optout-portier@uber.com, either from the email address associated with your delivery provider account or identifying that email address in the body of the email, stating your name and clearly indicating your intent to opt out of the Arbitration Provision or (2) by sending a letter by U.S. Mail, or by any nationally recognized delivery service (e.g, UPS, Federal Express, etc.), or by hand delivery to:

Legal
Portier, LLC
1455 Market St., Ste. 400
San Francisco CA 94103

In order to be effective, the letter under option (2) must clearly indicate your intent to opt out of this Arbitration Provision, and must be dated and personally signed. The envelope containing the signed letter must be received (if delivered by hand) or post-marked within 30 days of the date this

Agreement is executed by you. Your writing opting out of this Arbitration Provision, whether sent by option (1) or (2), will be filed with a copy of this Agreement and maintained by the Company.

Your decision to opt out of this Arbitration Provision will relieve you only of your obligation to arbitrate the disputes specified in this Arbitration Provision, and does not relieve you of any obligation to arbitrate disputes that might arise under any other arbitration agreements to which you and the Company, Uber, or any of Uber's Affiliates may be bound. Similarly, your decision to opt out of another arbitration provision contained in any other agreement shall not relieve your obligation to arbitrate disputes pursuant to this Arbitration Provision.

You acknowledge and agree that if Company modifies any provision of this Agreement other than a provision in Section 15.3, you will not have a renewed opportunity to opt out of arbitration. You further acknowledge and agree that if Company modifies (1) the addresses for hand delivery, mailing, or electronic mailing of opt-out notices identified in this Arbitration Provision, or (2) the portion of this Arbitration Provision listing the illustrative class, putative, and/or representative cases pending against Uber and Uber's Affiliates, you will not have a renewed opportunity to opt out of arbitration. If, however, Company modifies any provision of this Arbitration Provision other than (1) the addresses for hand delivery, mailing, or electronic mailing of opt-out notices or (2) the illustrative class, putative, and/or representative cases pending against Uber and Uber's Affiliates, you will have a renewed opportunity to opt out of arbitration. In such circumstances, the 30-day opt out period will begin to run upon your execution of the modified Agreement. Changes to any information referenced at hyperlinks from the Agreement or Arbitration Provision shall not create a renewed opportunity to opt-out.

Should you not opt out of this Arbitration Provision within the 30-day period, you and the Company shall be bound by the terms of this Arbitration Provision. You have the right to consult with counsel of your choice concerning this Arbitration Provision. You understand that you will not be subject to retaliation if you exercise your right to assert claims or opt-out of coverage under this Arbitration Provision.

ix. Full and Complete Agreement Related to Formal Resolution of Disputes; Enforcement Of This Arbitration Provision.

This Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes arising out of or related to this Agreement and/or arising out of or related to any Delivery Services you may provide using the Uber Services. In the event any portion of this Arbitration Provision is deemed unenforceable or invalid, the unenforceable or invalid provision or provisions shall be restricted or severed from this Arbitration Provision, in order to preserve as much of the parties' Arbitration Provision as possible.

By clicking "Yes, I agree" or signing below (as such may be required by applicable law), you expressly acknowledge that you have read, understood, and taken steps to thoughtfully consider the consequences of this Agreement, that you agree to be bound by the terms and conditions of the Agreement and have knowingly executed it, and that you are legally competent to enter into this Agreement with Company.

By you clicking “Yes, I accept,” or signing below (as such may be required by applicable law), the Company will be deemed to have agreed to be bound by this Agreement.

Your Signature: _____

Name: _____

Date: _____

EXHIBIT C

UBER TECHNOLOGIES, INC / RASIER, LLC / RASIER-PA, LLC / RASIER-DC, LLC / RASIER-MT, LLC

TECHNOLOGY SERVICES AGREEMENT

Last update: November 25, 2019

This Technology Services Agreement (“*Agreement*”) constitutes a legal agreement between you, an individual (“*you*”) and Uber Technologies, Inc. (“*Uber*”) if your Territory (as defined below) is within the State of California, Rasier-PA, LLC if your Territory is within the State of Pennsylvania, Rasier-DC, LLC if your Territory is within the State of Florida, Rasier-MT, LLC if your Territory is within the State of Montana, Hinter-NM if your Territory is within the State of New Mexico, or Rasier, LLC if your Territory is anywhere else within the United States (each as applicable, “*Company*”) and solely with respect to Section 14 of this Agreement, Rasier-CA, LLC, if your Territory is California and Hinter-NM if your Territory is New Mexico.

The Company provides lead generation to independent providers of rideshare or peer-to-peer (collectively, “*P2P*”) passenger transportation services using the Uber Services (as defined below). The Uber Services enable an authorized transportation provider to seek, receive and fulfill requests for transportation services from an authorized user of Uber’s mobile applications. You desire to enter into this Agreement for the purpose of accessing and using the Uber Services.

You acknowledge and agree that Company is a technology services provider that does not provide transportation services.

In order to use the Uber Services, you must agree to the terms and conditions that are set forth below. Upon your execution (electronic or otherwise) of this Agreement, you and Company shall be bound by the terms and conditions set forth herein.

The following sentence only applies if, immediately prior to accepting this Agreement, you are a party to an effective technology services agreement with the Company, Rasier-CA, LLC or Hinter-NM. Notwithstanding the execution of this Agreement, and the termination of your prior technology services agreement, any previously agreed and currently effective supplemental terms, including the Pricing Addendum (defined below) last updated on May 22, 2017, will continue in full force and effect as described in this Agreement.

1. Definitions

- 1.1 “*2015 Agreement*” means the Technology Services Agreement, last updated December 11, 2015, by and among you and Rasier-CA, LLC if your Territory is within the State of California, Rasier-PA, LLC if your Territory is within the State of Pennsylvania, Rasier-DC, LLC if your Territory is within the State of Florida, Rasier-MT, LLC if your Territory is within the State of Montana, Hinter-NM if your Territory is within the State of New Mexico, or Rasier, LLC.
- 1.2 “*2015 Termination*” has the meaning set forth in Section 14.1.
- 1.3 “*Affiliate*” means an entity that, directly or indirectly, controls, is under the control of, or is under common control with a party, where control means having more than fifty percent (50%) of the voting stock or other ownership interest or the majority of the voting rights of such entity.
- 1.4 “*City Addendum*” means an addendum or supplemental information to this Agreement setting forth additional Territory-specific terms, as made available and as updated by Company from time to time.
- 1.5 “*Class Action Waiver*” has the meaning set forth in Section 15.2.
- 1.6 “*Company Data*” means all data related to the access and use of the Uber Services hereunder, including all data related to Users (including User Information), all data related to the provision of Transportation Services via the Uber Services and the Driver App, and the Driver ID.
- 1.7 “*Company Device*” means a mobile device owned or controlled by Company that is provided to you solely for your use of the Driver App to provide Transportation Services.
- 1.8 “*Device*” means a Company Device or Your Device, as the case may be.
- 1.9 “*Driver App*” means the mobile application provided by Company that enables transportation providers to access the Uber Services for the purpose of seeking, receiving and fulfilling on- demand requests for transportation services by Users, as may be updated or modified from time to time.
- 1.10 “*Driver ID*” means the identification and password key assigned by Company to you that enables you to use and access the Driver App.
- 1.11 “*Effective Time*” means the date and time on which this Agreement is accepted by you.
- 1.12 “*Existing City Addendum*” means any City Addendum (as defined in the 2015 Agreement) effective as of immediately prior to the Effective Time including, without limitation the Pricing Addendum.

- 1.13 “*Existing Supplemental Terms*” means any Supplemental Terms (as defined in Section 14.2 of the 2015 Agreement) effective as of immediately prior to the Effective Time.
- 1.14 “*Fare*” has the meaning set forth in Section 4.1.
- 1.15 “*JAMS Rules*” has the meaning set forth in Section 15.2.
- 1.16 “*Pricing Addendum*” means that certain Addendum, last updated as of May 22, 2017, by and between you and the applicable Uber Subsidiary.
- 1.17 “*Representative Action Waiver*” has the meaning set forth in Section 15.2.
- 1.18 “*Service Fee*” has the meaning set forth in Section 4.4.
- 1.19 “*Territory*” means the city or metro areas in the United States in which you are enabled by the Driver App to receive requests for Transportation Services.
- 1.20 “*Tolls*” means any applicable road, bridge, ferry, tunnel and airport charges and fees, including inner-city congestion, environmental or similar charges as reasonably determined by the Uber Services based on available information.
- 1.21 “*Transportation Services*” means your provision of P2P passenger transportation services to Users via the Uber Services in the Territory using the Vehicle.
- 1.22 “*Uber Services*” mean Uber’s on-demand lead generation and related services licensed by Uber that enable transportation providers to seek, receive and fulfill on-demand requests for transportation services by Users seeking transportation services; such Uber Services include access to the Driver App and Uber’s software, websites, payment services as described in Section 4 below, and related support services systems, as may be updated or modified from time to time.
- 1.23 “*Uber Subsidiary*” means each of Rasier-CA, LLC, Rasier-PA, LLC, Rasier-DC, LLC, Rasier-MT, LLC, Hinter-NM and Rasier, LLC.
- 1.24 “*User*” means an end user authorized by Uber to use the Uber mobile application for the purpose of obtaining Transportation Services offered by Company’s transportation provider customers.
- 1.25 “*User Information*” means information about a User made available to you in connection with such User’s request for and use of Transportation Services, which may include the User’s name, pick-up location, contact information and photo.
- 1.26 “*Vehicle*” means your vehicle that: (a) meets the then-current Company requirements for a vehicle on the Uber Services; and (b) Company authorizes for your use for the purpose of providing Transportation Services.

- 1.27 “*Your Device*” means a mobile device owned or controlled by you: (a) that meets the then- current Company specifications for mobile devices as set forth at www.uber.com/byod-devices; and (b) on which the Driver App has been installed as authorized by Company solely for the purpose of providing Transportation Services.

2. Use of the Uber Services

- 2.1 **Driver IDs.** Uber will issue you a Driver ID to enable you to access and use the Driver App on a Device in accordance with this Agreement. Company reserves the right to deactivate your Driver ID if you have not fulfilled a request for Transportation Services using the Driver App at least once a month. **You agree that you will maintain your Driver ID in confidence and not share your Driver ID with any third party. You will immediately notify Company of any actual or suspected breach or improper use or disclosure of your Driver ID or the Driver App.**
- 2.2 **Provision of Transportation Services.** When the Driver App is active, User requests for Transportation Services may appear to you via the Driver App if you are available and in the vicinity of the User. If you accept a User’s request for Transportation Services, the Uber Services will provide you with certain User Information via the Driver App, including the User’s first name and pickup location. In order to enhance User satisfaction with the Uber mobile application and your Transportation Services, it is recommended that you wait at least ten (10) minutes for a User to show up at the requested pick-up location. You will obtain the destination from the User, either in person upon pickup or from the Driver App if the User elects to enter such destination via Uber’s mobile application. You acknowledge and agree that once you have accepted a User’s request for Transportation Services, Uber’s mobile application may provide certain information about you to the User, including your first name, contact information, photo and location, and your Vehicle’s make and license plate number. You shall not contact any Users or use any User’s personal data for any reason other than for the purposes of fulfilling Transportation Services. As between Company and you, you acknowledge and agree that: (a) you shall be solely responsible for determining the most effective, efficient and safe manner to perform each instance of Transportation Services; and (b) except for the Uber Services or any Company Devices (if applicable), you shall provide all necessary equipment, tools and other materials, at your own expense, necessary to perform Transportation Services. You understand and agree that you have a legal obligation under the Americans with Disabilities Act and similar state laws to transport Users with Service Animals (as defined by applicable state and federal law), including guide dogs for the blind and visually impaired Users, and there is no exception to this obligation for allergies or religious objections. Your knowing failure to transport a User with a Service Animal shall constitute a

material breach of this Agreement. You agree that a “knowing failure” to comply with this legal obligation shall constitute either: (1) a denial of a ride where you state the denial was due to a Service Animal; or (2) there is more than one (1) instance in which a User or the companion of a User alleges that you cancelled or refused a ride on the basis of a Service Animal.

- 2.3 **Your Relationship with Users.** You acknowledge and agree that your provision of Transportation Services to Users creates a direct business relationship between you and the User. Company is not responsible or liable for the actions or inactions of a User in relation to you, your activities or your Vehicle. You shall have the sole responsibility for any obligations or liabilities to Users or third parties that arise from your provision of Transportation Services. You acknowledge and agree that you are solely responsible for taking such precautions as may be reasonable and proper (including maintaining adequate insurance that meets the requirements of all applicable laws including motor vehicle financial responsibility laws) regarding any acts or omissions of a User or third party. You acknowledge and agree that Company may release your contact and/or insurance information to a User upon such User’s reasonable request. You acknowledge and agree that, unless specifically consented to by a User, you may not transport or allow inside your Vehicle individuals other than a User and any individuals authorized by such User, during the performance of Transportation Services for such User. You acknowledge and agree that all Users should be transported directly to their specified destination, as directed by the applicable User, without unauthorized interruption or unauthorized stops.
- 2.4 **Your Relationship with Company.** You acknowledge and agree that Company’s provision to you of the Driver App and the Uber Services creates a direct business relationship between Company and you. Company does not, and shall not be deemed to, direct or control you generally or in your performance under this Agreement specifically, including in connection with your provision of Transportation Services, your acts or omissions, or your operation and maintenance of your Vehicle. You retain the sole right to determine when, where, and for how long you will utilize the Driver App or the Uber Services. You retain the option, via the Driver App, to attempt to accept or to decline or ignore a User’s request for Transportation Services via the Uber Services, or to cancel an accepted request for Transportation Services via the Driver App, subject to Company’s then-current cancellation policies. With the exception of any signage required by local law or permit/license requirements, Company shall have no right to require you to: (a) display Company’s or any of its Affiliates’ names, logos or colors on your Vehicle(s); or (b) wear a uniform or any other clothing displaying Company’s or any of its Affiliates’ names, logos or colors. You acknowledge and agree that you have complete discretion to provide services or otherwise engage in other business or employment

activities. For the sake of clarity, you understand that you retain the complete right to; (i) use other software application services in addition to the Uber Services; and (ii) engage in any other occupation or business. Company retains the right to deactivate or otherwise restrict you from accessing or using the Driver App or the Uber Services in the event of a violation or alleged violation of this Agreement, your disparagement of Company or any of its Affiliates, your act or omission that causes harm to Company's or its Affiliates' brand, reputation or business as determined by Company in its sole discretion.

2.5 **Ratings.**

- 2.5.1 You acknowledge and agree that: (a) after receiving Transportation Services, a User will be prompted by Uber's mobile application to provide a rating of you and such Transportation Services and, optionally, to provide comments or feedback about you and such Transportation Services; and (b) after providing Transportation Services, you will be prompted by the Driver App to provide a rating of the User and, optionally, to provide comments or feedback about the User. You shall provide your ratings and feedback in good faith.
- 2.5.2 You acknowledge that Company desires that Users have access to high-quality services via Uber's mobile application. In order to continue to receive access to the Driver App and the Uber Services, you must maintain an average rating by Users that exceeds the minimum average acceptable rating established by Company for your Territory, as may be updated from time to time by Company in its sole discretion ("*Minimum Average Rating*"). Your average rating is intended to reflect Users' satisfaction with your Transportation Services rather than your compliance with any of Company's policies or recommendations. In the event your average rating falls below the Minimum Average Rating, Company will notify you and may provide you, in Company's discretion, a limited period of time to raise your average rating above the Minimum Average Rating. If you do not increase your average rating above the Minimum Average Rating within the time period allowed (if any), Company reserves the right to deactivate your access to the Driver App and the Uber Services. Additionally, you acknowledge that your repeated failure to accept User requests for Transportation Services while you are logged in to the Driver App creates a negative experience for Users of Uber's mobile application. If you do not wish to accept User requests for Transportation Services for a period of time, you agree that you will log off of the Driver App.
- 2.5.3 Company and its Affiliates reserve the right to use, share and display your and User ratings and comments in any manner in connection with the business of Company and its Affiliates without attribution to you or your

approval. You acknowledge and agree that Company and its Affiliates are distributors (without any obligation to verify) and not publishers of your and User ratings and comments, provided that Company and its Affiliates reserve the right to edit or remove comments in the event that such comments include obscenities or other objectionable content, include an individual's name or other personal information, or violate any privacy laws, other applicable laws or Company's or its Affiliates' content policies.

2.6 **Devices.**

- 2.6.1 Company encourages you to use Your Device in providing Transportation Services. Otherwise, if you elect to use any Company Devices, Company will supply you upon request with Company Devices and provide the necessary wireless data plan for such Devices, provided that Company will require reimbursement from you for the costs associated with the wireless data plan of each Company Device and/or request a deposit for each Company Device. You agree that: (a) Company Devices may only be used for the purpose of enabling your access to the Uber Services; and (b) Company Devices may not be transferred, loaned, sold or otherwise provided in any manner to any party other than you. Company Devices shall at all times remain the property of Company, and upon termination of this Agreement or your termination or deactivation, you agree to return to Company the applicable Company Devices within ten (10) days. You agree that failure to timely return any Company Devices, or damage to Company Devices outside of "normal wear and tear," will result in the forfeiture of related deposits.
- 2.6.2 If you elect to use Your Devices: (i) you are responsible for the acquisition, cost and maintenance of Your Devices as well as any necessary wireless data plan; and (ii) Company shall make available the Driver App for installation on Your Device. Company hereby grants you a personal, non-exclusive, non-transferable license to install and use the Driver App on Your Device solely for the purpose of providing Transportation Services. You agree to not provide, distribute or share, or enable the provision, distribution or sharing of, the Driver App (or any data associated therewith) with any third party. The foregoing license grant shall immediately terminate and you will delete and fully remove the Driver App from the Driver-Provided Device in the event that you cease to provide Transportation Services using Your Device. You agree that: (i) use of the Driver App on Your Device requires an active data plan with a wireless carrier associated with Your Device, which data plan will be provided by you at your own expense; and (ii) use of the Driver App on Your Device as an interface with the Uber Services may

consume very large amounts of data through the data plan. **COMPANY ADVISES THAT YOUR DEVICE ONLY BE USED UNDER A DATA PLAN WITH UNLIMITED OR VERY HIGH DATA USAGE LIMITS, AND COMPANY SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY FEES, COSTS, OR OVERAGE CHARGES ASSOCIATED WITH ANY DATA PLAN.**

- 2.7 **Location Based Services.** You acknowledge and agree that your geo-location information must be provided to the Uber Services via a Device in order to provide Transportation Services. You acknowledge and agree that: (a) your geo-location information may be obtained by the Uber Services while the Driver App is running; and (b) the approximate location of your Vehicle will be displayed to the User before and during the provision of Transportation Services to such User. In addition, Company and its Affiliates may monitor, track and share with third parties Driver's geo-location information obtained by the Driver App and Device for safety and security purposes.

3. You and Your Vehicle

- 3.1 **Your Requirements.** You acknowledge and agree that at all times, you shall: (a) hold and maintain (i) a valid driver's license with the appropriate level of certification to operate your Vehicle, and (ii) all licenses, permits, approvals and authority applicable to you that are necessary to provide passenger transportation services to third parties in the Territory; (b) possess the appropriate and current level of training, expertise and experience to provide Transportation Services in a professional manner with due skill, care and diligence; and (c) maintain high standards of professionalism, service and courtesy. You acknowledge and agree that you may be subject to certain background and driving record checks from time to time in order to qualify to provide, and remain eligible to provide, Transportation Services. You acknowledge and agree that Company reserves the right, at any time in Company's sole discretion, to deactivate or otherwise restrict you from accessing or using the Driver App or the Uber Services if you fail to meet the requirements set forth in this Agreement.
- 3.2 **Vehicle Requirements.** You acknowledge and agree that your Vehicle shall at all times be: (a) properly registered and licensed to operate as a passenger transportation vehicle in the Territory; (b) owned or leased by you, or otherwise in your lawful possession; (c) suitable for performing the passenger transportation services contemplated by this Agreement; and (d) maintained in good operating condition, consistent with industry safety and maintenance standards for a Vehicle of its kind and any additional standards or requirements in the applicable Territory, and in a clean and sanitary condition.

- 3.3 **Documentation.** To ensure your compliance with all requirements in Sections 3.1 and 3.2 above, you must provide Company with written copies of all such licenses, permits, approvals, authority, registrations and certifications prior to your provision of any Transportation Services. Thereafter, you must submit to Company written evidence of all such licenses, permits, approvals, authority, registrations and certifications as they are renewed. Company shall, upon request, be entitled to review such licenses, permits, approvals, authority, registrations and certifications from time to time, and your failure to provide or maintain any of the foregoing shall constitute a material breach of this Agreement. Company reserves the right to independently verify your documentation from time to time in any way Company deems appropriate in its reasonable discretion. Financial Terms
4. **Fare Calculation and Your Payment.** You are entitled to charge a fare for each instance of completed Transportation Services provided to a User that are obtained via the Uber Services ("*Fare*"), where such Fare is calculated based upon a base fare amount plus distance (as determined by Company using location-based services enabled through the Device) and/or time amounts, as detailed at www.uber.com/cities for the applicable Territory ("*Fare Calculation*"). You acknowledge and agree that the Fare provided under the Fare Calculation is the only payment you will receive in connection with the provision of Transportation Services, and that neither the Fare nor the Fare Calculation includes any gratuity. You are also entitled to charge User for any Tolls, taxes or fees incurred during the provision of Transportation Services, if applicable. You: (i) appoint Company as your limited payment collection agent solely for the purpose of accepting the Fare, applicable Tolls and, depending on the region and/or if requested by you, applicable taxes and fees from the User on your behalf via the payment processing functionality facilitated by the Uber Services; and (ii) agree that payment made by User to Company (or to an Affiliate of Company acting as an agent of Company) shall be considered the same as payment made directly by User to you. In addition, the parties acknowledge and agree that as between you and Company, the Fare is a recommended amount, and the primary purpose of the pre-arranged Fare is to act as the default amount in the event you do not negotiate a different amount. You shall always have the right to: (i) charge a fare that is less than the pre-arranged Fare; or (ii) negotiate, at your request, a Fare that is lower than the pre- arranged Fare (each of (i) and (ii) herein, a "*Negotiated Fare*"). Company shall consider all such requests from you in good faith. Company agrees to remit, or cause to be remitted, to you on at least a weekly basis: (a) the Fare less the applicable Service Fee; (b) the Tolls; and (c) depending on the region, certain taxes and ancillary fees. If you have separately agreed that other amounts may be deducted from the Fare prior to remittance to you (e.g., vehicle financing payments, lease payments, mobile device usage charges, etc.), the order of any such deductions from the Fare shall be

determined exclusively by Company (as between you and Company).

- 4.1 **Changes to Fare Calculation.** Company reserves the right to change the Fare Calculation at any time in Company's discretion based upon local market factors, and Company will provide you with notice in the event of changes to the base fare, per mile, and/or per minute amounts that would result in a change in the recommended Fare. Continued use of the Uber Services after any such change in the Fare Calculation shall constitute your consent to such change.
- 4.2 **Fare Adjustment.** Company reserves the right to: (i) adjust the Fare for a particular instance of Transportation Services (e.g., you took an inefficient route, you failed to properly end a particular instance of Transportation Services in the Driver App, technical error in the Uber Services, etc.); or (ii) cancel the Fare for a particular instance of Transportation Services (e.g., User is charged for Transportation Services that were not provided, in the event of a User complaint, fraud, etc.). Company's decision to reduce or cancel the Fare in any such manner shall be exercised in a reasonable manner.
- 4.3 **Service Fee.** In consideration of Company's provision of the Driver App and the Uber Services for your use and benefit hereunder, you agree to pay Company a service fee on a per Transportation Services transaction basis calculated as a percentage of the Fare determined by the Fare Calculation (regardless of any Negotiated Fare), as provided to you via email or otherwise made available electronically by Company from time to time for the applicable Territory ("*Service Fee*"). In the event regulations applicable to your Territory require taxes to be calculated on the Fare, Company shall calculate the Service Fee based on the Fare net of such taxes. Company reserves the right to change the Service Fee at any time in Company's discretion based upon local market factors, and Company will provide you with notice in the event of such change. Continued use of the Uber Services after any such change in the Service Fee calculation shall constitute your consent to such change.
- 4.4 **Cancellation Charges.** You acknowledge and agree that Users may elect to cancel requests for Transportation Services that have been accepted by you via the Driver App at any time prior to your arrival. In the event that a User cancels an accepted request for Transportation Services, Company may charge the User a cancellation fee on your behalf. If charged, this cancellation fee shall be deemed the Fare for the cancelled Transportation Services for the purpose of remittance to you hereunder ("*Cancellation Fee*"). The parties acknowledge and agree that as between you and Company, this Cancellation Fee is a recommended amount, and the primary purpose of such Cancellation Fee is to act as the default amount in the event you do not negotiate a different amount. You shall always have the right to: (i) charge a cancellation fee that is less than

the Cancellation Fee; or (ii) negotiate, at your request, a cancellation fee that is lower than the Cancellation Fee (each of (i) and (ii) herein, a “*Negotiated Cancellation Fee*”). If charged, the Cancellation Fee (regardless of any Negotiated Cancellation Fee) shall be deemed the Fare for the cancelled Transportation Services for the purpose of remittance to you hereunder.

- 4.5 **Receipts.** As part of the Uber Services, Company provides you a system for the delivery of receipts to Users for Transportation Services rendered. Upon your completion of Transportation Services for a User, Company prepares an applicable receipt and issues such receipt to the User via email on your behalf. Such receipts are also provided to you via email or the online portal available to you through the Uber Services. Receipts include the breakdown of amounts charged to the User for Transportation Services and may include specific information about you, including your name, contact information and photo, as well as a map of the route you took. Any corrections to a User’s receipt for Transportation Services must be submitted to Company in writing within three (3) business days after the completion of such Transportation Services. Absent such a notice, Company shall not be liable for any mistakes in or corrections to the receipt or for recalculation or disbursement of the Fare.
- 4.6 **No Additional Amounts.** You acknowledge and agree that, for the mutual benefit of the parties, through advertising and marketing, Company and its Affiliates may seek to attract new Users to Uber and to increase existing Users’ use of Uber’s mobile application. You acknowledge and agree such advertising or marketing does not entitle you to any additional monetary amounts beyond the amounts expressly set forth in this Agreement.
- 4.7 **Taxes.** You acknowledge and agree that you are required to: (a) complete all tax registration obligations and calculate and remit all tax liabilities related to your provision of Transportation Services as required by applicable law; and (b) provide Company with all relevant tax information. You further acknowledge and agree that you are responsible for taxes on your own income arising from the performance of Transportation Services. Notwithstanding anything to the contrary in this Agreement, Company may in its reasonable discretion based on applicable tax and regulatory considerations, collect and remit taxes resulting from your provision of Transportation Services and/or provide any of the relevant tax information you have provided pursuant to the foregoing requirements in this Section 4.8 directly to the applicable governmental tax authorities on your behalf or otherwise.

5. Proprietary Rights; License

- 5.1 **License Grant.** Subject to the terms and conditions of this Agreement, Company hereby grants you a non-exclusive, non-transferable, non-sublicensable, non-assignable license, during the term of this Agreement, to use the Uber Services

(including the Driver App on a Device) solely for the purpose of providing Transportation Services to Users and tracking resulting Fares and Fees. All rights not expressly granted to you are reserved by Company, its Affiliates and their respective licensors.

- 5.2 **Restrictions.** You shall not, and shall not allow any other party to: (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise provide or make available to any other party the Uber Services, Driver App or any Company Device in any way; (b) modify or make derivative works based upon the Uber Services or Driver App; (c) improperly use the Uber Services or Driver App, including creating Internet “links” to any part of the Uber Services or Driver App, “framing” or “mirroring” any part of the Uber Services or Driver App on any other websites or systems, or “scraping” or otherwise improperly obtaining data from the Uber Services or Driver App; (d) reverse engineer, decompile, modify, or disassemble the Uber Services or Driver App, except as allowed under applicable law; or (e) send spam or otherwise duplicative or unsolicited messages. In addition, you shall not, and shall not allow any other party to, access or use the Uber Services or Driver App to: (i) design or develop a competitive or substantially similar product or service; (ii) copy or extract any features, functionality, or content thereof; (iii) launch or cause to be launched on or in connection with the Uber Services an automated program or script, including web spiders, crawlers, robots, indexers, bots, viruses or worms, or any program which may make multiple server requests per second, or unduly burden or hinder the operation and/or performance of the Uber Services; or (iv) attempt to gain unauthorized access to the Uber Services or its related systems or networks.
- 5.3 **Ownership.** The Uber Services, Driver App and Company Data, including all intellectual property rights therein, and the Company Devices are and shall remain (as between you and Company) the property of Company, its Affiliates or their respective licensors. Neither this Agreement nor your use of the Uber Services, Driver App or Company Data conveys or grants to you any rights in or related to the Uber Services, Driver App or Company Data, except for the limited license granted above. Other than as specifically permitted by the Company in connection with the Uber Services, you are not permitted to use or reference in any manner Company’s, its Affiliates’, or their respective licensors’ company names, logos, products and service names, trademarks, service marks, trade dress, copyrights or other indicia of ownership, alone and in combination with other letters, punctuation, words, symbols and/or designs (the “UBER Marks and Names”) for any commercial purposes. You agree that you will not try to register or otherwise use and/or claim ownership in any of the UBER Marks and Names, alone or in combination with other letters, punctuation, words, symbols and/or designs, or in any confusingly similar mark, name or title, for

any goods and services.

6. Confidentiality

- 6.1 Each party acknowledges and agrees that in the performance of this Agreement it may have access to or may be exposed to, directly or indirectly, confidential information of the other party ("*Confidential Information*"). Confidential Information includes Company Data, Driver IDs, User Information, and the transaction volume, marketing and business plans, business, financial, technical, operational and such other non-public information of each party (whether disclosed in writing or verbally) that such party designates as being proprietary or confidential or of which the other party should reasonably know that it should be treated as confidential.
- 6.2 Each party acknowledges and agrees that: (a) all Confidential Information shall remain the exclusive property of the disclosing party; (b) it shall not use Confidential Information of the other party for any purpose except in furtherance of this Agreement; (c) it shall not disclose Confidential Information of the other party to any third party, except to its employees, officers, contractors, agents and service providers ("*Permitted Persons*") as necessary to perform under this Agreement, provided Permitted Persons are bound in writing to obligations of confidentiality and non-use of Confidential Information no less protective than the terms hereof; and (d) it shall return or destroy all Confidential Information of the disclosing party, upon the termination of this Agreement or at the request of the other party (subject to applicable law and, with respect to Company, its internal record-keeping requirements).
- 6.3 Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (a) is or becomes part of the public domain through no act or omission on the part of the receiving party; (b) was possessed by the receiving party prior to the date of this Agreement without an obligation of confidentiality; (c) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto; or (d) is required to be disclosed pursuant to law, court order, subpoena or governmental authority, provided the receiving party notifies the disclosing party thereof and provides the disclosing party a reasonable opportunity to contest or limit such required disclosure.

7. Privacy

- 7.1 **Disclosure of Your Information.** Subject to applicable law, Company and its Affiliates may, but shall not be required to, provide to you, a User, an insurance company and/or relevant authorities and/or regulatory agencies any information (including personal information (e.g., information obtained about you through any background check) and any Company Data) about you or any Transportation Services provided hereunder if: (a) there is a complaint, dispute

or conflict, including an accident, between you and a User; (b) it is necessary to enforce the terms of this Agreement; (c) it is required, in Company's or any Affiliate's sole discretion, by applicable law or regulatory requirements (e.g., Company or its Affiliates receive a subpoena, warrant, or other legal process for information); (d) it is necessary, in Company's or any Affiliate's sole discretion, to (1) protect the safety, rights, property or security of Company or its Affiliates, the Uber Services or any third party; (2) to protect the safety of the public for any reason including the facilitation of insurance claims related to the Uber Services; (3) to detect, prevent or otherwise address fraud, security or technical issues; (4) to prevent or stop activity which Company or any of its Affiliates, in their sole discretion, may consider to be, or to pose a risk of being, an illegal, unethical, or legally actionable activity); or (e) it is required or necessary, in Company's or any Affiliate's sole discretion, for insurance or other purposes related to your ability to qualify, or remain qualified, to use the Uber Services. You understand that Company may retain your personal data for legal, regulatory, safety and other necessary purposes after this Agreement is terminated.

- 7.2 Company and its Affiliates may collect your personal data during the course of your application for, and use of, the Uber Services, or may obtain information about you from third parties. Such information may be stored, processed, transferred, and accessed by Company and its Affiliates, third parties, and service providers for business purposes, including for marketing, lead generation, service development and improvement, analytics, industry and market research, and such other purposes consistent with Company's and its Affiliates' legitimate business needs. You expressly consent to such use of personal data.

8. Insurance

- 8.1 You agree to maintain during the term of this Agreement on all Vehicles operated by you under this Agreement automobile liability insurance that provides protection against bodily injury and property damage to third parties at levels of coverage that satisfy the minimum requirements to operate a private passenger vehicle on the public roads within the Territory. This coverage must also include any no-fault coverage required by law in the Territory that may not be waived by an insured. You agree to provide Company and its Affiliates a copy of the insurance policy, policy declarations, proof of insurance identification card and proof of premium payment for the insurance policy required in this Section 8.1 upon request. Furthermore, you must provide Company with written notice of cancellation of any insurance policy required by Company. Company shall have no right to control your selection or maintenance of your policy. You must be a named insured or individually rated driver, for which a premium is charged, on the insurance policy required in this Section 8.1 at all times.

- 8.2 **You agree to maintain during the term of this Agreement workers' compensation insurance as required by all applicable laws in the Territory. If permitted by applicable law, you may choose to insure yourself against industrial injuries by maintaining occupational accident insurance in place of workers' compensation insurance. Furthermore, if permitted by applicable law, you may choose not to insure yourself against industrial injuries at all, but do so at your own risk.**
- 8.3 You understand and acknowledge that your personal automobile insurance policy may not afford liability, comprehensive, collision, medical payments, personal injury protection, uninsured motorist, underinsured motorist, or other coverage for the Transportation Services you provide pursuant to this Agreement. If you have any questions or concerns about the scope or applicability of your own insurance coverage, it is your responsibility, not that of Company, to resolve them with your insurer(s).
- 8.4 Company may maintain during the term of this Agreement insurance related to your provision of Transportation Services as determined by Company in its reasonable discretion or as described in a City Addendum, provided that Company and its Affiliates are not required to provide you with any specific insurance coverage for any loss to you or your Vehicle. You are required to promptly notify Company of any accidents that occur while providing Transportation Services and to cooperate and provide all necessary information related thereto.

9. Representations and Warranties; Disclaimers

- 9.1 **By You.** You hereby represent and warrant that: (a) you have full power and authority to enter into this Agreement and perform your obligations hereunder; (b) you have not entered into, and during the term will not enter into, any agreement that would prevent you from complying with this Agreement; and (c) you will comply with all applicable laws in your performance of this Agreement, including holding and complying with all permits, licenses, registrations and other governmental authorizations necessary to provide (i) Transportation Services using the Vehicles pursuant to this Agreement, and (ii) passenger transportation services to third parties in the Territory generally.
- 9.2 **Disclaimer of Warranties.** COMPANY AND ITS AFFILIATES PROVIDE, AND YOU ACCEPT, THE UBER SERVICES, DRIVER APP AND THE COMPANY DEVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS. COMPANY AND ITS AFFILIATES DO NOT REPRESENT, WARRANT OR GUARANTEE THAT YOUR ACCESS TO OR USE OF THE UBER SERVICES, DRIVER APP OR THE COMPANY DEVICES: (A) WILL BE UNINTERRUPTED OR ERROR FREE; OR (B) WILL RESULT IN ANY REQUESTS FOR

TRANSPORTATION SERVICES. COMPANY AND ITS AFFILIATES FUNCTION AS AN ON-DEMAND LEAD GENERATION AND RELATED SERVICE ONLY AND MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AS TO THE ACTIONS OR INACTIONS OF THE USERS WHO MAY REQUEST OR RECEIVE TRANSPORTATION SERVICES FROM YOU, AND COMPANY AND ITS AFFILIATES DO NOT SCREEN OR OTHERWISE EVALUATE USERS. BY USING THE UBER SERVICES AND DRIVER APP, YOU ACKNOWLEDGE AND AGREE THAT YOU MAY BE INTRODUCED TO A THIRD PARTY THAT MAY POSE HARM OR RISK TO YOU OR OTHER THIRD PARTIES. YOU ARE ADVISED TO TAKE REASONABLE PRECAUTIONS WITH RESPECT TO INTERACTIONS WITH THIRD PARTIES ENCOUNTERED IN CONNECTION WITH THE USE OF THE UBER SERVICES OR DRIVER APP. NOTWITHSTANDING COMPANY'S APPOINTMENT AS THE LIMITED PAYMENT COLLECTION AGENT OF YOU FOR THE PURPOSE OF ACCEPTING PAYMENT FROM USERS ON YOUR BEHALF AS SET FORTH IN SECTION 4 ABOVE, COMPANY AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL LIABILITY FOR ANY ACT OR OMISSION OF YOU, ANY USER OR OTHER THIRD PARTY.

- 9.3 **No Service Guarantee.** COMPANY AND ITS AFFILIATES DO NOT GUARANTEE THE AVAILABILITY OR UPTIME OF THE UBER SERVICES OR DRIVER APP. YOU ACKNOWLEDGE AND AGREE THAT THE UBER SERVICES OR DRIVER APP MAY BE UNAVAILABLE AT ANY TIME AND FOR ANY REASON (e.g., DUE TO SCHEDULED MAINTENANCE OR NETWORK FAILURE). FURTHER, THE UBER SERVICES OR DRIVER APP MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND COMPANY AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES, LIABILITIES OR LOSSES RESULTING FROM SUCH PROBLEMS.

10. **Indemnification.** You shall indemnify, defend (at Company's option) and hold harmless Company and its Affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, expenses (including legal fees), damages, penalties, fines, social security contributions and taxes arising out of or related to: (a) your breach of your representations, warranties or obligations under this Agreement; or (b) a claim by a third party (including Users, regulators and governmental authorities) directly or indirectly related to your provision of Transportation Services or use of the Uber Services. This indemnification provision shall not apply to your breach of any representations regarding your status as a contractor.

11. Term and Termination

- 11.1 **Term.** This Agreement shall commence on the date accepted by you and shall continue until terminated as set forth herein.

- 11.2 **Termination.** Either party may terminate this Agreement: (a) without cause at any time upon seven (7) days prior written notice to the other party; (b) immediately, without notice, for the other party's material breach of this Agreement; or (c) immediately, without notice, in the event of the insolvency or bankruptcy of the other party, or upon the other party's filing or submission of request for suspension of payment (or similar action or event) against the terminating party. In addition, Company may terminate this Agreement or deactivate your Driver ID immediately, without notice, with respect to you in the event you no longer qualify, under applicable law or the standards and policies of Company and its Affiliates, to provide Transportation Services or to operate the Vehicle, or as otherwise set forth in this Agreement.
- 11.3 **Effect of Termination.** Upon termination of the Agreement, you shall: (a) promptly return to Company all Company Devices; and (b) immediately delete and fully remove the Driver App from any of Your Devices. Outstanding payment obligations and Sections 1, 2.3, 2.5.3, 4.7, 4.8, 5.3, 6, 7, 9, 10, 11.3, 12, 13, and 15 shall survive the termination of this Agreement.

12. Relationship of the Parties

- 12.1 **Except as otherwise expressly provided herein with respect to Company acting as the limited payment collection agent solely for the purpose of collecting payment from Users on your behalf, the relationship between the parties under this Agreement is solely that of independent contracting parties. The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship, between Company and you; and (b) no joint venture, partnership, or agency relationship exists between Company and you.**
- 12.2 You have no authority to bind Company or its Affiliates and you undertake not to hold yourself out as an employee, agent or authorized representative of Company or its Affiliates. Where, by implication of mandatory law or otherwise, you may be deemed an agent or representative of Company, you undertake and agree to indemnify, defend (at Company's option) and hold Company and its Affiliates harmless from and against any claims by any person or entity based on such implied agency or representative relationship.

13. Miscellaneous Terms

- 13.1 **Modification.** In the event Company modifies the terms and conditions of this Agreement at any time, such modifications shall be binding on you only upon your acceptance of the modified Agreement. Company reserves the right to modify any information referenced at hyperlinks from this Agreement from time to time. You hereby acknowledge and agree that, by using the Uber Services, or

downloading, installing or using the Driver App, you are bound by any future amendments and additions to information referenced at hyperlinks herein, or documents incorporated herein, including with respect to Fare Calculations. Continued use of the Uber Services or Driver App after any such changes shall constitute your consent to such changes.

- 13.2 **Supplemental Terms.** Supplemental terms may apply to your use of the Uber Services, such as use policies or terms related to certain features and functionality, which may be modified from time to time ("*Supplemental Terms*"). You may be presented with certain Supplemental Terms from time to time. Supplemental Terms are in addition to, and shall be deemed a part of, this Agreement. Supplemental Terms shall prevail over this Agreement in the event of a conflict.
- 13.3 **Severability.** If any provision of this Agreement is or becomes invalid or non-binding, the parties shall remain bound by all other provisions hereof. In that event, the parties shall replace the invalid or non-binding provision with provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this Agreement.
- 13.4 **Assignment.** Neither party shall assign or transfer this Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of the other party; provided that Company may assign or transfer this Agreement or any or all of its rights or obligations under this Agreement from time to time without consent: (a) to an Affiliate; or (b) to an acquirer of all or substantially all of Company's business, equity or assets.
- 13.5 **Entire Agreement.** Except as provided below, this Agreement, including all Supplemental Terms, constitutes the entire agreement and understanding of the parties with respect to its subject matter and replaces and supersedes all prior or contemporaneous agreements or undertakings regarding such subject matter. In this Agreement, the words "including" and "include" mean "including, but not limited to." The recitals form a part of this Agreement. Notwithstanding the foregoing, if you opt out of the arbitration provision set forth in Section 15.2 below, then any prior arbitration agreement between the parties shall remain in full force and effect.
- 13.6 **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement, except as expressly set forth in the Arbitration Provision in Section 15.2 below. Nothing contained in this Agreement is intended to or shall be interpreted to create any third-party beneficiary claims.
- 13.7 **Notices.** Any notice delivered by Company to you under this Agreement will be delivered by email to the email address associated with your account or by posting on the portal available to you on the Uber Services. Any notice delivered

by you to Company under this Agreement will be delivered by contacting Company at <http://partners.uber.com> in the “Contact Us” section. Additional Territory-specific notices may be required from time to time.

14. Existing Agreements. This Section 14 only applies if you were party to a 2015 Agreement effective immediately prior to the Effective Time:

- 14.1 **2015 Agreement.** Except as provided in Section 15 below, you and the applicable Uber Subsidiary hereby terminate such 2015 Agreement (except as provided in Section 12.3 of the 2015 Agreement), effective as of the Effective Time (the “*2015 Termination*”). The parties further agree to waive any applicable notice requirements with respect to the 2015 Termination.
- 14.2 **Continuing Agreements.** Notwithstanding the 2015 Termination, you hereby (a) ratify, assume and confirm your obligations under any Existing Supplemental Terms or Existing City Addenda and (b) acknowledge and agree that as of the Effective Time such Existing Supplemental Terms and Existing City Addenda are Supplemental Terms or City Addenda, as applicable, under this Agreement. The Company hereby ratifies, assumes and confirms its obligations under such agreements.

15. Governing Law; Arbitration

- 15.1 The choice of law provisions contained in this Section 15.1 do not apply to the arbitration clause contained in Section 15.2, such arbitration clause being governed by the Federal Arbitration Act. Accordingly, and except as otherwise stated in Section 15.2, the interpretation of this Agreement shall be governed by California law, without regard to the choice or conflicts of law provisions of any jurisdiction. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Uber Services that are not subject to the arbitration clause contained in Section 15.2 shall be subject to the exclusive jurisdiction of the state and federal courts located in the City and County of San Francisco, California. However, neither the choice of law provision regarding the interpretation of this Agreement nor the forum selection provision is intended to create any other substantive right to non-Californians to assert claims under California law whether that be by statute, common law, or otherwise. These provisions, and except as otherwise provided in Section 15.2, are only intended to specify the use of California law to interpret this Agreement and the forum for disputes asserting a breach of this Agreement, and these provisions shall not be interpreted as generally extending California law to you if you do not otherwise reside or provide services in California. The foregoing choice of law and forum selection provisions do not apply to the arbitration clause in Section 15.2 or to any arbitrable disputes as defined therein. Instead, as described in Section 15.2, the Federal Arbitration

Act shall apply to any such disputes. The failure of Company to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Uber in writing.

15.2 **Arbitration Provision.**

IMPORTANT: PLEASE REVIEW THIS ARBITRATION PROVISION CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH THE COMPANY ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION, EXCEPT AS PROVIDED BELOW. YOU MAY CHOOSE TO OPT OUT OF THIS ARBITRATION PROVISION BY FOLLOWING THE BELOW INSTRUCTIONS. THERE ARE AND/OR MAY BE LAWSUITS ALLEGING CLASS, COLLECTIVE OR REPRESENTATIVE CLAIMS ON YOUR BEHALF AGAINST THE COMPANY. IF YOU DO NOT OPT OUT OF THIS ARBITRATION PROVISION AND THEREFORE AGREE TO ARBITRATION WITH THE COMPANY, YOU ARE AGREEING IN ADVANCE, EXCEPT AS OTHERWISE PROVIDED BELOW, THAT YOU WILL NOT PARTICIPATE IN AND, THEREFORE, WILL NOT SEEK OR BE ELIGIBLE TO RECOVER MONETARY OR OTHER RELIEF IN CONNECTION WITH, ANY SUCH CLASS, COLLECTIVE OR REPRESENTATIVE LAWSUIT. THIS ARBITRATION PROVISION, HOWEVER, WILL ALLOW YOU TO BRING INDIVIDUAL CLAIMS IN ARBITRATION ON YOUR OWN BEHALF.

15.2.1 **How This Arbitration Provision Applies**

This Arbitration Provision is a contract governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. and evidences a transaction involving commerce, and you agree that this is not a contract of employment involving any class of workers engaged in foreign or interstate commerce within the meaning of Section 1 of the Federal Arbitration Act (FAA). If notwithstanding the foregoing, the FAA does not apply to this Arbitration Provision, the law pertaining to arbitration agreements of the state where you reside when you entered into this Agreement shall apply. Except as it otherwise provides, this Arbitration Provision applies to any legal dispute, past, present or future, arising out of or related to your relationship with the Company or relationship with any of its agents, employees, executives, officers, investors, shareholders, affiliates, successors, assigns, subsidiaries or parent companies (each of which may enforce this Arbitration Provision as third party beneficiaries), and termination of that relationship, and survives after the relationship terminates.

This Arbitration Provision applies to all claims whether brought by you or the Company, except as provided below. This Arbitration Provision requires all such

claims to be resolved only by an arbitrator through final and binding individual arbitration and not by way of court or jury trial. Except as provided below regarding the Class Action Waiver and Representative Action Waiver, such disputes include without limitation disputes arising out of or relating to interpretation or application of this Arbitration Provision, including the formation, scope, enforceability, waiver, applicability, revocability or validity of this Arbitration Provision or any portion of this Arbitration Provision.

Except as it otherwise provides, this Arbitration Provision also applies, without limitation, to disputes between you and the Company, or between you and any other entity or individual, arising out of or related to your application for and use of an account to use the Uber Services and Driver App as a driver, background checks, your privacy, your contractual relationship with the Company or the termination of that relationship (including post-relationship defamation or retaliation claims), the nature of your relationship with the Company (including, but not limited to, any claim that you are an employee of the Company), trade secrets, workplace safety and health, unfair competition, compensation, minimum wage, expense reimbursement, overtime, breaks and rest periods, retaliation, discrimination, or harassment and claims arising under the Telephone Consumer Protection Act, Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, 8 U.S.C. § 1324b (unfair immigration related practices), Americans With Disabilities Act, Age Discrimination in Employment Act, Fair Labor Standards Act, Worker Adjustment and Retraining Notification Act, Older Workers Benefits Protection Act of 1990, Occupational Safety and Health Act, Consolidated Omnibus Budget Reconciliation Act of 1985, federal, state or local statutes or regulations addressing the same or similar subject matters, and all other federal, state, or local statutory, common law and legal claims (including without limitation, torts) arising out of or relating to your relationship with the Company or the termination of that relationship.

15.2.2 Limitations On How This Arbitration Provision Applies

Nothing in this Arbitration Provision prevents you from making a report to or filing a claim or charge with a government agency, including without limitation the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. This Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Arbitration Provision.

Where you allege claims of sexual assault or sexual harassment, you may elect to bring those claims in a court of competent jurisdiction instead of arbitration. Company agrees to honor your election of forum with respect to your individual sexual harassment or sexual assault claim but in so doing does not waive the enforceability of this Arbitration Provision as to any other provision (including but not limited to Section 15.2.4 below, which will continue to apply in court and arbitration), controversy, claim or dispute.

To the extent an Act of Congress or applicable federal law not preempted by the Federal Arbitration Act provides that a particular claim or dispute may not be subject to pre-dispute arbitration, such claim or dispute is excluded from the coverage of this Arbitration Provision. Likewise, if the Federal Arbitration Act does not apply to a claim or dispute, any claims or disputes that may not be subject to pre-dispute arbitration under applicable state arbitration law will be excluded from the coverage of this Arbitration Provision.

Impact on Pending Litigation: This Arbitration Provision shall not affect your standing with respect to any litigation against the Company brought by you or on your behalf that is pending in a state or federal court or arbitration as of the date of your receipt of this Arbitration Provision (“pending litigation”). Therefore:

- If you are or previously were a driver-partner authorized to use the Uber Services and Driver App, and at the time of your receipt of this Agreement you were not bound by an existing arbitration agreement with the Company, you shall remain eligible to participate in any pending litigation to which you were a party or putative class, collective or representative action member regardless of whether you opt out of this Arbitration Provision.
- If, at the time of your receipt of this Agreement, you were bound by an existing arbitration agreement with the Company, that arbitration agreement will continue to apply to any pending litigation, even if you opt out of this Arbitration Provision.
- If, at the time of your receipt of this Agreement, you were not previously a driver-partner authorized to use the Uber Services and Driver App, then this Arbitration Provision will apply to covered claims and any pending litigation unless you opt out of this Arbitration Provision as provided below.

15.2.3 **Governing Rules, Starting The Arbitration, And Selecting The Arbitrator**

The JAMS Comprehensive Arbitration Rules & Procedures (the “*JAMS Rules*”) will apply to arbitration under this Arbitration Provision; however, if there is a conflict between the JAMS Rules and this Arbitration Provision, this Arbitration Provision shall govern. The JAMS Rules are available by, for example, searching Google.com, to locate “JAMS Comprehensive Arbitration Rules” or by clicking here: <https://www.jamsadr.com/rules-comprehensive-arbitration/>.

Prior to commencing arbitration with JAMS, the party bringing the claim in arbitration must first demand arbitration in writing within the applicable statute of limitations period. The demand for arbitration shall include identification of the parties, a statement of the legal and factual basis of the claim(s), and a specification of the remedy sought and the amount in controversy. Any demand for arbitration made to the Company shall be served upon Uber’s registered agent for service of process (CT Corporation, 818 West Seventh Street, Suite 930, Los Angeles, California 90017). Any demand for arbitration made to you shall be sent via electronic email to the email address associated with your driver-partner account.

Before the arbitration demand is submitted to JAMS, the party bringing the claim shall first attempt to informally negotiate with the other party, in good faith, a resolution of the dispute, claim or controversy between the parties for a period of not less than 30 days but no more than 45 days (the “*negotiation period*”) unless extended by mutual agreement of the parties. During the negotiation period, any otherwise applicable statute of limitations shall be tolled. If the parties cannot reach agreement to resolve the dispute, claim or controversy within the negotiation period, the party bringing the claim shall submit the arbitration demand to JAMS.

To commence arbitration, the party bringing the claim must: (1) submit the arbitration demand to JAMS, and (2) pay its, his or her portion of any initial arbitration filing fee (see Section 15.2.6 below).

During the negotiation period, the party bringing the claim shall also make a good faith effort to meet and confer with the other party regarding the selection of an Arbitrator. If the parties reach agreement on an Arbitrator not affiliated with JAMS or to use procedures either not specified in the JAMS Rules or in lieu of the JAMS Rules, any such agreement shall be memorialized in writing before arbitration is commenced.

Delivering a written arbitration demand to the other party will not relieve the party bringing the claim of the obligation to commence arbitration as described above. It shall always be the obligation of the party bringing the claim to commence arbitration.

If, for any reason, the parties cannot agree to an Arbitrator or JAMS will not administer the arbitration, either party may apply to a court of competent jurisdiction with authority over the location where the arbitration will be conducted for appointment of a neutral Arbitrator. The location of the arbitration shall be no more than 45 miles from and in the same state where you last used the Uber Services and Driver App as a driver, unless each party to the arbitration agrees in writing otherwise.

All claims in arbitration are subject to the same statutes of limitation that would apply in court. The Arbitrator shall resolve all disputes regarding the timeliness or propriety of the demand for arbitration.

15.2.4 Class Action Waiver

This Arbitration Provision affects your ability to participate in class or collective actions. Both the Company and you agree to bring any dispute in arbitration on an individual basis only, and not on a class or collective basis on behalf of others. There will be no right or authority for any dispute to be brought, heard or arbitrated as a class or collective action, or for you to participate as a member in any such class or collective proceeding ("*Class Action Waiver*"). Notwithstanding any other provision of this Arbitration Provision or the JAMS Rules, disputes in court or arbitration regarding the validity, enforceability, conscionability or breach of the Class Action Waiver, or whether the Class Action Waiver is void or voidable, may be resolved only by the court and not by an arbitrator. In any case in which (1) the dispute is filed as a class or collective action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class or collective action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

15.2.5 Representative Action Waiver

This Arbitration Provision affects your ability to participate in representative actions. To the maximum extent provided by law, both the Company and you agree to bring any dispute in arbitration on an individual basis only, and not on a representative basis—including but not limited to as a private attorney general representative under the California Labor Code—on behalf of

others. There will be no right or authority for any dispute to be brought, heard or arbitrated as a representative action, or for you to participate as a member in any such representative proceeding ("*Representative Action Waiver*"). Notwithstanding any other provision of this Arbitration Provision or the JAMS Rules, disputes in court or arbitration regarding the validity, enforceability, conscionability or breach of the Representative Action Waiver, or whether the Representative Action Waiver is void or voidable, may be resolved only by the court and not by an arbitrator. If any portion of this Representative Action Waiver is found to be unenforceable or unlawful for any reason (1) any representative claims subject to the unenforceable or unlawful portion(s) shall proceed in a civil court of competent jurisdiction; (2) the portion of the Representative Action Waiver that is enforceable shall be enforced in arbitration; (3) the unenforceable or unlawful provision shall be severed from this Agreement; and (4) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the Arbitration Provision or the arbitrability of any remaining claims asserted by you or the Company.

Disputes regarding the nature of your relationship with the Company (including, but not limited to, any claim that you are an employee of the Company), as well as any claim you bring on your own behalf as an aggrieved worker for recovery of underpaid wages or other individualized relief (as opposed to a representative claim for civil penalties) are arbitrable and must be brought in arbitration on an individual basis only as required by this Arbitration Provision. You agree that any representative claim that is permitted to proceed in a civil court of competent jurisdiction must be stayed pending the arbitration of your dispute regarding the nature of your relationship with the Company and any claim you bring on your own behalf for individualized relief.

15.2.6 Paying For The Arbitration

Except in the case of offers of judgment (such as under Federal Rule of Civil Procedure 68 or any applicable state equivalents), each party will pay the fees for its, his or her own attorneys and any costs that are not unique to arbitration, subject to any remedies to which that party may later be entitled under applicable law.

You and the Company shall follow the JAMS Rules applicable to initial arbitration filing fees, except that your portion of any initial arbitration filing fee shall not exceed the amount you would be required to pay to initiate a lawsuit in federal court in the jurisdiction where the arbitration will be conducted. After (and only after) you have paid your portion of any initial arbitration filing fee, the

Company will make up the difference, if any, between the fee you have paid and the amount required by the JAMS Rules.

In all cases where required by law, the Company will pay the Arbitrator's fees, as well as all fees and costs unique to arbitration. Otherwise, such fee(s) will be apportioned between the parties in accordance with said applicable law, and any disputes in that regard will be resolved by the Arbitrator. You agree to not oppose any negotiations between JAMS and the Company relating only to the Company's fees.

15.2.7 The Arbitration Hearing And Award

Within 30 days of the close of the arbitration hearing, any party will have the right to prepare, serve on the other party and file with the Arbitrator a brief. The Arbitrator may award any party any remedy to which that party is entitled under applicable law, but such remedies shall be limited to those that would be available to a party in his or her individual capacity in a court of law for the claims presented to and decided by the Arbitrator. The Arbitrator shall apply applicable controlling law and will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. A court of competent jurisdiction shall have the authority to enter a judgment upon the award made pursuant to the arbitration.

15.2.8 Your Right To Opt Out Of This Arbitration Provision

Agreeing to this Arbitration Provision is not a mandatory condition of your contractual relationship with the Company. If you do not want to be subject to this Arbitration Provision, you may opt out of this Arbitration Provision (subject to the pending litigation provision in Section 15.2.2, and the limitations set forth in this Section 15.2.8). To do so, within 30 days of the date that this Agreement is electronically accepted by you, you must send an electronic email from the email address associated with your driver-partner account to optout@uber.com, stating your intent to opt out of this Arbitration Provision, as well as your name, the phone number associated with your driver-partner account, and the city in which you reside.

An email sent by your agent or representative (including your counsel) shall not be effective. Your email may opt out yourself only, and any email that purports to opt out anyone other than yourself shall be void as to any others. Should you not opt out of this Arbitration Provision within the 30-day period, you and the Company shall be bound by the terms of this Arbitration Provision.

You will not be subject to retaliation if you exercise your right to opt out of this Arbitration Provision.

If you opt out of this Arbitration Provision and at the time of your receipt of this Agreement you were bound by an existing agreement to arbitrate disputes arising out of or related to your use of the Uber Services and Driver App, that existing arbitration agreement will remain in full force and effect.

Neither your acceptance of this Agreement nor your decision to opt out of this Arbitration Provision will affect any obligation you have to arbitrate disputes not specified in this Arbitration Provision pursuant to any other agreement you have with the Company or any of its subsidiaries or affiliate entities. Likewise, your acceptance of or decision to opt out of any other arbitration agreement you have with the Company or any of its subsidiaries or affiliate entities shall not affect any obligation you have to arbitrate claims pursuant to this Arbitration Provision.

15.2.9 Enforcement Of This Arbitration Provision

You have the right to consult with counsel of your choice concerning this Arbitration Provision and to be represented by counsel at any stage during the arbitration process. Except as provided in Sections 15.2.2 and 15.2.8 of this Arbitration Provision, this Arbitration Provision replaces prior agreements regarding the arbitration of disputes and is the full and complete agreement relating to the formal resolution of disputes covered by this Arbitration Provision. In the event any portion of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable. This Arbitration Provision will survive the termination of your relationship with the Company, and it will continue to apply if your relationship with the Company is ended but later renewed.

EXHIBIT D

UBER USA, LLC

TECHNOLOGY SERVICES AGREEMENT

Last update: December 11, 2015

This Technology Services Agreement ("*Agreement*") constitutes a legal agreement between an independent company in the business of providing transportation services ("*Customer*" or "*You*") and Uber USA, LLC, a limited liability company ("*Uber*").

Uber provides the Uber Services (as defined below) for the purpose of providing lead generation to transportation services providers. The Uber Services enable an authorized transportation provider to seek, receive and fulfill requests for transportation services from an authorized user of Uber's mobile application.

Customer is authorized to provide transportation services in the state(s) and jurisdiction(s) in which it operates, and it desires to enter into this Agreement for the purpose of accessing and using the Uber Services to enhance its transportation business.

Customer acknowledges and agrees that Uber is a technology services provider that does not provide transportation services, function as a transportation carrier, nor operate as a broker for the transportation of passengers.

In order to use the Uber Services, Customer must agree to the terms and conditions that are set forth below. Upon Customer's execution (electronic or otherwise) of this Agreement, Customer and Uber shall be bound by the terms and conditions set forth herein.

IMPORTANT: PLEASE NOTE THAT TO USE THE UBER SERVICES AND THE ASSOCIATED SOFTWARE, YOU MUST AGREE TO THE TERMS AND CONDITIONS SET FORTH BELOW. PLEASE REVIEW THE ARBITRATION PROVISION SET FORTH BELOW IN SECTION 15.3 CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH UBER ON AN INDIVIDUAL BASIS, EXCEPT AS PROVIDED IN SECTION 15.3, THROUGH FINAL AND BINDING ARBITRATION UNLESS YOU CHOOSE TO OPT OUT OF THE ARBITRATION PROVISION. BY VIRTUE OF YOUR ELECTRONIC EXECUTION OF THIS AGREEMENT, YOU WILL BE ACKNOWLEDGING THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT (INCLUDING SECTION 15.3) AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT BUSINESS DECISION. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED IN SECTION 15.3 BELOW.

1. Definitions

- 1.1. *"Affiliate"* means an entity that, directly or indirectly, controls, is under the control of, or is under common control with a party, where control means having more than fifty percent (50%) of the voting stock or other ownership interest or the majority of the voting rights of such entity.
- 1.2. *"City Addendum"* means an addendum to this Agreement or supplemental information setting forth additional Territory-specific terms, as made available and as updated by Uber from time to time.
- 1.3. *"Device"* means an Uber Device or Driver-Provided Device, as the case may be.
- 1.4. *"Driver"* means a principal, employee or contractor of Customer: (a) who meets the then-current Uber requirements to be an active driver using the Uber Services; (b) whom Uber authorizes to access the Uber Services to provide Transportation Services on behalf of Customer; and (c) who has entered into the Driver Addendum.
- 1.5. *"Driver Addendum"* means the terms and conditions that Customer is required to enter into with a Driver prior to such Driver providing Transportation Services on behalf of Customer (as may be updated by Uber from time to time).
- 1.6. *"Driver App"* means Uber's mobile application that enables transportation providers to access the Uber Services for the purpose of seeking, receiving and fulfilling on-demand requests for transportation services by Users, as may be updated or modified by Uber at its discretion from time to time.
- 1.7. *"Driver ID"* means the identification and password key assigned by Uber to a Driver that enables a Driver to use and access the Driver App.
- 1.8. *"Driver-Provided Device"* means a mobile device owned or controlled by Customer or a Driver: (a) that meets the then-current Uber specifications for mobile devices as set forth at www.uber.com/byod-devices; and (b) on which the Driver App has been installed as authorized by Uber solely for the purpose of providing Transportation Services.
- 1.9. *"Fare"* has the meaning set forth in Section 4.1.
- 1.10. *"Service Fee"* has the meaning set forth in Section 4.4.
- 1.11. *"Taxi Services"* has the meaning set forth in Section 3.1.
- 1.12. *"Territory"* means the city or metro areas in the United States in which Customer and its Drivers are enabled by the Driver App to receive requests for Transportation Services.
- 1.13. *"Tolls"* means any applicable road, bridge, ferry, tunnel and airport charges and fees, including inner-city congestion, environmental or similar charges as reasonably determined by the Uber Services based on available information.
- 1.14. *"Transportation Services"* means the provision of passenger transportation services to Users via the Uber Services in the Territory by Customer and its Drivers using the Vehicles.
- 1.15. *"Uber Data"* means all data related to the access and use of the Uber Services hereunder, including all data related to Users (including User Information), all data related to the provision of Transportation Services via the Uber Services and the Driver App, and the Driver ID.
- 1.16. *"Uber Device"* means a mobile device owned or controlled by Uber that is provided to Customer or a Driver for the sole purpose of such Driver using the Driver App to provide Transportation Services.

- 1.17. *“Uber Services”* mean Uber’s on-demand lead generation and related services that enable transportation providers to seek, receive and fulfill on-demand requests for transportation services by Users seeking transportation services; such Uber Services include access to the Driver App and Uber’s software, websites, payment services as described in Section 4 below, and related support services systems, as may be updated or modified by Uber at its discretion from time to time.
- 1.18. *“User”* means an end user authorized by Uber to use Uber’s mobile application for the purpose of obtaining Transportation Services offered by Uber’s transportation provider customers.
- 1.19. *“User Information”* means information about a User made available to Customer or a Driver in connection with such User’s request for and use of Transportation Services, which may include the User’s name, pick-up location, contact information and photo.
- 1.20. *“Vehicle”* means any vehicle of Customer that: (a) meets the then-current Uber requirements for a vehicle on the Uber Services; and (b) Uber authorizes for use by a Driver for the purpose of providing Transportation Services on behalf of Customer.

2. Use of the Uber Services

- 2.1. **Driver IDs.** Uber will issue Customer a Driver ID for each Driver providing Transportation Services to enable Customer and each Driver to access and use the Driver App on a Device in accordance with the Driver Addendum and this Agreement. Uber reserves the right to deactivate the Driver ID of those Drivers who have not fulfilled a request for Transportation Services using the Driver App at least once a month. **Customer agrees that it will, and that it will ensure that its Drivers will, maintain Driver IDs in confidence and not share Driver IDs with any third party other than the Driver associated with such Driver ID for the purpose of providing Transportation Services. Customer will immediately notify Uber of any actual or suspected breach or improper use or disclosure of a Driver ID or the Driver App.**
- 2.2. **Provision of Transportation Services.** When the Driver App is active, User requests for Transportation Services may appear to a Driver via the Driver App if the Driver is available and in the vicinity of the User. If a Driver accepts a User’s request for Transportation Services, the Uber Services will provide certain User Information to such Driver via the Driver App, including the User’s first name and pickup location. In order to enhance User satisfaction with the Uber mobile application and a Driver’s Transportation Services, it is recommended that Driver waits at least ten (10) minutes for a User to show up at the requested pick-up location. The Driver will obtain the destination from the User, either in person upon pickup or from the Driver App if the User elects to enter such destination via Uber’s mobile application. Customer acknowledges and agrees that once a Driver has accepted a User’s request for Transportation Services, Uber’s mobile application may provide certain information about the Driver to the User, including the Driver’s first name, contact information, Customer entity name, photo and location, and the Driver’s Vehicle’s make and license plate number. Customer shall not, and shall ensure that all Drivers do not, contact any Users or use any User’s personal data for any reason other than for the purposes of fulfilling Transportation Services. As between Uber and Customer, Customer acknowledges and agrees that: (a) Customer and its Drivers are solely responsible for determining the most effective, efficient and safe manner to perform each instance of Transportation Services; and (b) except for the Uber Services or any Uber Devices (if applicable), Customer shall provide all necessary equipment, tools and other materials, at Customer’s own expense, necessary to perform Transportation Services. Customer understands and agrees that Customer and each Driver have a legal obligation under the Americans with Disabilities Act and

similar state laws to transport Users with Service Animals (as defined by applicable state and federal law), including guide dogs for the blind and visually impaired Users, and there is no exception to this obligation for allergies or religious objections. Customer's or any Driver's knowing failure to transport a User with a Service Animal shall constitute a material breach of this Agreement. Customer agrees that a "knowing failure" to comply with this legal obligation shall constitute either: (1) a denial of a ride where the Customer/Driver states the denial was due to a Service Animal; or (2) there is more than one (1) instance in which a User or the companion of a User alleges that the Customer/Driver cancelled or refused a ride on the basis of a Service Animal.

- 2.3. **Customer's Relationship with Users.** Customer acknowledges and agrees that Customer's provision of Transportation Services to Users creates a direct business relationship between Customer and the User. Uber is not responsible or liable for the actions or inactions of a User in relation to Customer or any Driver, the activities of Customer, a Driver or any Vehicle. Customer shall have the sole responsibility for any obligations or liabilities to Users or third parties that arise from its provision of Transportation Services. Customer acknowledges and agrees that it and each Driver are solely responsible for taking such precautions as may be reasonable and proper (including maintaining adequate insurance that meets the requirements of all applicable laws including motor vehicle financial responsibility) regarding any acts or omissions of a User or third party. Customer acknowledges and agrees that Uber may release the contact and/or insurance information of Customer and/or a Driver to a User upon such User's reasonable request. Customer acknowledges and agrees that, unless specifically consented to by a User, neither Customer nor Driver may transport or allow inside any Vehicle individuals other than a User and any individuals authorized by such User during the performance of Transportation Services for such User. Customer acknowledges and agrees, and shall ensure that its Drivers agree, that all Users should be transported directly to their specified destination, as directed by the applicable User, without unauthorized interruption or unauthorized stops.
- 2.4. **Customer's Relationship with Uber.** Customer acknowledges and agrees that Uber's provision to Customer of the Driver App and the Uber Services creates a direct business relationship between Uber and Customer. Uber does not, and shall not be deemed to, direct or control Customer or its Drivers generally or in their performance under this Agreement specifically, including in connection with the operation of Customer's business, the provision of Transportation Services, the acts or omissions of Drivers, or the operation and maintenance of any Vehicles. Customer and its Drivers retain the sole right to determine when, where, and for how long each of them will utilize the Driver App or the Uber Services. Customer and its Drivers retain the option, via the Driver App, to attempt to accept or to decline or ignore a User's request for Transportation Services via the Uber Services, or to cancel an accepted request for Transportation Services via the Driver App, subject to Uber's then-current cancellation policies. With the exception of any signage required by local law or permit/license requirements, Uber shall have no right to require Customer or any Driver to: (a) display Uber's or any of its Affiliates' names, logos or colors on any Vehicle(s); or (b) wear a uniform or any other clothing displaying Uber's or any of its Affiliates' names, logos or colors. Customer acknowledges and agrees that it has complete discretion to operate its independent business and direct its Drivers at its own discretion, including the ability to provide services at any time to any third party separate and apart from Transportation Services. For the sake of clarity, Customer understands that Customer retains the complete right to provide transportation services to its existing customers and to use other software application services in addition to the Uber Services. Uber retains the right to deactivate or otherwise restrict Customer or any Driver from accessing or

using the Driver App or the Uber Services in the event of a violation or alleged violation of this Agreement, a violation or alleged violation of a Driver Addendum, Customer's or any Driver's disparagement of Uber or any of its Affiliates, Customer's or any Driver's act or omission that causes harm to Uber's or its Affiliates' brand, reputation or business as determined by Uber in its sole discretion.

- 2.5. **Customer's Relationship with Drivers.** Customer shall have the sole responsibility for any obligations or liabilities to Drivers that arise from its relationship with its Drivers (including provision of Transportation Services). Customer acknowledges and agrees that it exercises sole control over the Drivers and will comply with all applicable laws (including tax, social security and employment laws) governing or otherwise applicable to its relationship with its Drivers. Notwithstanding Customer's right, if applicable, to take recourse against a Driver, Customer acknowledges and agrees that it is at all times responsible and liable for the acts and omissions of its Drivers vis-à-vis Users and Uber, even where such vicarious liability may not be mandated under applicable law. Customer shall require each Driver to enter into a Driver Addendum (as may be updated from time to time) and shall provide a copy of each executed Driver Addendum to Uber. Customer acknowledges and agrees that Uber is a third party beneficiary of each Driver Addendum, and that, upon a Driver's acceptance of the terms and conditions of the Driver Addendum, Uber will have the right (and will be deemed to have accepted the right) to enforce the Driver Addendum against the Driver as a third party beneficiary thereof.

2.6. **Ratings.**

- 2.6.1. Customer acknowledges and agrees that: (a) after receiving Transportation Services, a User will be prompted by Uber's mobile application to provide a rating of such Transportation Services and Driver and, optionally, to provide comments or feedback about such Transportation Services and Driver; and (b) after providing Transportation Services, the Driver will be prompted by the Driver App to provide a rating of the User and, optionally, to provide comments or feedback about the User. Customer shall instruct all Drivers to provide ratings and feedback in good faith.
- 2.6.2. Customer acknowledges that Uber desires that Users have access to high-quality services via Uber's mobile application. In order to continue to receive access to the Driver App and the Uber Services, each Driver must maintain an average rating by Users that exceeds the minimum average acceptable rating established by Uber for the Territory, as may be updated from time to time by Uber in its sole discretion ("*Minimum Average Rating*"). A Driver's average rating is intended to reflect Users' satisfaction with the Driver's Transportation Services rather than any such Driver's compliance with any of Uber's policies or recommendations. In the event a Driver's average rating falls below the Minimum Average Rating, Uber will notify Customer and may provide the Driver in Uber's discretion, a limited period of time to raise his or her average rating above the Minimum Average Rating. If such Driver does not increase his or her average rating above the Minimum Average Rating within the time period allowed (if any), Uber reserves the right to deactivate such Driver's access to the Driver App and the Uber Services. Additionally, Customer acknowledges and agrees that repeated failure by a Driver to accept User requests for Transportation Services while such Driver is logged in to the Driver App creates a negative experience for Users of Uber's mobile application. Accordingly, Customer agrees and shall ensure that if a Driver does not wish to accept User requests for Transportation Services for a period of time, such Driver will log off of the Driver App.

- 2.6.3. Uber and its Affiliates reserve the right to use, share and display Driver and User ratings and comments in any manner in connection with the business of Uber and its Affiliates without attribution to or approval of Customer or the applicable Driver. Customer acknowledges that Uber and its Affiliates are distributors (without any obligation to verify) and not publishers of Driver and User ratings and comments, provided that Uber and its Affiliates reserve the right to edit or remove comments in the event that such comments include obscenities or other objectionable content, include an individual's name or other personal information, or violate any privacy laws, other applicable laws or Uber's or its Affiliates' content policies.

2.7. **Devices.**

- 2.7.1. Uber encourages Customer to use Driver-Provided Devices in providing Transportation Services. Otherwise, if Customer elects to use any Uber Devices, Uber will supply Uber Devices upon request to each authorized Driver and provide the necessary wireless data plan for such Devices, provided that Uber will require reimbursement from Customer for the costs associated with the wireless data plan of each Uber Device and/or request a deposit for each Uber Device. Customer acknowledges and agrees that: (a) Uber Devices may only be used for the purpose of enabling Driver access to the Uber Services; and (b) Uber Devices may not be transferred, loaned, sold or otherwise provided in any manner to any party other than the Driver assigned to use such Uber Device. Uber Devices shall at all times remain the property of Uber, and upon termination of this Agreement or the termination or deactivation of a Driver, Customer agrees to return to Uber the applicable Uber Devices within ten (10) days. Customer acknowledges and agrees that failure to timely return any Uber Devices, or damage to Uber Devices outside of "normal wear and tear," will result in the forfeiture of related deposits.
- 2.7.2. If Customer elects to use any Driver-Provided Devices: (i) Customer and/or its Drivers are responsible for the acquisition, cost and maintenance of such Driver-Provided Devices as well as any necessary wireless data plan; and (ii) Uber shall make available the Driver App for installation on such Driver-Provided Devices. Uber hereby grants the authorized user of any Driver-Provided Device a personal, non-exclusive, non-transferable license to install and use the Driver App on a Driver-Provided Device solely for the purpose of providing Transportation Services. Customer agrees to not, and shall cause each applicable Driver to not, provide, distribute or share, or enable the provision, distribution or sharing of, the Driver App (or any data associated therewith) with any third party. The foregoing license grant shall immediately terminate and Driver will delete and fully remove the Driver App from the Driver-Provided Device in the event that Customer and/or the applicable Driver ceases to provide Transportation Services using the Driver-Provided Device. Customer agrees, and shall inform each applicable Driver that: (i) use of the Driver App on a Driver-Provided Device requires an active data plan with a wireless carrier associated with the Driver-Provided Device, which data plan will be provided by either Customer or the applicable Driver at their own expense; and (ii) use of the Driver App on a Driver-Provided Device as an interface with the Uber Services may consume very large amounts of data through the data plan. **UBER ADVISES THAT DRIVER-PROVIDED DEVICES ONLY BE USED UNDER A DATA PLAN WITH UNLIMITED OR VERY HIGH DATA USAGE LIMITS, AND UBER SHALL NOT BE RESPONSIBLE**

OR LIABLE FOR ANY FEES, COSTS, OR OVERAGE CHARGES ASSOCIATED WITH ANY DATA PLAN.

- 2.8. **Location Based Services.** Customer acknowledges and agrees that each Driver's geo-location information must be provided to the Uber Services via a Device in order to provide Transportation Services. Customer acknowledges and agrees, and shall inform and obtain the consent of each Driver, that: (a) the Driver's geo-location information may be obtained by the Uber Services while the Driver App is running; and (b) the approximate location of the Driver's Vehicle will be displayed to the User before and during the provision of Transportation Services to such User. In addition, Company and its Affiliates may monitor, track and share with third parties Driver's geo-location information obtained by the Driver App and Device for safety and security purposes.

3. Drivers and Vehicles

- 3.1. **Driver Requirements.** Customer acknowledges and agrees that each Driver shall at all times: (a) hold and maintain (i) a valid driver's license with the appropriate level of certification to operate the Vehicle assigned to such Driver, and (ii) all licenses, permits, approvals and authority applicable to Customer and/or Driver that are necessary to provide passenger transportation services to third parties in the Territory; (b) possess the appropriate and current level of training, expertise and experience to provide Transportation Services in a professional manner with due skill, care and diligence; and (c) maintain high standards of professionalism, service and courtesy. Customer acknowledges and agrees that each Driver may be subject to certain background and driving record checks from time to time in order for such Driver to qualify to provide, and remain eligible to provide, Transportation Services. In addition if Customer and/or Driver are using the Uber App to provide Transportation Services in conjunction with operating a taxi ("*Taxi Services*"), such Customer and/or Driver shall comply with all applicable laws with respect thereto. Customer acknowledges and agrees that Uber reserves the right, at any time in Uber's sole discretion, to deactivate or otherwise restrict a Driver from accessing or using the Driver App or the Uber Services if Customer or such Driver fails to meet the requirements set forth in this Agreement or the Driver Addendum.
- 3.2. **Vehicle Requirements.** Customer acknowledges and agrees that each Vehicle shall at all times be: (a) properly registered and licensed to operate as a passenger transportation vehicle in the Territory; (b) owned or leased by Customer, or otherwise in Customer's lawful possession; (c) suitable for performing the passenger transportation services contemplated by this Agreement; and (d) maintained in good operating condition, consistent with industry safety and maintenance standards for a Vehicle of its kind and any additional standards or requirements in the applicable Territory, and in a clean and sanitary condition.
- 3.3. **Documentation.** To ensure Customer's and each of its Drivers' compliance with all requirements in Sections 3.1 and 3.2 above, Customer must provide Uber with written copies of all such licenses, permits, approvals, authority, registrations and certifications prior to Customer's and the applicable Drivers' provision of any Transportation Services. Thereafter, Customer must submit to Uber written evidence of all such licenses, permits, approvals, authority, registrations and certifications as they are renewed. Uber shall, upon request, be entitled to review such licenses, permits, approvals, authority, registrations and certifications from time to time, and Customer's failure to provide or maintain any of the foregoing shall constitute a material breach of this Agreement. Uber reserves the right to independently verify Customer's and any Driver's documentation from time to time in any way Uber deems appropriate in its reasonable discretion.

4. Financial Terms

- 4.1. **Fare Calculation and Customer Payment.** Customer is entitled to charge a fare for each instance of completed Transportation Services provided to a User that are obtained via the Uber Services (“Fare”), where such Fare is calculated based upon a base fare amount plus distance (as determined by Uber using location-based services enabled through the Device) and/or time amounts, as detailed at www.uber.com/cities for the applicable Territory (“Fare Calculation”). Customer acknowledges and agrees that the Fare provided under the Fare Calculation is the only payment Customer will receive in connection with the provision of Transportation Services, and that neither the Fare nor the Fare Calculation includes any gratuity. Customer is also entitled to charge User for any Tolls, taxes or fees incurred during the provision of Transportation Services, and, if applicable. Customer: (i) appoints Uber as Customer’s limited payment collection agent solely for the purpose of accepting the Fare, applicable Tolls and, depending on the region and/or if requested by Customer, applicable taxes and fees from the User on behalf of the Customer via the payment processing functionality facilitated by the Uber Services; and (ii) agrees that payment made by User to Uber (or to an Affiliate of Uber acting as an agent of Uber) shall be considered the same as payment made directly by User to Customer. In addition, the parties acknowledge and agree that as between Customer and Uber, the Fare is a recommended amount, and the primary purpose of the pre-arranged Fare is to act as the default amount in the event Customer does not negotiate a different amount. Customer shall always have the right to: (i) charge a fare that is less than the pre-arranged Fare; or (ii) negotiate, at Customer’s request, a Fare that is lower than the pre-arranged Fare (each of (i) and (ii) herein, a “*Negotiated Fare*”). Uber shall consider all such requests from Customer in good faith. Uber agrees to remit, or cause to be remitted, to Customer on at least a weekly basis: (a) the Fare less the applicable Service Fee; (b) the Tolls; and (c) depending on the region, certain taxes and ancillary fees. If Customer has separately agreed that other amounts may be deducted from the Fare prior to remittance to Customer (e.g., vehicle financing payments, lease payments, mobile device usage charges, etc.), the order of any such deductions from the Fare shall be determined exclusively by Uber (as between Customer and Uber). Notwithstanding anything to the contrary in this Section 4.1, if Customer is providing Taxi Services, the following shall apply: (x) the Fare is calculated pursuant to local taxi regulations in the Territory; (y) Customer or Driver agrees to enter the exact Fare amount (as indicated by the official taxi meter in the Vehicle) into the Driver App upon completion of an instance of Transportation Services; and (z) in some jurisdictions, Users will pay such Customer or Driver directly rather than through Uber’s mobile application (Uber will notify Customer if (z) is applicable in its Territory).
- 4.2. **Changes to Fare Calculation.** Uber reserves the right to change the Fare Calculation at any time in Uber’s discretion based upon local market factors, and Uber will provide notice to Customer in the event of changes to the base fare, per mile, and/or per minute amounts that would result in a change in the recommended Fare for each instance of completed Transportation Services. Continued use of the Uber Services after any such change in the Fare Calculation shall constitute Customer’s consent to such change.
- 4.3. **Fare Adjustment.** Uber reserves the right to: (i) adjust the Fare for a particular instance of Transportation Services (e.g., Driver took an inefficient route, Driver failed to properly end a particular instance of Transportation Services in the Driver App, technical error in the Uber Services, etc.); or (ii) cancel the Fare for a particular instance of Transportation Services (e.g., a User is charged for Transportation Services that were not provided, in the event of a User

complaint, fraud, etc.). Uber's decision to reduce or cancel the Fare in any such manner shall be exercised in a reasonable manner.

- 4.4. **Service Fee.** In consideration of Uber's provision of the Driver App and the Uber Services for the use and benefit of Customer and its Drivers hereunder, Customer agrees to pay Uber a service fee on a per Transportation Services transaction basis calculated as a percentage of the Fare determined by the Fare Calculation (regardless of any Negotiated Fare), as provided to Customer and/or a Driver via email or otherwise made available electronically by Uber from time to time for the applicable Territory ("*Service Fee*"). In the event regulations applicable to Customer's Territory require taxes to be calculated on the Fare, Uber shall calculate the Service Fee based on the Fare net of such taxes. Uber reserves the right to change the Service Fee at any time in Uber's discretion based upon local market factors, and Uber will provide notice to Customer in the event of such change. Continued use of the Uber Services after any such change in the Service Fee calculation shall constitute Customer's consent to such change. In addition, with respect to Taxi Services in the applicable Territory, Customer agrees to pay Uber a booking fee in consideration of Uber's provision of the Driver App and the Uber Services.
- 4.5. **Cancellation Charges.** Customer acknowledges and agrees that Users may elect to cancel requests for Transportation Services that have been accepted by a Driver via the Driver App at any time prior to the Driver's arrival. In the event that a User cancels an accepted request for Transportation Services, Uber may charge the User a cancellation fee on behalf of the Customer. If charged, this cancellation fee shall be deemed the Fare for the cancelled Transportation Services for the purpose of remittance to Customer hereunder ("*Cancellation Fee*"). The parties acknowledge and agree that as between Customer and Uber, this Cancellation Fee is a recommended amount, and the primary purpose of such Cancellation Fee is to act as a default amount in the event Customer does not negotiate a different amount. Customer shall always have the right to: (i) charge a cancellation fee that is less than the Cancellation Fee; or (ii) negotiate, at your request, a cancellation fee that is lower than the Cancellation Fee (each of (i) and (ii) herein, a "*Negotiated Cancellation Fee*"). If charged, the Cancellation Fee (regardless of any Negotiated Cancellation Fee) shall be deemed the Fare for the cancelled Transportation Services for the purpose of remittance to Customer hereunder.
- 4.6. **Receipts.** As part of the Uber Services, Uber provides Customer a system for the delivery of receipts to Users for Transportation Services rendered. Upon the completion of Transportation Services for a User by a Driver, Uber prepares an applicable receipt and issues such receipt to the User via email on behalf of the Customer and applicable Driver. Such receipts are also provided via email or the online portal available to Customer through the Uber Services. Receipts include the breakdown of amounts charged to the User for Transportation Services and may include specific information about the Customer and applicable Driver, including the Customer's entity name and contact information and the Driver's name and photo, as well as a map of the route taken by the Driver. Customer shall inform Drivers that any corrections to a User's receipt for Transportation Services must be submitted to Uber in writing within three (3) business days after the completion of such Transportation Services. Absent such a notice, Uber shall not be liable for any mistakes in or corrections to the receipt or for recalculation or disbursement of the Fare.
- 4.7. **No Additional Amounts.** Customer acknowledges and agrees that, for the mutual benefit of the parties, through advertising and marketing, Uber and its Affiliates may seek to attract new Users to Uber and to increase existing Users' use of Uber's mobile application. Customer

acknowledges and agrees such advertising or marketing does not entitle Customer to any additional monetary amounts beyond the amounts expressly set forth in this Agreement.

- 4.8. **Taxes.** Customer acknowledges and agrees that it is required to: (a) complete all tax registration obligations and calculate and remit all tax liabilities related to its and its Drivers' provision of Transportation Services as required by applicable law; and (b) provide Uber with all relevant tax information. Customer further acknowledges and agrees that it is responsible for taxes on its own income (and that of its Drivers) arising from the performance of Transportation Services. Notwithstanding anything to the contrary in this Agreement, Uber may in its reasonable discretion based on applicable tax and regulatory considerations, collect and remit taxes resulting from its or its Drivers' provision of Transportation Services and/or provide any of the relevant tax information provided by Customer or any Driver pursuant to the foregoing requirements in this Section 4.8 directly to the applicable governmental tax authorities on your behalf or otherwise.

5. Proprietary Rights; License

- 5.1. **License Grant.** Subject to the terms and conditions of this Agreement, Uber hereby grants Customer a non-exclusive, non-transferable, non-sublicensable, non-assignable license, during the term of this Agreement, to use (and allows its Drivers to use) the Uber Services (including the Driver App on a Device) solely for the purpose of providing Transportation Services to Users and tracking resulting Fares and Fees. All rights not expressly granted to Customer are reserved by Uber, its Affiliates and their respective licensors.
- 5.2. **Restrictions.** Customer shall not, and shall not allow any other party to: (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise provide or make available to any other party the Uber Services, Driver App or any Uber Device in any way; (b) modify or make derivative works based upon the Uber Services or Driver App; (c) improperly use the Uber Services or Driver App, including creating Internet "links" to any part of the Uber Services or Driver App, "framing" or "mirroring" any part of the Uber Services or Driver App on any other websites or systems, or "scraping" or otherwise improperly obtaining data from the Uber Services or Driver App; (d) reverse engineer, decompile, modify, or disassemble the Uber Services or Driver App, except as allowed under applicable law; or (e) send spam or otherwise duplicative or unsolicited messages. In addition, Customer shall not, and shall not allow any other party to, access or use the Uber Services or Driver App to: (i) design or develop a competitive or substantially similar product or service; (ii) copy or extract any features, functionality, or content thereof; (iii) launch or cause to be launched on or in connection with the Uber Services an automated program or script, including web spiders, crawlers, robots, indexers, bots, viruses or worms, or any program which may make multiple server requests per second, or unduly burden or hinder the operation and/or performance of the Uber Services; or (iv) attempt to gain unauthorized access to the Uber Services or its related systems or networks.
- 5.3. **Ownership.** The Uber Services, Driver App and Uber Data, including all intellectual property rights therein, and the Uber Devices are and shall remain the property of Uber, its Affiliates or their respective licensors. Neither this Agreement nor Customer's use of the Uber Services, Driver App or Uber Data conveys or grants to Customer any rights in or related to the Uber Services, Driver App or Uber Data, except for the limited license granted above. Customer is not permitted to use or reference in any manner Uber's, its Affiliates', or their respective licensors' company names, logos, product and service names, trademarks, service marks or other indicia of ownership, alone or in combination with other letters, punctuation, words, symbols and/or designs (the "*UBER Marks and Names*"). Customer will not try to register or otherwise claim

ownership in any of the UBER Marks and Names, alone or in combination with other letters, punctuation, words, symbols and/or designs or in any confusingly similar mark or name.

6. Confidentiality

- 6.1. Each party acknowledges and agrees that in the performance of this Agreement it may have access to or may be exposed to, directly or indirectly, confidential information of the other party ("*Confidential Information*"). Confidential Information includes Uber Data, Driver IDs, User Information, and the transaction volume, marketing and business plans, business, financial, technical, operational and such other non-public information of each party (whether disclosed in writing or verbally) that such party designates as being proprietary or confidential or of which the other party should reasonably know that it should be treated as confidential.
- 6.2. Each party acknowledges and agrees that: (a) all Confidential Information shall remain the exclusive property of the disclosing party; (b) it shall not use Confidential Information of the other party for any purpose except in furtherance of this Agreement; (c) it shall not disclose Confidential Information of the other party to any third party, except to its employees, officers, contractors, agents and service providers ("*Permitted Persons*") as necessary to perform under this Agreement, provided Permitted Persons are bound in writing to obligations of confidentiality and non-use of Confidential Information no less protective than the terms hereof; and (d) it shall return or destroy all Confidential Information of the disclosing party, upon the termination of this Agreement or at the request of the other party (subject to applicable law and, with respect to Uber, its internal record-keeping requirements).
- 6.3. Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (a) is or becomes part of the public domain through no act or omission on the part of the receiving party; (b) was possessed by the receiving party prior to the date of this Agreement without an obligation of confidentiality; (c) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto; or (d) is required to be disclosed pursuant to law, court order, subpoena or governmental authority, provided the receiving party notifies the disclosing party thereof and provides the disclosing party a reasonable opportunity to contest or limit such required disclosure.

7. Privacy

- 7.1. **Disclosure of Customer or Driver Information.** Subject to applicable law and regulation, Uber may, but shall not be required to, provide to Customer, a Driver, a User, an insurance company and/or relevant authorities and/or regulatory agencies any information (including personal information (*e.g.*, information obtained about a Driver through any background check) and any Uber Data) about Customer, a Driver, or any Transportation Services provided hereunder if: (a) there is a complaint, dispute or conflict, including an accident, between Customer or a Driver on the one hand and a User on the other hand; (b) it is necessary to enforce the terms of this Agreement; (c) it is required, in Uber's or any Affiliate's sole discretion, by applicable law or regulatory requirements (*e.g.*, Uber or its Affiliate receives a subpoena, warrant, or other legal process for information); (d) it is necessary, in Uber's or any Affiliate's sole discretion, to (1) protect the safety, rights, property or security of Uber or its Affiliates, the Uber Services or any third party; (2) protect the safety of the public for any reason including the facilitation of insurance claims related to the Uber Services; (3) detect, prevent or otherwise address fraud, security or technical issues; and/or (4) prevent or stop activity Uber or its Affiliates, in their sole discretion, may consider to be, or to pose a risk of being, an illegal, unethical, or legally actionable activity); or (e) it is required or necessary, in Uber's or any of its Affiliate's sole

discretion, for insurance or other purposes related to Customer's or any Driver's ability to qualify, or remain qualified, to use the Uber Services. Customer understands that Uber may retain and its Drivers' personal data for legal, regulatory, safety and other necessary purposes after this Agreement is terminated.

- 7.2. Uber and its Affiliates may collect personal data from Customer or a Driver during the course of Customer's or such Driver's application for, and use of, the Uber Services, or obtain information about Customer or any Drivers from third parties. Such information may be stored, processed, transferred, and accessed by Uber and its Affiliates, third parties and service providers, for business purposes, including for marketing, lead generation, service development and improvement, analytics, industry and market research, and such other purposes consistent with Uber's and its Affiliates' legitimate business needs. Customer (or Driver, through the Driver Addendum) expressly consents to such use of personal data.

8. Insurance

- 8.1. Customer agrees to maintain during the term of this Agreement on all Vehicles operated by Customer or its Drivers commercial automobile liability insurance that provides protection against bodily injury and property damage to third parties at levels of coverage that satisfy all applicable laws in the Territory. This coverage must also include any no-fault coverage required by law in the Territory that may not be waived by an insured. Customer agrees to provide Uber and its Affiliates a copy of the insurance policy, policy declarations, proof of insurance identification card and proof of premium payment for the insurance policy required in this Section 8.1 upon request. Furthermore, Customer must provide Uber with written notice of cancellation of any insurance policy required by Uber. Uber shall have no right to control Customer's selection or maintenance of Customer's policy.
- 8.2. Customer agrees to maintain during the term of this Agreement commercial general liability insurance that provides protection against personal injury, advertising injury and property damage to third parties at levels of coverage required by all applicable laws in the Territory.
- 8.3. **Customer agrees to maintain during the term of this Agreement workers' compensation insurance for itself and any of its subcontractors as required by all applicable laws in the Territory. If permitted by applicable law, Customer may choose to insure itself against industrial injuries by maintaining occupational accident insurance in place of workers' compensation insurance. Customer's subcontractors may also, to the extent permitted by applicable law, maintain occupational accident insurance in place of workers' compensation insurance. Furthermore, if permitted by applicable law, Customer may choose not to insure itself against industrial injuries at all, but does so at its own risk.**
- 8.4. Customer shall add Uber (or any Affiliate which may be designated by Uber from time to time) to Customer's insurance policies required in Sections 8.1 and 8.2 above as an additional insured, and shall, upon Uber's request, provide Uber with a copy of such insurance certificate(s) within seven (7) days of such request.

9. Representations and Warranties; Disclaimers

- 9.1. **By Customer.** Customer hereby represents and warrants that: (a) it has full power and authority to enter into this Agreement and perform its obligations hereunder; (b) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its origin; (c) it has not entered into, and during the term will not enter into, any agreement that would prevent it from complying with this Agreement; (d) it will comply with all applicable laws in its performance of

this Agreement, including holding and complying with all permits, licenses, registrations and other governmental authorizations necessary to provide (i) Transportation Services using the Drivers and Vehicles pursuant to this Agreement, and (ii) passenger transportation services to third parties in the Territory generally; and (e) it shall require all Drivers to comply with the Driver Addendum, the applicable terms and conditions set forth in this Agreement and all applicable laws.

- 9.2. **Disclaimer of Warranties.** UBER PROVIDES, AND CUSTOMER ACCEPTS, THE UBER SERVICES, DRIVER APP AND THE UBER DEVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS. UBER DOES NOT REPRESENT, WARRANT OR GUARANTEE THAT CUSTOMER'S OR ANY DRIVER'S ACCESS TO OR USE OF THE UBER SERVICES, DRIVER APP OR THE UBER DEVICES: (A) WILL BE UNINTERRUPTED OR ERROR FREE; OR (B) WILL RESULT IN ANY REQUESTS FOR TRANSPORTATION SERVICES. UBER FUNCTIONS AS AN ON-DEMAND LEAD GENERATION AND RELATED SERVICE ONLY AND MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AS TO THE ACTIONS OR INACTIONS OF THE USERS WHO MAY REQUEST OR RECEIVE TRANSPORTATION SERVICES FROM CUSTOMER OR ANY DRIVER HEREUNDER, AND UBER DOES NOT SCREEN OR OTHERWISE EVALUATE USERS. BY USING THE UBER SERVICES AND DRIVER APP, CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER OR A DRIVER MAY BE INTRODUCED TO A THIRD PARTY THAT MAY POSE HARM OR RISK TO CUSTOMER, A DRIVER OR OTHER THIRD PARTIES. CUSTOMER AND DRIVERS ARE ADVISED TO TAKE REASONABLE PRECAUTIONS WITH RESPECT TO INTERACTIONS WITH THIRD PARTIES ENCOUNTERED IN CONNECTION WITH THE USE OF THE UBER SERVICES OR DRIVER APP. NOTWITHSTANDING UBER'S APPOINTMENT AS THE LIMITED PAYMENT COLLECTION AGENT OF CUSTOMER FOR THE PURPOSE OF ACCEPTING PAYMENT FROM USERS ON BEHALF OF CUSTOMER AS SET FORTH IN SECTION 4 ABOVE, UBER EXPRESSLY DISCLAIMS ALL LIABILITY FOR ANY ACT OR OMISSION OF CUSTOMER, ANY USER OR OTHER THIRD PARTY.
- 9.3. **No Service Guarantee.** UBER DOES NOT GUARANTEE THE AVAILABILITY OR UPTIME OF THE UBER SERVICES OR DRIVER APP. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE UBER SERVICES OR DRIVER APP MAY BE UNAVAILABLE AT ANY TIME AND FOR ANY REASON (*e.g.*, DUE TO SCHEDULED MAINTENANCE OR NETWORK FAILURE). FURTHER, THE UBER SERVICES OR DRIVER APP MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND UBER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES, LIABILITIES OR LOSSES RESULTING FROM SUCH PROBLEMS.

10. Indemnification

- 10.1. Customer shall indemnify, defend (at Uber's option) and hold harmless Uber and its Affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, expenses (including legal fees), damages, penalties, fines, social security contributions and taxes arising out of or related to: (a) Customer's breach of its representations, warranties or obligations under this Agreement; or (b) a claim by a third party (including Users, regulators and governmental authorities) directly or indirectly related to Customer's provision of Transportation Services or use of the Uber Services. This indemnification provision shall not apply to Customer's or any Drivers' breach of any representations regarding their status as independent contractors.
- 10.2. As between Customer and Uber, Customer is and shall be solely responsible for its Drivers' provision of Transportation Services. As such, Customer shall indemnify, defend (at Uber's option) and hold harmless Uber and its Affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, expenses

(including legal fees), damages, penalties, fines, social contributions and taxes directly or indirectly arising out of or related to its Drivers' provision of Transportation Services or use of the Uber Services.

11. **Limits of Liability.** UBER AND ITS AFFILIATES SHALL NOT BE LIABLE UNDER OR RELATED TO THIS AGREEMENT FOR ANY OF THE FOLLOWING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES: (i) ANY INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES OF ANY TYPE OR KIND; OR (ii) CUSTOMER'S OR ANY THIRD PARTY'S PROPERTY DAMAGE, OR LOSS OR INACCURACY OF DATA, OR LOSS OF BUSINESS, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE. EXCEPT FOR UBER'S OBLIGATIONS TO PAY AMOUNTS DUE TO CUSTOMER PURSUANT TO SECTION 4 ABOVE, BUT SUBJECT TO ANY LIMITATIONS OR OTHER PROVISIONS CONTAINED IN THIS AGREEMENT WHICH ARE APPLICABLE THERETO, IN NO EVENT SHALL THE LIABILITY OF UBER OR ITS AFFILIATES UNDER THIS AGREEMENT EXCEED THE AMOUNT OF SERVICE FEES ACTUALLY PAID TO OR DUE TO UBER HEREUNDER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

12. Term and Termination

- 12.1. **Term.** This Agreement shall commence on the date accepted by Customer and shall continue until terminated as set forth herein.
- 12.2. **Termination.** Either party may terminate this Agreement: (a) without cause at any time upon seven (7) days prior written notice to the other party; (b) immediately, without notice, for the other party's material breach of this Agreement; or (c) immediately, without notice, in the event of the insolvency or bankruptcy of the other party, or upon the other party's filing or submission of request for suspension of payment (or similar action or event) against the terminating party. In addition, Uber may terminate this Agreement or deactivate Customer or a particular Driver immediately, without notice, with respect to Customer and/or any Driver in the event Customer and/or any Driver, as applicable, no longer qualifies, under applicable law or the standards and policies of Uber, to provide Transportation Services or to operate the Vehicle, or as otherwise set forth in this Agreement.
- 12.3. **Effect of Termination.** Upon termination of the Agreement, Customer and all Drivers, as applicable, shall: (a) promptly return to Uber all Uber Devices; and (b) immediately delete and fully remove the Driver App from any applicable Driver-Provided Devices. Outstanding payment obligations and Sections 1, 2.3, 2.5, 2.6.3, 4.7, 4.8, 5.3, 6, 7, 9, 10, 11, 12.3, 13, 14 and 15 shall survive the termination of this Agreement.

13. Relationship of the Parties

- 13.1. **Except as otherwise expressly provided herein with respect to Uber acting as the limited payment collection agent solely for the purpose of collecting payment from Users on behalf of Customer, the relationship between the parties under this Agreement is solely that of independent contracting parties. The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship, between Uber and Customer or Uber and any Driver; and (b) no joint venture, partnership, or agency relationship exists between Uber and Customer or Uber and any Driver.**
- 13.2. Customer has no authority to bind Uber and undertakes not to hold itself out, and to ensure that each Driver does not hold himself or herself out, as an employee, agent or authorized

representative of Uber or its Affiliates. Where, by implication of mandatory law or otherwise, Customer or any Driver may be deemed an agent or representative of Uber, Customer undertakes and agrees to indemnify, defend (at Uber's option) and hold Uber and its Affiliates harmless from and against any claims by any person or entity based on such implied agency or representative relationship.

14. Miscellaneous Terms

- 14.1. **Modification.** In the event Uber modifies the terms and conditions of this Agreement or Driver Addendum at any time, such modifications shall be binding on Customer only upon Customer's acceptance of the modified Agreement and/or Driver Addendum. Uber reserves the right to modify any information referenced at hyperlinks from this Agreement from time to time. Customer hereby acknowledges and agrees that, by using the Uber Services, or downloading, installing or using the Driver App, Customer is bound by any future amendments and additions to information referenced at hyperlinks herein, or documents incorporated herein, including with respect to Fare Calculations. Continued use of the Uber Services or Driver App after any such changes shall constitute Customer's consent to such changes. Unless changes are made to the arbitration provisions herein, Customer agrees that modification of this Agreement does not create a renewed opportunity to opt out of arbitration.
- 14.2. **Supplemental Terms.** Supplemental terms may apply to Customer's and Driver's use of the Uber Services, such as use policies or terms related to certain features and functionality, which may be modified from time to time ("*Supplemental Terms*"). Customer may be presented with certain Supplemental Terms from time to time. Supplemental Terms are in addition to, and shall be deemed a part of, this Agreement. Supplemental Terms shall prevail over this Agreement in the event of a conflict.
- 14.3. **Severability.** If any provision of this Agreement is or becomes invalid or non-binding, the parties shall remain bound by all other provisions hereof. In that event, the parties shall replace the invalid or non-binding provision with provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this Agreement.
- 14.4. **Assignment.** Neither party shall assign or transfer this Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of the other party; provided that Uber may assign or transfer this Agreement or any or all of its rights or obligations under this Agreement from time to time without consent: (a) to an Affiliate; or (b) to an acquirer of all or substantially all of Uber's business, equity or assets.
- 14.5. **Entire Agreement.** This Agreement, including all Supplemental Terms, constitutes the entire agreement and understanding of the parties with respect to its subject matter and replaces and supersedes all prior or contemporaneous agreements or undertakings regarding such subject matter. In this Agreement, the words "including" and "include" mean "including, but not limited to." The recitals form a part of this Agreement.
- 14.6. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement, except as expressly set forth in the Arbitration Provision in Section 15.3. Nothing contained in this Agreement is intended to or shall be interpreted to create any third party beneficiary claims.
- 14.7. **Notices.** Any notice delivered by Uber to Customer under this Agreement will be delivered by email to the email address associated with Customer's account or by posting on the Customer portal available on the Uber Services. Any notice delivered by Customer to Uber under this

Agreement will be delivered by contacting Uber at <http://partners.uber.com> in the “Contact Us” section. Additional Territory-specific notices may be required from time to time.

15. Governing Law; Arbitration

15.1 The choice of law provisions contained in this Section 15.1 do not apply to the arbitration clause contained in Section 15.3, such arbitration clause being governed by the Federal Arbitration Act. Accordingly, and except as otherwise stated in Section 15.3, the interpretation of this Agreement shall be governed by California law, without regard to the choice or conflicts of law provisions of any jurisdiction. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Uber Services that are not subject to the arbitration clause contained in this Section 15.3 shall be subject to the exclusive jurisdiction of the state and federal courts located in the City and County of San Francisco, California. However, neither the choice of law provision regarding the interpretation of this Agreement nor the forum selection provision is intended to create any other substantive right to non-Californians to assert claims under California law whether that be by statute, common law, or otherwise. These provisions, and except as otherwise provided in Section 15.3, are only intended to specify the use of California law to interpret this Agreement and the forum for disputes asserting a breach of this Agreement, and these provisions shall not be interpreted as generally extending California law to Customer if Customer does not otherwise operate its business in California. The foregoing choice of law and forum selection provisions do not apply to the arbitration clause in Section 15.3 or to any arbitrable disputes as defined therein. Instead, as described in Section 15.3, the Federal Arbitration Act shall apply to any such dispute. The failure of Uber to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Uber in writing.

15.2 Other than disputes regarding the intellectual property rights of the parties and other claims identified in Section 15.3.ii, any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Uber Services shall be subject to arbitration pursuant to Section 15.3.

15.3 Arbitration.

Important Note Regarding this Section 15.3:

- Except as provided below, arbitration does not limit or affect the legal claims you may bring against Uber. Agreeing to arbitration only affects where any such claims may be brought and how they will be resolved.
- Arbitration is a process of private dispute resolution that does not involve the civil courts, a civil judge, or a jury. Instead, the parties’ dispute is decided by a private arbitrator selected by the parties using the process set forth herein. Other arbitration rules and procedures are also set forth herein.
- Unless the law requires otherwise, as determined by the Arbitrator based upon the circumstances presented, you will be required to split the cost of any arbitration with Uber.

- **IMPORTANT:** This Arbitration Provision will require you to resolve any claim that you may have against Uber on an individual basis, except as provided below, pursuant to the terms of the Agreement unless you choose to opt out of the Arbitration Provision. Except as provided below, this provision will preclude you from bringing any class, collective, or representative action (other than actions under the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 *et seq.* (“PAGA”)) against Uber, and also precludes you from participating in or recovering relief under any current or future class, collective, or representative (non-PAGA) action brought against Uber by someone else.
 - **Cases have been filed against Uber and may be filed in the future involving claims by users of Uber Services and Software, including by drivers. You should assume that there are now, and may be in the future, lawsuits against Uber alleging class, collective, and/or representative (non-PAGA) claims on your behalf, including but not limited to claims for tips, reimbursement of expenses, and employment status. Such claims, if successful, could result in some monetary recovery to you. (THESE CASES NOW INCLUDE, FOR EXAMPLE, YUCESoy ET AL. V. UBER TECHNOLOGIES, INC., ET AL., CASE NO. 3:15-CV-00262 (NORTHERN DISTRICT OF CALIFORNIA); IN RE UBER FCRA LITIGATION, CASE NO. 14-CV-05200-EMC (NORTHERN DISTRICT OF CALIFORNIA); AND O’CONNOR V. UBER TECHNOLOGIES, INC., ET AL., CASE NO. CV 13-03826-EMC (NORTHERN DISTRICT OF CALIFORNIA). The contact information for counsel in the O’Connor matter is as follows: Shannon Liss-Riordan, Lichten & Liss-Riordan, P.C., 100 Cambridge Street, 20th Floor, Boston, MA 02114, Telephone: (617) 994-5800, Fax: (617) 994-5801, email: sliss@llrlaw.com.)**
 - The mere existence of such class, collective, and/or representative lawsuits, however, does not mean that such lawsuits will ultimately succeed. But if you do agree to arbitration with Uber, you are agreeing in advance, except as otherwise provided, that you will not participate in and,

therefore, will not seek to recover monetary or other relief under any such class, collective, and/or representative (non-PAGA) lawsuit.

- However, as discussed above and except as provided below, if you agree to arbitration, you will not be precluded from bringing your claims against Uber in an individual arbitration proceeding. If successful on such claims, you could be awarded money or other relief by an arbitrator (subject to splitting the cost of arbitration as mentioned above).**

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT BUSINESS DECISION. IT IS YOUR DECISION TO MAKE, AND YOU SHOULD NOT RELY SOLELY UPON THE INFORMATION PROVIDED IN THIS AGREEMENT AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS — INCLUDING BUT NOT LIMITED TO AN ATTORNEY — REGARDING THE CONSEQUENCES OF YOUR DECISION, JUST AS YOU WOULD WHEN MAKING ANY OTHER IMPORTANT BUSINESS OR LIFE DECISION.

i. How This Arbitration Provision Applies.

This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the “FAA”) and evidences a transaction involving interstate commerce. This Arbitration Provision applies to any dispute arising out of or related to this Agreement or termination of the Agreement and survives after the Agreement terminates. Nothing contained in this Arbitration Provision shall be construed to prevent or excuse You from utilizing any informal procedure for resolution of complaints established in this Agreement (if any), and this Arbitration Provision is not intended to be a substitute for the utilization of such procedures.

Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before any forum other than arbitration, with the exception of proceedings that must be exhausted under applicable law before pursuing a claim in a court of law or in any forum other than arbitration. Except as it otherwise provides, this Arbitration Provision requires all such disputes to be resolved only by an arbitrator through final and binding arbitration on an individual basis only and not by way of court or jury trial, or by way of class, collective, or representative (non-PAGA) action.

Except as provided in Section 15.3(v), below, regarding the Class Action Waiver, such disputes include without limitation disputes arising out of or relating to interpretation or application of this Arbitration Provision, including the enforceability, revocability or validity of the Arbitration

Provision or any portion of the Arbitration Provision. All such matters shall be decided by an Arbitrator and not by a court or judge. However, as set forth below, the preceding sentences shall not apply to disputes relating to the interpretation or application of the Class Action Waiver or PAGA Waiver below, including their enforceability, revocability or validity.

Except as it otherwise provides, this Arbitration Provision also applies, without limitation, to all disputes between You and Uber, as well as all disputes between You and Uber's fiduciaries, administrators, affiliates, subsidiaries, parents, and all successors and assigns of any of them, including but not limited to any disputes arising out of or related to this Agreement and disputes arising out of or related to Your relationship with Uber, including termination of the relationship. This Arbitration Provision also applies, without limitation, to disputes regarding any city, county, state or federal wage-hour law, trade secrets, unfair competition, compensation, breaks and rest periods, expense reimbursement, termination, harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act (except for individual claims for employee benefits under any benefit plan sponsored by Uber and covered by the Employee Retirement Income Security Act of 1974 or funded by insurance), Genetic Information Non-Discrimination Act, and state statutes, if any, addressing the same or similar subject matters, and all other similar federal and state statutory and common law claims.

This Agreement is intended to require arbitration of every claim or dispute that lawfully can be arbitrated, except for those claims and disputes which by the terms of this Agreement are expressly excluded from the Arbitration Provision.

Uber Technologies, Inc. is an intended, third party beneficiary of this Agreement.

ii. Limitations On How This Agreement Applies.

The disputes and claims set forth below shall not be subject to arbitration and the requirement to arbitrate set forth in Section 15.3 of this Agreement shall not apply:

A representative action brought on behalf of others under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code § 2698 *et seq.*, to the extent waiver of such a claim is deemed unenforceable by a court of competent jurisdiction;

Claims for workers compensation, state disability insurance and unemployment insurance benefits;

Regardless of any other terms of this Agreement, nothing prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, Securities Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs, and nothing in this Agreement or Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Arbitration Provision. Nothing in this Arbitration Provision shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's obligation to exhaust administrative remedies before making a claim in arbitration;

Disputes that may not be subject to a predispute arbitration agreement pursuant to applicable Federal law or Executive Order are excluded from the coverage of this Arbitration Provision;

Disputes regarding the Intellectual Property Rights of the parties;

This Arbitration Provision shall not be construed to require the arbitration of any claims against a contractor that may not be the subject of a mandatory arbitration agreement as provided by section 8116 of the Department of Defense ("DoD") Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118), section 8102 of the Department of Defense ("DoD") Appropriations Act for Fiscal Year 2011 (Pub. L. 112-10, Division A), and their implementing regulations, or any successor DoD appropriations act addressing the arbitrability of claims.

iii. Selecting The Arbitrator and Location of the Arbitration.

The Arbitrator shall be selected by mutual agreement of Uber and You. Unless You and Uber mutually agree otherwise, the Arbitrator shall be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration will be conducted. If the Parties cannot agree on an Arbitrator, then an arbitrator will be selected using the alternate strike method from a list of five (5) neutral arbitrators provided by JAMS (Judicial Arbitration & Mediation Services). You will have the option of making the first strike. If a JAMS arbitrator is used, then the JAMS Streamlined Arbitration Rules & Procedures rules will apply; however, if there is a conflict between the JAMS Rules and this Agreement, this Agreement shall govern. Those rules are available here:

<http://www.jamsadr.com/rules-streamlined-arbitration/>

The location of the arbitration proceeding shall be no more than 45 miles from the place where You last provided transportation services under this Agreement, unless each party to the arbitration agrees in writing otherwise.

iv. Starting The Arbitration.

All claims in arbitration are subject to the same statutes of limitation that would apply in court. The party bringing the claim must demand arbitration in writing and deliver the written demand by hand or first class mail to the other party within the applicable statute of limitations period. The demand for arbitration shall include identification of the Parties, a statement of the legal and factual basis of the claim(s), and a specification of the remedy sought. Any demand for arbitration made to Uber shall be provided to General Counsel, Uber Technologies, Inc., 1455 Market St., Ste. 400, San Francisco CA 94103. The Arbitrator shall resolve all disputes regarding the timeliness or propriety of the demand for arbitration. A party may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that party may be entitled may be rendered ineffectual without such provisional relief.

v. How Arbitration Proceedings Are Conducted.

In arbitration, the Parties will have the right to conduct adequate civil discovery, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses, and any disputes in this regard shall be resolved by the Arbitrator.

You and Uber agree to resolve any dispute that is in arbitration on an individual basis only, and not on a class or collective action basis (“Class Action Waiver”). The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on any basis other than an individual basis. The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on a class, collective, or representative basis. Notwithstanding any other provision of this Agreement, the Arbitration Provision or the JAMS Streamlined Arbitration Rules & Procedures, disputes regarding the enforceability, revocability or validity of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective, and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

While Uber will not take any retaliatory action in response to any exercise of rights You may have under Section 7 of the National Labor Relations Act, if any, Uber shall not be precluded from moving to enforce its rights under the FAA to compel arbitration on the terms and conditions set forth in this Agreement.

Private Attorneys General Act.

Notwithstanding any other provision of this Agreement or the Arbitration Provision, to the extent permitted by law, (1) **You and Uber agree not to bring a representative action on behalf of others under the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 et seq., in any court or in arbitration,** and (2) for any claim brought on a private attorney general basis—i.e., where you are seeking to pursue a claim on behalf of a government entity—both you and Uber agree that any such dispute shall be resolved in arbitration on an individual basis only (i.e., to resolve whether you have personally been aggrieved or subject to any violations of law), and that such an action may not be used to resolve the claims or rights of other individuals in a single or collective proceeding (i.e., to resolve whether other individuals have been aggrieved or subject to any violations of law) (“PAGA Waiver”). Notwithstanding any other provision of this Agreement or the Arbitration Provision, the validity of the PAGA Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. If any provision of the PAGA Waiver is found to be unenforceable or unlawful for any reason, (1) the unenforceable provision shall be severed from this Agreement; (2) severance of the unenforceable provision shall have no impact whatsoever on the Arbitration Provision or the Parties’ attempt to arbitrate any remaining claims on an individual basis pursuant to the Arbitration Provision; and (3) any representative action brought under PAGA on behalf of others must be litigated in a civil court of competent jurisdiction and not in arbitration. To the extent that there are any claims to be litigated in a civil court of competent jurisdiction because a civil court of competent jurisdiction determines that the PAGA Waiver is unenforceable with respect

to those claims, the Parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

vi. Paying For The Arbitration.

Each party will pay the fees for his, her or its own attorneys, subject to any remedies to which that party may later be entitled under applicable law (i.e., a party prevails on a claim that provides for the award of reasonable attorney fees to the prevailing party). In all cases where required by law, Uber will pay the Arbitrator's and arbitration fees. If under applicable law Uber is not required to pay all of the Arbitrator's and/or arbitration fees, such fee(s) will be apportioned equally between the Parties or as otherwise required by applicable law. However, You will not be required to bear any type of fee or expense that You would not be required to bear if You had filed the action in a court of law. Any disputes in that regard will be resolved by the Arbitrator as soon as practicable after the Arbitrator is selected, and Uber shall bear all of the Arbitrator's and arbitration fees until such time as the Arbitrator resolves any such dispute.

vii. The Arbitration Hearing And Award.

The Parties will arbitrate their dispute before the Arbitrator, who shall confer with the Parties regarding the conduct of the hearing and resolve any disputes the Parties may have in that regard. Within 30 days of the close of the arbitration hearing, or within a longer period of time as agreed to by the Parties or as ordered by the Arbitrator, any party will have the right to prepare, serve on the other party and file with the Arbitrator a brief. The Arbitrator may award any party any remedy to which that party is entitled under applicable law, but such remedies shall be limited to those that would be available to a party in his or her individual capacity in a court of law for the claims presented to and decided by the Arbitrator, and no remedies that otherwise would be available to an individual in a court of law will be forfeited by virtue of this Arbitration Provision. The Arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. A court of competent jurisdiction shall have the authority to enter a judgment upon the award made pursuant to the arbitration. The Arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.

viii. Your Right To Opt Out Of Arbitration.

Arbitration is not a mandatory condition of your contractual relationship with Uber. If You do not want to be subject to this Arbitration Provision, You may opt out of this Arbitration Provision by notifying Uber in writing of Your desire to opt out of this Arbitration Provision, which writing must be dated, signed and delivered by electronic mail to optout@uber.com, by U.S. Mail, or by any nationally recognized delivery service (e.g, UPS, Federal Express, etc.), or by hand delivery to:

**General Counsel
Uber Technologies, Inc.
1455 Market St., Ste. 400
San Francisco CA 94103**

In order to be effective, the writing must clearly indicate Your intent to opt out of this Arbitration Provision and the envelope containing the signed writing must be received (if delivered by hand) or post-marked within 30 days of the date this Agreement is executed by You. Your writing opting out of this Arbitration Provision will be filed with a copy of this Agreement and maintained by Uber. Should You not opt out of this Arbitration Provision within the 30-day period, You and Uber shall be bound by the terms of this Arbitration Provision. You have the right to consult with counsel of Your choice concerning this Arbitration Provision. You understand that You will not be subject to retaliation if You exercise Your right to assert claims or opt-out of coverage under this Arbitration Provision.

ix. Full And Complete Agreement Related To Formal Resolution Of Disputes; Enforcement Of This Agreement.

This Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes arising out of this Agreement. Except as stated in subsection v, above, in the event any portion of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable.

By clicking "I accept", Customer expressly acknowledge that Customer has read, understood, and taken steps to thoughtfully consider the consequences of this Agreement, that Customer agrees to be bound by the terms and conditions of the Agreement, and that Customer is legally competent to enter into this Agreement with Uber.

EXHIBIT E

Unemployment Insurance
Audits & Investigations
1309 SW Topeka Boulevard
Topeka, KS 66612



Phone: (785) 296-5000 Opt 0 Ext 2718
Fax: (785) 296-0008
Gavin.Edwards@dol.ks.gov
www.dol.ks.gov

Lana Gordon, Secretary

Sam Brownback, Governor

January 20th, 2016

On this date this determination was mailed to:

Dalene Bramer
Rasier LLC
182 Howard St
San Francisco, CA 94105

Dear Employer,

As a result of an examination that was conducted for the 2014 year in regard to Uber, it is determined that Uber drivers, and any others performing the same or similar services, do not fall under the definition of employment and/or do meet the exemptions to the term employment in the *Kansas Employment Security Law*, specifically 44-703.

Sincerely,


Gavin Edwards
Agency Auditor

APPEAL RIGHTS: This determination shall become conclusive and binding unless you request, in writing, an administrative review. Your request for an administrative review must be received within 20 days if this determination was mailed; or if delivered, within 15 days. Your appeal must state your objections to the determination. Your appeal must list in detail the supporting reasons for your objections and be mailed to: CHIEF OF CONTRIBUTIONS, KS DEPT OF LABOR, 401 SW TOPEKA BLVD., TOPEKA, KS 66603-3182.

(Kansas Administrative Regulation 50-2-19)

K-CNS 312(Rev.5-12)

Department of Workforce Development
Equal Rights Division
819 N. 6th Street, Rm. 723
Milwaukee, WI 53203-1687
Telephone: (414) 227-4384
Fax: (414) 227-4084
TTY: (414) 227-4081



Scott Walker, Governor
Raymond Allen, Secretary

DATED AND MAILED FEB - 6 2018

Redacted Anderson
Redacted
Complainant

vs.

PRELIMINARY DETERMINATION
AND ORDER

Uber Technologies, Inc.
182 Howard Street
Suite 8
San Francisco, CA 94105
Respondent

ERD Case No. CR201702307

I. THE DIVISION DECIDED:

The Department does not have jurisdiction under the Wisconsin Fair Employment Law, sec. 111.31-111.395, Stats.

II. THIS MEANS:

The complaint is dismissed.

III. THE NEXT STEP IS:

The dismissal will become final unless written appeal is received by the Equal Rights Division, PO Box 7997, Madison, Wisconsin 53707, within 20 days of the date this determination was mailed. (The DATE OF MAILING is stamped at the top of the Preliminary Determination.) The appeal must state the specific reasons why you are appealing.

IV. THE DIVISION DECIDED THAT A PORTION OF THE COMPLAINT IS NOT TIMELY FILED BECAUSE:

- A. In order for the Respondent to be subject to the Wisconsin Fair Employment Law, an employee-employer relationship must exist. The Respondent is not subject to the law because the Complainant is an independent contractor and no employee-employer relationship exists.



- B. The Respondent is a San Francisco-based technology company that connects riders to independent, third-party transportation providers through a technology platform accessed through a software application available on smartphones. It does not perform transportation services, but rather offers the application as a tool to facilitate those services to occur upon request.
- C. After a rider requests a ride through the application, the application locates the nearest available online driver, which could be either a transportation provider or an employee of a subcontractor of the transportation provider. The driver may accept or decline the ride. The rider is then picked up and the driver and the rider agree on the route to take to arrive at the rider's desired destination. The ride is then charged to the rider's credit card and disbursed to the transportation provider, less the contractual licensing fee paid by the transportation provider to the Respondent for the license to use the application.
- D. The Respondent is not a transportation company; it does not employ drivers or own, lease, or operate any commercial vehicles. Its sole relationship to the transportation providers is to license the use of the application to them. Users of the application may log on and off when they wish to accept ride requests. They may also decline or accept rides at their choosing.

V. INVESTIGATOR'S EXPLANATION:

- A. The Complainant is not protected by the Wisconsin Fair Employment Law because no employee / employer relationship exists. The Complainant was an independent contractor.

Amy Johnson
Equal Rights Officer

cc: Complainant
Respondent
Angela Healy, Attorney for Respondent
Sofija Anderson, Attorney for Respondent

**UNEMPLOYMENT COMPENSATION
BOARD OF REVIEW**

Department of Labor & Industry
Commonwealth of Pennsylvania



APPEAL NUMBER 19-09-D-8186
DATE MAILED 09/05/2019
FINAL DATE
TO APPEAL 09/20/2019
SSN 165-56-1877

REFEREE'S DECISION/ORDER

CLAIMANT

EMPLOYER

Redacted BRYANT
Redacted

UBER TECHNOLOGIES
4TH FLOOR
1455 MARKET STREET
SAN FRANCISCO CA 94103
US

CLAIM:

FILED: 6/9/2019

DETERMINATION/S ISSUED: 8/5/2019 BY: ALTOONA UC SERVICE CENTER

CLAIMANT DETERMINED UNDER UC LAW: Ineligible 4(w)(2), 404, 404(c), section 4

FOR WAITING WEEK ENDING: 6/15/2019

FOR COMPENSABLE WEEK/S ENDING: 6/22/2019 THROUGH 8/3/2019

APPEAL:

FILED: 8/7/2019 BY: Claimant

HEARING HELD: 9/3/2019 IN: PITTSBURGH, PA

ATTENDED BY: Claimant, Employer, Employer's Attorney

ENCLOSURE: A translation document UC-1627 is enclosed with this notice.

FINDINGS OF FACT:

1. The Claimant filed her most recent application for unemployment compensation (UC) benefits effective June 9, 2019.
2. Based upon the covered wages paid to the Claimant during her base year by her base year Employers, the Department determined the Claimant to be conditionally financially eligible for the above UC application for the maximum rate of \$561.
3. The Claimant had previously established a UC application effective June 3, 2018, for which the Claimant was also determined to be financially eligible for a weekly benefit rate (WBR) of \$561.

4. Six times the Claimant's prior WBR is \$3,366.
5. In early 2019 the Claimant decided to perform driving services through Uber after having performed such services briefly in 2016.
6. Uber provides a ride sharing smart phone application (app) through which riders and drivers may engage in transactions for transportation services.
7. The technology services agreement entered into between the Claimant and Uber, prior to the Claimant beginning to drive through the Uber app, stated that the Claimant provided said services as an independent contractor.
8. The Claimant obtained passengers by activating the Uber app and was free to accept or reject any ride requests and determine the days and hours she would make herself available to provide driving service through the Uber app.
9. The Claimant's rate of pay for service was determined by Uber.
10. Uber provided no remuneration to the Claimant but acted as an intermediary to facilitate payment from the rider to the Claimant.
11. Uber did not provide the Claimant any fringe benefits or reimburse the Claimant for expenses.
12. Uber did not provide the Claimant a vehicle or any tools, equipment, materials or supplies to facilitate her driving services except for a logo which the Claimant was required to display in her vehicle.
13. Uber did not deduct any taxes from the Claimant's pay and will issue the Claimant a Federal Income Tax Form 1099.
14. Uber did not supervise or direct the Claimant in the performance of her services for the clients.
15. Uber did not provide any training to the Claimant other some brief training on proper protocol for airport pickups and drop offs.
16. Uber did not require the Claimant to attend meetings.
17. Uber did not prohibit the Claimant from performing the same or similar services for others.
18. The Claimant has also provided similar services via the Lyft app.
19. Other than the above payments received via the Claimant for providing driving services, the Claimant worked for Service Link with whom the Claimant earned less than \$1,000.00 between her two UC applications.

ISSUES: Whether the Claimant filed a valid application and has subsequent to the beginning of the preceding benefit year and prior to the filing of their most recent application, worked and earned wages earned in "employment" as defined in this Act in an amount equal to or in excess of six (6) times their weekly benefit rate in effect during such preceding benefit year such as to have filed a valid application for benefits in accordance with Sections 401(c) and 4(w)(2) of the Law.

REASONING: Both the Claimant and Uber appeared at the Unemployment Compensation Hearing to present testimony and evidence on the issues under appeal. Although duly notified no one appeared on behalf of Service Link. The above findings represent the competent evidence and credibility determinations

made by the Referee in rendering the following decision.

At the onset, the Referee will note that Section 4(w)(2) of the Law is a definitional Section of Law which must be utilized in conjunction with an eligibility Section of Law, which in this case is Section 401(c). As the fundamental legal issues remain the same, the Referee cannot find that either party will be adversely impacted by the Referee modifying the Section of Law at issue in this case. The Referee also explained to both parties at the hearing that the Determination at issue improperly referenced the incorrect Section of Law in regard to the covered employment provisions instead of Section 4(l)(2)(b) of the Law. Both parties agreed to go forward with the hearing as scheduled. Therefore, the Referee will proceed accordingly.

Section 401(c) of the Law provides that "Compensation shall be payable to any employee who is or becomes unemployed, and who has made a *valid application for benefits* with respect to the benefit year for which compensation is claimed and has made a claim for compensation in the proper manner and on the form prescribed by the department."

Section 4(w)(2) of the Law provides that an application for benefits filed after the termination of a preceding benefit year by an individual shall not be considered a *valid Application for Benefits* within the meaning of this subsection unless such individual has subsequent to the beginning of such preceding benefit year and prior to the filing of such application, *worked and earned wages* earned in "employment" as defined in this Act in an amount equal to or in excess of six (6) times his weekly benefit rate in effect during such preceding benefit year.

The Commonwealth Court had that a Claimant who fails to comply with Section 4(w)(2) of the Law is disqualified from receiving UC benefit.

It is well settled under Pennsylvania Law that it is the Claimant's burden to prove that they are financially eligible for benefits.

At the onset, the Referee will note that the Claimant did not argue or establish that she earned sufficient covered wages with Service Link in accordance with (4)(w)(2). Therefore, the Referee will limit his analysis to the remuneration paid to the Claimant by Uber.

The Claimant argued that she earned in excess of \$3,366 in wages with Uber in the period between her two UC applications. Thus, the Referee must first determine whether these wages may be considered as earned in covered employment such as to render them useable for purposes of establishing financial eligibility in this case.

Section 4(l)(2)(B) of the Law provides that services performed by an individual for wages shall be deemed to be employment subject to this Act unless and until it is shown to the satisfaction of the Department that – (a) such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact; and (b) as to such services such individual is customarily engaged in an independently established trade, occupation, profession or business.

The Pennsylvania Courts have held that in employment cases, an individual receiving wages for their services is presumed to be an employee, and the Employer bears a heavy burden to overcome that

presumption. To overcome this statutory presumption of employment, the Employer must show that the individual performed the work free from the Employer's control and direction, and that the work was done for others, not just the Employer, as part of an independent trade. Unless the Employer can show that the employee is not subject to his control and direction and is engaged in an independent trade, occupation or profession, then the worker is an employee.

When considering whether a Claimant for unemployment compensation benefits is an independent contractor, in reviewing the "direction and control" prong of the applicable test, our Courts have considered factors such as whether: there was a fixed rate of remuneration; taxes were withheld from the Claimant's pay; the Employer provided the tools or training to perform the job; the Employer set the time and location of work; and the Employer could review the Claimant's performance. No single factor is controlling and, therefore, the ultimate conclusion must be based on the totality of the circumstances.

Further, our Courts have held when considering whether a Claimant for unemployment compensation benefits is an independent contractor, a Claimant is not under the direction and control of an Employer where it is the Employer's client who sets the Claimant's hours and work location, provides the Claimant with his or her daily assignments, and supervises and evaluates the Claimant's work.

In this case, the competent evidence of record before the Referee establishes that the Claimant was substantially free from the control and direction of the presumed Employer in the performance of her services. Specifically, Uber did not monitor or supervise the Claimant in the performance of her driving services, Uber did not deduct taxes from the Claimant's pay, Uber did not set or determine the days and hours of the Claimant's availability to provide driving services, and Uber did not provide any tools or materials to the Claimant to facilitate her driving services except for a logo which Uber argued was a regulatory requirement mandated by the state of Pennsylvania. The presumed Employer also established that any control exercised was primarily by the client and not the presumed Employer. Therefore, the Referee must examine the second prong of Section 4(l)(2)(B) of the Law.

The Pennsylvania Courts in determining whether an individual is engaged in an independent trade or business have provided for the consideration of three factors: (1) whether the individual is able to work for more than one entity; (2) whether the individual depended on the existence of the presumed Employer for ongoing work; and (3) whether the individual was hired on a job-to-job basis and could refuse any assignment.

In this case, the Claimant did not depend solely on Uber for ridesharing work, was able to and did work via other ride sharing apps and worked on a job to job basis and could refuse any assignment.

Accordingly, the second prong necessary to establish the Claimant was an independent contractor with Uber has been satisfied and accordingly, any remuneration paid to the Claimant by Uber was not in covered employment for purposes of Sections 401(c) and 4(w)(2) of the Law. As such, benefits must be denied under Sections 401(c) and 4(w)(2) of the Law for the Claimant's current UC application.

ORDER: The Notice of Determination issued by the UC Service Center is **AFFIRMED AS MODIFIED**; the Claimant is **INELIGIBLE FOR** benefits under Section 401(c), in accordance with 4(w)(2), of the Pennsylvania UC Law beginning with waiting week ending June 9, 2019.

J. O'Dell, Referee

tst - 9145

Pursuant to the provisions of the Law, this referee decision shall become final on the date it was mailed to the parties, unless any aggrieved party files a further appeal to the Pennsylvania Unemployment Compensation Board of Review within the fifteen (15) day appeal period.

THE LAST DATE TO FILE AN APPEAL TO THIS DECISION IS.

IF YOU WISH TO FILE A FURTHER APPEAL

You have the right to file a further appeal to this decision within fifteen (15) days of the date of mailing. Your appeal must include the following information: ► your name; ► the Claimant's name and social security number; ► the date of the decision being appealed; ► the reason for appeal; ► the appeal number; ► your address. Under the provisions of Act 5 of 2005, you may file your own appeal, or your appeal may be filed by an attorney or by any other advocate of your choice.

You may file your appeal by mail. If you file your appeal by mail, the appeal is filed as of the date of the U.S. Postal Service postmark or a U.S. Postal Service form 3817 (Certificate of Mailing) or a U.S. Postal Service certified mail receipt. If there is no U.S. Postal Service postmark, the date of filing will be the date of a postage meter mark on the envelope containing the appeal. If the appeal contains neither a postmark nor a postage meter mark, the date of filing will be the date recorded by the Department when the appeal is received. Your appeal should be mailed to the following address:

**Department of Labor & Industry
UC Board of Review, Room 1119
651 Boas Street
Harrisburg, PA 17121**

You may file your appeal by common carrier. If you file your appeal by common carrier, the appeal is filed on the date it is delivered to the common carrier as established by the records of the common carrier. You should use the above address to send your appeal by common carrier.

You may file your appeal by fax. If you file your appeal by fax, it must be received by the Department by 11:59 p.m. on the last day to appeal. The filing date will be determined by the date of receipt imprinted by the receiving fax machine. If there is no receipt date imprinted by the receiving fax machine, the sender's fax banner will control the date of filing. If neither date appears on the fax, the date of receipt recorded by the Department will serve as the date of filing. Your appeal should be faxed to the following number:

Claimant — Redacted BRYANT

Appeal — 19-09-D-8186

717-346-4484

NOTE: A party filing an appeal by fax is responsible for delay, disruption or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

You may file your appeal via electronic mail (email). If you file your appeal by email, the appeal is filed on the date of receipt recorded by the Department's electronic transmission system. If you wish to file your appeal by email, forward your appeal information to the Department at:

UCBoardAppeals@pa.gov

WARNING: Information submitted by email is not secure.

NOTE: A party filing an appeal via the internet or electronic mail is responsible for using the proper format and for delay, disruption or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

If you wish to file your appeal **in person**, you may do so at any CareerLink office during normal business hours on or before the last day to appeal shown above. The CareerLink office will forward your appeal to the UC Board of Review for processing.

***Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program***

Claimant —Redacted BRYANT

Appeal — 19-09-D-8186

ADDITIONAL INTERESTED PARTIES OR APPEARANCES AT HEARING

Employer

SERVICELINK MANAGEMENT
COMPANY LLC
1400 CHERRINGTON PARKWAY
CORAOPOLIS PA 15108
US

Agency Representative

CINDY LEE
FAS TAX AGENT
651 BOAS STREET
HARRISBURG PA 17121
US

Employer's Representative

EQUIFAX WORKFORCE SOLUTIONS
PO BOX 182366
COLUMBUS OH 43218-2366
US

Employer's Attorney

PAUL C LANTIS
LITTLER MENDELSON PC
THREE PARKWAY SUITE 1400
1601 CHERRY STREET
PHILADELPHIA PA 19102-1321
US

Employer's Attorney

LITTLER MENDELSON PC
THREE PARKWAY
1601 CHERRY STREET SUITE 1400
PHILADELPHIA PA 19102



pennsylvania

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF UNEMPLOYMENT COMPENSATION BENEFITS

English	IMPORTANT! THIS NOTICE MAY AFFECT YOUR UNEMPLOYMENT COMPENSATION RIGHTS OR BENEFITS AND SHOULD BE TRANSLATED IMMEDIATELY! If you need assistance, the UC Service Center will interpret this document free of charge.
Spanish	¡IMPORTANTE! ¡ESTE AVISO PUEDE AFECTAR SUS DERECHOS O BENEFICIOS DE COMPENSACIÓN DE DESEMPLEO Y DEBE SER TRADUCIDO INMEDIATAMENTE! Si necesita ayuda, el centro de servicio de UC le traducirá este documento gratuitamente.
Vietnamese	QUAN TRỌNG! THÔNG BÁO NÀY CÓ THỂ ẢNH HƯỞNG ĐẾN CÁC QUYỀN HOẶC PHÚC LỢI TRỢ CẤP THẤT NGHIỆP CỦA QUÝ VỊ VÀ NÊN ĐƯỢC THÔNG DỊCH NGAY! Nếu quý vị cần trợ giúp, Trung Tâm Trợ Cấp Thất Nghiệp sẽ thông dịch tài liệu này miễn phí.
Arabic	هام! قد يؤثر هذا الإخطار على حقوق أو إعانات البطالة الخاصة بك ويجب ترجمته على الفور! إذا كنت بحاجة إلى مساعدة، فإن 'مركز إعانات البطالة' سوف يقوم بترجمة هذه الوثيقة مجاناً.
Russian	ВАЖНО! ИНФОРМАЦИЯ, СОДЕРЖАЩАЯСЯ В ДАННОМ УВЕДОМЛЕНИИ, МОЖЕТ ПОВЛИЯТЬ НА ВАШИ ПРАВА НА ПОЛУЧЕНИЕ ПОСОБИЯ И КОМПЕНСАЦИОННЫХ ВЫПЛАТ ПО БЕЗРАБОТИЦЕ. ЕГО СЛЕДУЕТ ПЕРЕВЕСТИ НЕМЕДЛЕННО. Если вам потребуется помощь, сотрудники Центра помощи в вопросах компенсационных выплат по безработице (UC Service Center) переведут этот документ бесплатно.
Cantonese (Traditional Chinese)	重要提示！此通告有可能影響到你的失業補償權利或補償費用，應立即翻譯好！如果你需要幫助，UC 服務中心可以免費為你翻譯此文件。
Hindi	महत्वपूर्ण! यह नोटिस आपके बेरोज़गारी मुआवज़ा अधिकारों या लाभों को प्रभावित कर सकता है और इसका अनुवाद तुरन्त किया जाना चाहिए! अगर आपको सहायता की आवश्यकता है, तो UC सेवा केन्द्र इस दस्तावेज़ का मुफ्त में अनुवाद करेगा।
Haitian Creole	ENPÒTAN! AVI SA A KAPAB GEN EFÈ SOU DWA OSWA BENEFIS OU GENYEN POU KONPANSASYON CHOMAJ EPI LI DWE TRADUI SAN PÈDI TAN! Si ou bezwen èd, Sant Sèvis UC a ap entèprete dokiman sa a gratis pou ou.
Albanian	E RËNDËSISHME! KY NJOFTIM MUND TË NDIKOJË NË PËRFITIMET OSE TË DREJTAT TUAJA TË KOMPENSIMIT TË PAPUNËSISË DHE DUHET PËRKTHYER MENJËHERË! Në qoftë se keni nevojë për ndihmë, Qendra e Shërbimit UC jua përkthen këtë dokument falas.
Chinese/Mandarin (Simplified Chinese)	重要提示！此通告有可能影响到您的失业福利或补偿费用，请立即翻译好！如果您需要帮助，UC 服务中心可以免费为您翻译此文件。
Gujarati	મહત્વપૂર્ણ ! આ સૂચના આપના બેરોજગારી વળતર હકો કે લાભોને અસર કરી શકે છે અને તરત જ અનુવાદિત કરવા જોઈએ! જો તમે સહાયતાની જરૂર છે, યુસી સેવા કેન્દ્ર આ દસ્તાવેજનું નફિશ્લક અર્થઘટન કરી આપશે.
Bengali	গুরুত্বপূর্ণ! এই বজিঃপূর্তি আপনার বাক্যের ভাষার অধিকারসমূহ অথবা সুখ-সুবিধাসমূহকে প্রভাবান্বিত করতে পারে এবং অনতিবিলম্বে এটি অনুবাদ করে নিন। আপনার যদি সহায়তার প্রয়োজন হয়, ডাফনে ইউসি সার্ভিস সেন্টার বিনামূল্যে এই ডকুমেন্ট অনুবাদ করে দিবে।

French	IMPORTANT! CET AVIS POURRAIT MODIFIER VOS DROITS OU VOS BÉNÉFICES D'INDEMNITÉ DE CHÔMAGE, ET DEVRAIT ÊTRE IMMÉDIATEMENT TRADUIT! Au cas ou vous auriez besoin d'assistance, le Centre de Service de l'U.C. vous interpréterait ce document gratuitement.
Somali	WAA MUHIIM! OGEYSIISKAN AYAA LAGA YAABAA INUU SAAMEEYO XUQUUQDAA-DA AMA MANFACYADAADA OO GUNNADA LA SIIYO QOFKA AANAN SHAQEYN OO WAA IN SI DEG DEGGA AH LOO TARJUMAA! Haddii aad caawinaad u baahan tahay, Xarunta Adeegga ee UC ayaa dokumentigan si bilaash ah kuugu tarjumi doonta.
Korean	중요사항! 이 고지는 귀하의 실업수당 권리나 혜택에 영향을 미칠 수 있으며 즉시 번역되어야 합니다! 도움이 필요하시면 UC 서비스 센터에서 이 문서를 무료로 번역해드립니다.
Cambodian/Khmer	សំខាន់! សេចក្តីជូនដំណឹងនេះ អាចប៉ះពាល់សិទ្ធិ ឬអត្ថប្រយោជន៍សំណងពីភាពអត់ការងារធ្វើរបស់អ្នក ហើយត្រូវតែត្រូវបានបកស្រាយភ្លាមៗ! ប្រសិនបើអ្នកត្រូវការជំនួយ មជ្ឈមណ្ឌលសេវាកម្ម UC នឹងបកប្រែឯកសារនេះដោយឥតគិតថ្លៃ។
Polish	WAŻNE! NINIEJSZE POWIADOMIENIE MOŻE DOTYCZYĆ PANA/PANI PRAWA DO ZASIŁKU DLA BEZROBOTNYCH LUB ŚWIADCZEŃ I NALEŻY JE NATYCHMIAST PRZETŁUMACZYĆ! Jeżeli potrzebna jest Panu/Pani pomoc, Centrum Obsługi w sprawie zasiłków dla bezrobotnych nieodpłatnie przetłumaczy ten dokument.
Portuguese	IMPORTANTE! ESTA NOTIFICAÇÃO PODE AFECTAR OS SEUS DIREITOS E REGALIAS DO SUBSÍDIO DE DESEMPREGO E DEVE SER TRADUZIDA IMEDIATAMENTE! Se precisar de assistência, o centro de apoio do UC (centro de desemprego) traduzirá este documento gratuitamente.
Malayalam	സുപ്രധാനം! നിങ്ങളുടെ തൊഴിലില്ലായ്മ വേദന അവകാശത്ത് അല്ലെങ്കിലും ആനുകൂല്യത്ത് ഈ അറിയിപ്പ് ബാധിച്ചേക്കാം, അതിനാലുടന്തന്നെ ഇത് തർജ്ജിമ ചെയ്യേണ്ടതാണ്! നിങ്ങളുടെ സഹായം ആവശ്യമുണ്ടെങ്കിലും, യുസി സേവന കേന്ദ്രം ഈ രേഖ നിങ്ങളുടെ സൗജന്യമായി വിവർത്തനം ചെയ്ത് നൽകുന്നതാണ്.
Bosnian	VAŽNO! OVA OBAVIJEST MOŽE UTJECATI NA PRAVA ILI POVLASTICE SOCIJALNE NAKNADE ZA NEZAPOSLENE I TREBA SE ODMAH PREVESTI! Ako trebate pomoć, Centar za usluge socijalne pomoći će besplatno prevesti ovaj dokument.
Amharic	አስፈላጊ! ይህ ማስታወቂያ ለስራ አጥነት የሚያገኙትን የካሳ መብቶችን ወይም አርዳታዎችን የሚነካ ሊሆን ስለሚችል፣ ባስቸኳይ መተርጎም ይኖርበታል! አርዳታ የሚያስፈልግዎ ከሆነ፣ የ ዩ.ሲ. የአገልግሎት ማከከል ይህንን ሰነድ በነጻ ያስተረጉምልዎታል።

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 Equal Opportunity Employer/Program

NEVADA EQUAL RIGHTS
COMMISSION



BRIAN SANDOVAL
Governor

DON SODERBERG
Director

KARA M. JENKINS
Administrator

December 28, 2018

Sandra Ketner, Esq.
Littler Mendelson, P.C.
200 S. Virginia Street, 8th Floor
Reno, NV 89501

RE: Nicole Contreras vs Uber Technologies Inc.
NERC No. 0712-18-0094R EEOC No. 34B-2018-00829

Dear Ms. Ketner:

The Nevada Equal Rights Commission reviewed the above referenced complaint and has ruled that this case be closed as the Commission lacks jurisdiction due to the Charging Party's status as an independent contractor during the relevant time period.

Should you have any questions, please do not hesitate to contact the Commission at the telephone number listed below.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Brown', is written over the word 'Sincerely,'.

Richard Brown
Compliance Investigator II



WORKERS' COMPENSATION BOARD
328 State Street
Schenectady NY 12305-2318
www.wcb.ny.gov

Clarissa M. Rodriguez
Chair

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JUL 18 2019
ALBANY, NY

State of New York - Workers' Compensation Board

In regard to Redacted Gofur, WCB Case #G191 5433

**MANDATORY FULL BOARD REVIEW
FULL BOARD MEMORANDUM OF DECISION**

keep for your records

The Full Board, at its meeting on July 16, 2019, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed December 18, 2018.

ISSUE

The issue presented for Mandatory Full Board Review is whether claimant was an employee of the alleged employer.

The Workers' Compensation Law Judge (WCLJ) found that claimant was an independent contractor and disallowed the claim.

The Board Panel majority affirmed the WCLJ.

The dissenting Board Panel member would find that claimant was an employee.

The claimant filed an application for Mandatory Full Board Review on January 16, 2019, arguing that the employer exerted sufficient control over him to find that an employment relationship existed, and that the Board failed to consider the relative nature of the work test.

The carrier filed a rebuttal on February 20, 2019, arguing that the decision of the Board Panel majority should be affirmed.

Upon review, the Full Board votes to adopt the following findings and conclusions.

*** Continued on next page ***

Claimant - Redacted Gofur
Social Security No. -
WCB Case No. - G191 5433
Date of Accident - 05/05/2017
District Office - NYC

Employer -
Carrier -
Carrier ID No. -
Carrier Case No. -
Date of Filing of this Decision - 08/09/2019

Redacted

ATENCION:

Puede llamar a la oficina de la Junta de Compensacion Obrera, en su area correspondiente, cuyo numero de telefono aparece al principio de la pagina y pida informacion acerca de su reclamacion(caso).

FACTS

Claimant filed a C-3 (Employee Claim) on June 21, 2017, alleging that on May 5, 2017, he injured his right leg when he fell while delivering food on a bicycle. The carrier controverted the claim, arguing that claimant was an independent contractor and not an employee of the alleged employer, Uber Eats.

Claimant testified on October 18, 2017, that he would deliver food for Uber Eats. They would send him the food delivery information on his phone and he would confirm. He would get the address of the store from Uber Eats. He would pick up the food from the store, notify Uber Eats that he had done so, and they would then supply the delivery address. He would deliver the food to the customer by bicycle. He would notify Uber Eats after he delivered the food. He worked for Uber Eats five or six days per week, between six and eight hours per day. He was paid via direct deposit once a week. Uber Eats sends him a weekly schedule of when he has to work. When asked what he does when he doesn't want to work on a particular day, claimant responded, "They have this on and off, so I turn it off" (transcript, 10/18/17 hearing, p. 10). Uber Eats provided him with a bag to deliver food in. He is required to use the bag. He uses the Uber Eats application on his phone. On May 5, 2017, he was making a delivery for Uber Eats when he was pushed by a pedestrian and fell, breaking his leg. He was taken by ambulance to the hospital. He underwent surgery and had not yet returned to work.

On cross-examination, claimant testified that a friend showed him how to download and use the Uber Eats app. He didn't remember if he had to sign an agreement in order to begin using the Uber Eats app. He confirmed that he would get a weekly schedule from Uber Eats. If he didn't want to work on a particular day he could turn the app off, but he always worked according to the schedule provided by Uber Eats. He was not required to work any particular day, but if he did not work he would get less "points."

Claimant's testimony was continued at a hearing on November 30, 2017. He testified on cross-examination that he always worked at the times Uber Eats scheduled him to work and could log on to the app at other times. If he didn't work, his "points" would go down and he would not get as much work. He used his own bicycle to make deliveries. He chose not work one day per week. He was paid for each delivery, not by the hour. He never met anyone from Uber Eats and received no training. The Uber Eats app suggested a route for deliveries, but he was permitted to take another route if he so chose. On redirect, claimant testified that the bag he used to make deliveries had the Uber Eats logo on it. His "points" would be affected if he was late making a delivery or failed to finish a delivery.

*** Continued on next page ***

Claimant - Redacted Gofur
Social Security No. -
WCB Case No. - G191 5433
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Carrier Case No. -
Date of Filing of this Decision - 08/09/2019

ATENCION:

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A general manager of the employer testified at a hearing on February 1, 2018: "In my role as general manager, I oversee operations of a market team who runs the logistics in New York City" (transcript, 2/1/18 hearing, p. 5). Uber classifies its "delivery providers" as independent contractors (p. 5-6). Delivery providers can accept or reject a delivery and make the delivery on foot or on a bicycle. Delivery providers pay Uber a fee for each delivery. Uber does not make any deliveries itself. Claimant performed deliveries for Uber in April and May of 2017. Uber does not interview delivery providers and does not provide them with any training. Delivery providers are required to agree to a Technology Service Agreement (Agreement) the first time they log on to the app. Claimant agreed to the terms of the Agreement on April 6, 2017 (*see* doc. #290635355 and #295119674). Section 13.1 of the Agreement characterizes claimant as an independent contractor. Uber Eats does not create schedules for delivery drivers, but does offer increased rates for making deliveries at certain times. Delivery drivers are also offered the opportunity to qualify for other incentives, but are not required to participate in any incentives. Claimant could log on and off the app any time he chose and did not face any repercussions for not logging onto the app at a particular time. Uber's records showed that claimant rejected 20 percent of the delivery leads sent to him and was not penalized for rejecting deliveries. Delivery providers are able to negotiate the fee for deliveries, but Uber sets a default rate. Claimant may have purchased a messenger bag from Uber for \$20, but was under no obligation to use it. The bags Uber provides do not have a logo. Delivery providers can use other dispatch and lead generation services. Uber has the right to terminate its contractual relationship with a delivery provider for any reason and without notice. Uber Eats terminates its relationship:

When delivery providers have materially breached the agreement, such as in the case of fraudulent or illegal activity or numerous customer complaints, or if they have a history of abusive language with their customers or Uber personnel.

(Transcript, 2/1/18 hearing, p. 25).

On cross examination, the general manager testified that Uber has a third-party run a criminal background check on delivery providers. Delivery providers are not required to use a bicycle and can make deliveries on foot. Section 4.3 of the Agreement permits Uber to reduce or cancel a delivery fee in some circumstances, such as when a delivery provider takes an inefficient route, and provides that Uber will exercise its discretion to reduce or cancel a delivery fee in a reasonable manner. Delivery providers have to press a button on the app when they pick up a delivery in order to get the customer's delivery address. They also have to press a button on the app when they complete a delivery. Uber Eats also acts as a payment collection agent and

*** Continued on next page ***

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provides automated receipts to delivery customers. Uber Eats keeps track of the ratings a delivery provider receives. Uber Eats tracks the time it takes to make deliveries.

In a reserved decision filed March 2, 2018, the WCLJ disallowed the claim, finding that "claimant was an independent contractor because he chose when and where to work, he determined which deliveries he wanted to make, he did not have any supervision, he used his own equipment to perform deliveries and he was paid per delivery he accepted."

Claimant filed an application for administrative review on April 2, 2018, arguing that the record supported a finding that he was an employee.

The carrier filed a rebuttal on May 2, 2018.

LEGAL ANALYSIS

"Whether an employer-employee relationship exists is a factual issue for the Board... The relevant factors in making 'such a finding include the right to control the work and set the work schedule, the method of payment, the furnishing of equipment, the right to discharge and the relative nature of the work at issue' (*Matter of Bugaj v Great Am. Transp., Inc.*, 20 AD3d 612 [2005]). No one factor is dispositive, however, including the fact that the contract between claimant and the [employer] designates claimant as an independent contractor" (*Matter of Brown v City of Rome*, 66 AD3d 1092 [2009] [additional citations omitted]).

Here, the credible evidence in the record indicates that claimant did not have a set schedule he was required to work and could log on and off the Uber Eats app whenever he chose. Claimant was free to turn down delivery assignments. Uber Eats did not instruct the claimant how to complete his delivery jobs. The claimant was not directly supervised by Uber Eats. He used his own bicycle to make deliveries and could make deliveries either by bicycle or on foot. Claimant was paid per delivery, rather than by the hour. These factors reflect a lack of direction and control by Uber Eats over the claimant, which supports a finding that the claimant was an independent contractor.

The Board has consistently found that claimants who deliver food by bicycle through a digital platform were independent contractors rather than employees (*see Matter of RJ Square Inc.*, 2017 NY Wrk Comp G1524445; *Matter of Relay Delivery Inc.*, 2018 NY Wrk Comp G1775559; *Matter of Relay Delivery Inc.*, 2018 NY Wrk Comp G1911011; *Matter of Relay Delivery Inc.*, 2018 NY Wrk Comp G1657755). In a case involving facts that are essentially identical to the facts of this case, the Full Board recently found that the claimant was an

*** Continued on next page ***

Claimant - Redacted Gofur
Social Security No. -
WCB Case No. - G191 5433
Date of Accident - 05/05/2017
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Carrier Case No. -
Date of Filing of this Decision - 08/09/2019

Redacted

ATENCION:

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independent contractor (Matter of Postmates, Inc., 2019 Wrk Comp G1917469).

Therefore, the Full Board finds that the preponderance of the evidence in the record supports the finding that the claimant was an independent contractor.

CONCLUSION

ACCORDINGLY, the WCLJ reserved decision filed March 2, 2018, is AFFIRMED. The case is disallowed and closed.

The above reflects the unanimous opinion of the Board.

FOR THE WORKERS' COMPENSATION BOARD,


Clarissa M. Rodriguez

Claimant - Redacted Gofur
Social Security No. -
WCB Case No. - G191 5433
Date of Accident - 05/05/2017
District Office - NYC

Employer - Redacted
Carrier -
Carrier ID No. -
Carrier Case No. -
Date of Filing of this Decision - 08/09/2019

ATENCION:

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Copies To:
Claimant:
Carrier:
Employer:
Other:

Case #G191 5433
Abdul Gofur
Old Republic Insurance Co.
Uber Eats
Villamar & Mewafy, PLLC
Broadspire Services, Inc.
Littler Mendelson PC

Broadspire Services, Inc.
P.O. Box 14343
Lexington, KY 40512-4343

Abdul Gofur
151 NORFOLK ST 4D
New York, NY 10002

Uber Eats
633 W. 27th St.
New York, NY 10001

Old Republic Insurance Co.
Claims
PO Box 2200
Greensburg, PA 15601-6922

Villamar & Mewafy, PLLC
74-09 37th Ave, Suite 304
Jackson Heights, NY 11372

Broadspire Services, Inc.
P.O. Box 14343
Lexington, KY 40512-4343

Littler Mendelson PC
900 Third Avenue
New York, NY 10022

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by KENNARD
Deputy Commissioner

October 23, 2019

ANJUM IQBAL v. UBER TECHNOLOGIES
OLD REPUBLIC INS CO., Insurance Carrier
BROADSPIRE SERVICES, INC., Claim Administrator
Jurisdiction Claim No. VA02000029744
Docket ID VA02000029744-01
Claim Administrator File No. 188674390001
Date of Injury November 20, 2017

Anjum Iqbal
Claimant pro se

G. Bethany Ingle, Esquire
For the Defendants

S. Libby Henniger, Esquire
For the Defendants
(pro hac vice)

Hearing before Deputy Commissioner Kennard in Manassas, Virginia on August 14, 2019.

PRESENT PROCEEDING

This matter is before the Commission upon the claimant's January 29, 2018 claim alleging an injury by accident to the right hand occurring on November 20, 2017. The claimant seeks an award of temporary total disability benefits for the period of November 20, 2017 through February 12, 2018. The claimant also seeks an award of lifetime, causally related, medical benefits. The claimant contends that he earned a pre-injury average weekly wage of \$700.00.

STIPULATIONS

None.

DEFENSES

In response to the claimant's applications, the defendants contend that the claimant is an independent contractor, and not an employee of Uber Technologies.

PRE AND POST HEARING EVIDENCE

The defendants submitted a Designation of Medical Records pursuant to Commission Rule 2.2(B)(3). The record closed upon conclusion of the hearing.

ISSUE

- 1.) Whether the claimant was an employee of Uber Technologies on November 20, 2017.

SUMMARY OF THE EVIDENCE

The following evidence was introduced, admitted, and considered in connection with the adjudication of disputed issues: (1) Hearing testimony of Anjum Iqbal; (2) Hearing testimony of Arshad Hussain; (3) Hearing testimony of Kasra Moshkani; (4) Defendants' Exhibit No. 1, Designation of Medical Records, consisting of records and reports from Dr. Laura Cook and Stone Springs Hospital Center; (5) Defendants' Exhibit No. 2, Designation of Claimant's Deposition; (6) Defendants' Exhibit No. 3, U.S. Department of Labor Opinion Letter dated April 29, 2019; (7) Defendants' Exhibit No. 4, U.S. National Labor Relations Board Office of the General Counsel Advice Memorandum dated April 16, 2019; (8) Defendants' Exhibit No. 5, Virginia Transportation Network Company Manual; (9) Defendants' Exhibit No. 6, Claimant's June 18, 2018 Response to Defendants' Request for Admissions; (10) Defendants' Exhibit No. 7, Email Correspondence between claimant and Uber representative; (11) Defendants' Exhibit No. 8, Form 1099-K from Raiser, LLC for tax year 2016; (12) Defendants' Exhibit No. 9, Form 1099-K from

Uber Technologies, Inc. for tax year 2017; (13) Defendants' Exhibit No. 10, Form 1099-K from Uber Technologies for tax year 2018; (14) Defendants' Exhibit No. 11, Claimant's Form 1040 Schedule C, "Profit or Loss from Business" for tax year 2017; (15) Defendants' Exhibit No. 12, Claimant's Federal Tax Return for tax year 2016; (16) Defendants' Exhibit No. 13, Uber Trip History Summary; (17) Defendants' Exhibit No. 14, Log-on/ Log-off History Summary; (18) Defendants' Exhibit No. 15, Record of Payments; and (19) All medical records previously filed with the Commission.

Defendants' August 7, 2019 Motion to Dismiss

On August 7, 2019 the defendants filed a Motion to Dismiss the claimant's January 29, 2018 claim alleging that the claimant failed to comply with three of the Commission's Orders that compelled him to fully respond to the defendants' discovery requests. Alternatively, the defendants sought an Order precluding the claimant from introducing any evidence at the evidentiary hearing in support of his burden to show that he was an employee of Uber Technologies. Specifically, the defendants contend that they have been prejudiced by the claimant's alleged failure to provide complete copies of his tax returns and other documents related to earned income.

Having given due consideration to the defendants' Motion to Dismiss, the claimant's August 8, 2019 opposition, the claimant's production of tax information from 2016, 2017, and 2018,¹ as well as the availability of the claimant's accountant to testify at the time of the hearing pursuant to the defendants' subpoena on issues relating to the claimant's income and tax returns, we find there to be insufficient evidence of substantial prejudice to the defendants to warrant dismissal of the claimant's claim. The Motion to Dismiss is therefore DENIED as is the

¹ The defendants acknowledge receipt of the claimant's tax information in their Motion to Dismiss, but contend that the supplied information is incomplete.

alternative Motion seeking to preclude the claimant from offering any evidence in support of his burden to show that he was an employee of Uber Technologies.

Testimony

The claimant testified that in November of 2017 he was a user of the Uber software application in order to provide rides to customers who were seeking transportation. The claimant believes that he had been using the Uber app for approximately three years. He also used the Lyft app on occasion, but noted that there weren't as many customers when using Lyft as compared to Uber. As a result, he preferred to use the Uber app.

In order to obtain access to the Uber app, the claimant was required to complete an online application. He was required to show proof of insurance, and that he was a licensed driver. He testified that confirming this information on a yearly basis is required in order to use the app. The claimant has used three different vehicles during the time he provided transportation using the Uber app. The claimant was the registered owner of all three vehicles. The claimant testified that he must update his profile when changing vehicles.

The claimant confirmed that customers using the Uber app can download the app to their cell phone. Customers can then request a ride using the app. As a user of the transportation provider portion of the app, the claimant receives notification that someone is seeking a ride, and he then can decide as to whether he wants to accept that ride. Asked if Uber requires him to accept a particular fare, the claimant testified that there was a "percentage that he could refuse" but this never happened to him because he normally accepted the fare. Other drivers in the area using the Uber app could also decide to accept the fare.

The claimant testified that Uber did not make any of the payments on the vehicles he used while working as an Uber driver. The claimant pays for all gas and maintenance for his vehicles. The claimant confirmed that the only thing provided to him by Uber was access to their app, and a “sticker” to be placed on his car.

The claimant testified that there are no restrictions on the hours he works. He assumes that there may be restrictions on the maximum number of hours that can be worked using the app within a given time period, but he has not driven the “max hours”. The claimant testified that he determines the hours he wants to work on a particular day. He also decides on what days he works. He is not required to get Uber’s permission to take a day off. The claimant confirmed that he is free to adjust his hours within a given day. For instance, the claimant testified that he can elect to work using the app in the morning, and then decide to work again in the evening. While Uber provides a navigation function along with its app, it does not dictate the route he takes when providing transportation. He is free to use other navigation apps such as Google Maps and Waze. Uber does not place a restriction on the geographical area he works within while using the app.

In regard to compensation, the claimant testified that Uber collects a portion of each fare as a commission and the claimant receives the remainder. No payments are made directly to the claimant by his passengers. He receives pay from Uber on a weekly basis. The claimant’s compensation varies from week to week based on the number of fares and their cost, but he estimates that he earns approximately \$700 per week on average. Money earned by the claimant is deposited directly into his bank account by Uber. He is not aware of any state, local, or federal tax withholdings.

Asked if he was aware of anything that would indicate that he was an employee of Uber Technologies, the claimant testified, “I was not employed by Uber, but I was working for Uber”. The claimant explained that he was “working for Uber” to the extent that, when utilizing their app, Uber received a portion of each of his fares. The more he used the app, and the more fares he took as a result, the more money Uber made.

On November 20, 2017 the claimant received notification at 8:41 a.m. that someone was requesting a pick-up from Dulles Airport. At the time, the claimant was sitting in his vehicle at the airport’s cell phone parking lot. The claimant accepted the fare. When the claimant arrived at the terminal, he saw that his passengers had an infant with them. Because the claimant did not have an infant car seat, he explained that he could not accept the fare, and suggested that they request an Uber provider whose car was equipped with an infant car seat.

The claimant testified that the trunk of his vehicle was already open when he first realized that the passengers had an infant with them. A male passenger had already placed luggage in the trunk. After he explained to the male passenger that he could not accept the fare, the passenger removed luggage from the trunk, at the same time removing the claimant’s personal bag with it, and placing the claimant’s bag on the ground. As the claimant attempted to retrieve his personal belongings, he was approached by the male passenger and pushed to the ground. The claimant testified that he was pushed backward and fell onto his right hand. The claimant called 911, and Airport Authority Police responded to the scene and took a report. An ambulance also arrived and provided first aid to the claimant. The claimant then drove himself to a nearby hospital. The claimant was subsequently seen and treated by Dr. Daniel Laino for follow up treatment of his injury.

On cross-examination, the claimant testified that he began using the Uber app in 2016 after he sold his “snack shack” business. No one from Uber interviewed the claimant before he was allowed to begin using the app. Using the Uber app to earn money appealed to him because he could set his own schedule. There was no training on how to use the app.

The claimant testified that he is often logged into both the Uber and Lyft apps at the same time. He receives more business using the Uber app, but will often accept fares from Lyft as well. The claimant can log in and out of the Uber app whenever he wants.

The claimant testified that following his assault, the Airport Authority police asked the claimant for the name of the passenger that assaulted him. The claimant explained that he did not have that information and that the police would need to contact Uber so that the information could be obtained. The police informed the claimant that Uber would need to contact them with the information. The claimant later followed up with the police and was told that Uber had not contacted them with the needed information about his assailant.

The claimant confirmed that he is not compensated for simply using the Uber app and that he only receives payment for fares that are completed using the app. The claimant testified that he has nothing to do with credit card payments made by passengers and that payment for each ride is something that is strictly between Uber and the passenger. If a passenger decides to provide a cash tip in addition to the cost of the fare, he does not need to report this to Uber. The claimant does not wear a uniform, and is not assigned a supervisor. During the years he worked using the Uber app, the claimant received 1099 forms from Uber at the end of the year.

Arshad Hussain testified that he is a self-employed accountant. He prepared the claimant’s taxes “for two or three years”. The last tax year for which he completed the claimant’s tax return

was 2016. He recalls that the claimant had a small business that he “discontinued” in the beginning of 2016 and that the claimant subsequently began working with Uber. Mr. Hussain identified the claimant’s tax return for tax year 2016 including the submission of Schedule C forms based on the claimant’s self-employment. One Schedule C form was submitted in connection with the claimant’s “snack shack” and one was submitted for the claimant’s work with Uber. Mr. Hussain testified that the 1099 K received from Uber would reflect credit card payments to the claimant. He testified that a 1099 Miscellaneous form would be issued by Uber to reflect payments that were made to the claimant in regard to promotions. For instance, extra money might be paid to the claimant for completing a certain number of fares within a given time period. These payments are categorized as non-employee compensation.

Kasra Moshkani testified that he is employed by Uber Technologies as Director of Operations for the South. He has been with Uber for just under five years. Mr. Moshkani described Uber Technologies as a technology company that builds apps. For example, the company created the Uber app for ride sharing that connects “independent transportation providers” with someone looking to get from “point A to point B”. The app provides potential leads for the transportation provider. Another app created by Uber Technology is “Uber Eats” and allows couriers to connect with people looking to have food delivered from a restaurant. The app provides couriers using the apps with leads as to potential customers. Uber also offers “Uber XL” for riders needing transportation in a larger vehicle, and “Uber Pool” in which riders can overlap their trip with the transport of other Uber passengers in order to reduce the cost of their individual fare. “Uber Freight” is an app for use by transportation providers who are interested in transporting freight from one location to another.

Mr. Moshkani testified that Uber is a technology company and not a transportation company. According to Moshkani, “Uber is considered a transportation network company”. The Uber app is utilized by “independent third-party transportation providers” who use Uber’s technology to make their services available to potential customers who access their services through the customer side of the application.

Mr. Moshkani testified that in order to use the transportation provider side of the app, providers are required to sign a Transportation Services Agreement. That agreement includes information informing the provider that they are independent contractors, and not employees of Uber. Uber does not review the performance of its users. Transportation providers and their customers have the ability to rate each other on a “one to five-star scale” using the app. Uber does not withhold any percentage of tips earned by transportation providers. There is no dress code for users of the app, and Uber does not inspect the user’s vehicle. There is no withholding of payroll tax.

Claimant’s August 14, 2018 Deposition

The claimant was deposed on August 14, 2018. Asked if he knew that Uber was providing him a service by providing access to its app, the claimant testified, “I do know that”. “They not charging any special fee from me.” “They provide me with riders and then they charge whatever they want.” The claimant confirmed it is his decision regarding when he uses the app, and he sets his own work schedule. He likes using the app because there are no cash transactions.

The claimant testified that he brought his workers’ compensation claim against Uber because he believes that Uber promised to provide information to the police regarding the identity

of his assailant but did not do so. “At that time, they called me, they promised to go against that guy and that I don’t need to do anything, they will do everything”.

Claimant’s Responses to Defendants’ Request for Admissions

As part of his June 18, 2018 response to the defendants’ Request for Admissions, the claimant admitted the following:

Pursuant to the Technology Services Agreement with Uber, the claimant agreed to provide transportation services to third-party riders with his own vehicle, at times of his own choosing, through the use of the Uber app.

Uber never assigned the claimant a supervisor or manager.

While using the Uber app, the claimant controlled and set his own schedule and hours. He controlled the times he logged on or off the app, the time he was online, the time he was available to accept fares, and when he took breaks.

While using the Uber app, the claimant could provide transportation services as much or as little as he wanted, solely at his discretion.

He provided all of the tools and equipment needed or desired to provide transportation services using the Uber app, including all gas, vehicle repairs, insurance, and maintenance.

The title, insurance, and registration of the vehicle used by the claimant to provide services using the app were in his name.

He was not required to wear a uniform when providing services under the app.

He earned income on a per trip basis rather than an hourly basis.

He was free to take any route he selected when providing transportation services.

He was free to use other software applications such as Lyft.

He was free to decline transportation requests from third-party riders.

Uber did not control the manner or method of how he performed his transportation services.

At all times relevant to this Claim for Benefits filed on January 29, 2018, he was an independent contractor, and not an employee of Uber.

Medical Evidence

On November 20, 2017, the claimant was seen at the emergency room of Stone Springs Hospital Center complaining of right wrist pain following a fall. The claimant reported that he fell onto his right hand and buttocks just prior to his arrival and was now having right wrist pain radiating to his elbow. The claimant denied any other symptoms. There was diffuse right wrist tenderness with palpation and moderate tenderness at the elbow. X-rays of the wrist revealed to non-displaced distal scaphoid wrist (mid-portion of the scaphoid bone) fracture. X-rays of the right elbow were negative. The claimant's hand and wrist were placed in a splint and sling, and he was discharged to home with instruction to follow up with an orthopedist.

Dr. William Mook saw the claimant on November 21, 2017 for evaluation of his right-hand injury. Dr. Mook wrote, "[h]e was arguing with another individual when the altercation resulted in him getting pushed onto his right outstretched hand". X-rays revealed a nondisplaced distal 1/3 scaphoid fracture with possible comminution. The claimant was placed in a thumb spica cast and was referred for a CT scan and follow up examination with Dr. Daniel Laino.

On November 30, 2017, the claimant was seen by Dr. Laino for his right wrist pain. A CT scan of the right wrist that was completed on November 27, 2017 reportedly showed a nondisplaced scaphoid fracture with a mildly comminuted distal component in near anatomic alignment. Dr. Laino agreed with continued non-operative treatment and informed the claimant that this type of fracture was difficult to heal. If the fracture did not heal, surgery would then be considered. On December 12, 2017 Christine Meuting, PA-C issued a work status slip keeping the claimant off of work until cleared by a physician on January 2, 2018.

On January 4, 2018 the claimant returned to Dr. Daniel Laino for follow-up of his right scaphoid middle third fracture. It was noted that the claimant was in a short arm cast for the past 6 weeks. The claimant reported that he was doing well with only mild pain. X-rays showed that the fracture line was still present, and Dr. Laino noted that if the fracture did not appear healed after another month in a cast, a CT scan would be obtained and surgery considered. Dr. Laino prepared a work status slip stating that the claimant was unable to drive for another month.

When seen again on February 5, 2018 the claimant denied any significant pain. X-rays showed the continued presence of a fracture line. Dr. Laino recommended a CT scan to check for further healing. The claimant was provided with a removable brace. On February 19, 2018 the results of the CT scan were discussed with the claimant. The study showed a comminuted subacute fracture of the mid to distal portion of the scaphoid. Dr. Laino noted that it was difficult to determine if there was any further healing of the fracture. The claimant was instructed to continue use of his brace and to follow up in one month. The claimant indicated that he would like to avoid surgery if at all possible. Dr. Laino recommended the use of a bone stimulator.

New x-rays were obtained during a follow-up visit with Dr. Laino on March 19, 2018. The claimant reported that his right wrist was improving although he still felt intermittent pain while driving. The claimant was noted to be wearing his brace "full time". X-rays showed that a fracture line was still visible. Dr. Laino again recommended the use of a bone stimulator and noted that given the fracture location, and the extension of the fracture into the STT joint, surgical treatment with internal fixation would be difficult. The claimant indicated his preference to continue with non-operative treatment. On May 1, 2018 the claimant again reported improvement in his pain. X-rays revealed some sclerotic change at the distal scaphoid, but no obvious fracture line. Dr.

Laino noted that the claimant was now healing well and recommended that the claimant hold off on use of the bone stimulator.

FINDINGS OF FACT AND RULINGS OF LAW

This matter is before the Commission upon the claimant's January 29, 2018 claim. As a result, the burden of proof is upon the claimant to prove every essential element of his case by a preponderance of the evidence, including that he was an employee within the meaning of the Act. *See Rios v. Ryan Inc. Central*, 35 Va. App. 40 (2001).

Virginia Code § 65.2-101 defines an employee as a person in the service of another under a contract of hire or apprenticeship, written or implied, lawfully or unlawfully employed, except a person whose employment is not in the usual course of the trade, business, occupation, or profession of the employer. A "contract of hire" has been defined as an agreement in which an employee provides labor or personal services to an employer for wages or remuneration or other things of value supplied by the employer. *Charlottesville Music Center v. McCray*, 215 Va. 31 (1974).

The elements of an employment relationship are: (1) selection and engagement of the employee, (2) payment of wages, (3) power of dismissal, and (4) power of control of the employee's action. The power of control is the most significant factor in determining whether a person is an employee. *Behrens v. Whitaker*, 10 Va. App. 364, 366 (1990) (citing *Stover v. Ratliff*, 221 Va. 509, 511-12 (1980)). "Thus, 'one is an employee of another if the person for whom he or she works has the power to direct the means and methods by which the work is done.'" *Mount Vernon Builders, Inc. v. Rotty*, 28 Va. App. 511, 514 (1998) (quoting *Craddock [Moving & Storage Co. v. Settles]*, 16 Va. App. 1, 4 (1993), *aff'd*, 247 Va. 165 (1994)).

After carefully reviewing all of the record evidence, and applying the above, we find that the claimant was not an employee of Uber Technologies on November 20, 2017. We reach this conclusion for the following reasons.

We first note that we find there to be insufficient evidence to establish that the claimant was acting in the service of Uber Technologies pursuant to a “contract of hire”. Here, there was no selection process in which the claimant was retained as an “employee”. The evidence before us establishes that the claimant was granted access to the Uber software application merely upon showing that he met Virginia regulatory requirements, by passing a criminal background check, and by agreeing to the terms of Uber’s Technology Services Agreement. There is no evidence to suggest that by granting the claimant user access to its software, Uber intended to make the claimant its employee.

We also note that the claimant provided no services to Uber in exchange for wages or other remuneration. The transportation services provided by the claimant were provided to individuals seeking transportation who are also users of the Uber software application. While payment for transportation provided by the claimant when using the app is completed via credit card transactions in which payment is received and processed by Uber, Uber only retains its Commission on the transaction, and the remainder of the fare earned by the claimant is paid via direct deposit to the claimant. Uber does not provide transportation. As a software technology company, Uber retains a portion of each fare serviced by the claimant as compensation for the use of its software application.

Here, the record evidence establishes that Uber maintained no control over the claimant’s actions while he was providing transportation services. The claimant was free to set his own work schedule, could work as often or as little as he liked, and was not required to accept any particular

fare suggested by his use of the Uber app. Uber maintained no power to direct the means and methods by which the claimant's work was performed. The claimant was free to use other competing software applications such as Lyft in conjunction with, or in lieu of, the Uber application. Uber did not dictate the routes to be taken by the claimant when providing transportation, nor did it restrict the area where the claimant provided those services. Uber had no supervisor or manager to oversee the claimant's activity. Uber's sole interest in the claimant's work was to receive a Commission on each fare in which the claimant and riders were connected through the use of Uber's app.

The Technology Services Agreement that was signed and agreed to by the claimant prior to being granted access to the Uber software application also states, in part,

Your Relationship with Company. You acknowledge and agree that Company's provision to you of the Driver App and the Uber Services creates a direct business relationship between Company and you. Company does not, and shall not be deemed to, direct or control you generally or in your performance under this Agreement specifically, including in connection with your provision of Transportation Services, your acts or omissions, or your operation and maintenance of your Vehicle. You retain the sole right to determine when, where, and how long you will utilize the Driver App or the Uber Services. You retain the option, via the Driver App, to attempt to accept or decline or ignore a User's request for Transportation Services via the Uber Services, or to cancel an accepted request for Transportation Services via the Driver App, subject to Company's then-current cancellation policies, Company shall have no right to require you to: (a) display Company's or any of its Affiliates names, logos, or colors on your Vehicle(s); or (b) wear a uniform or any other clothing displaying Company's or any of its Affiliates' names, logos or colors. You acknowledge and agree that you have complete discretion to provide services or otherwise engage in other business or employment activities. For the sake of clarity, you understand that you retain the complete right to (i) use other software application services in addition to the Uber Services; and (ii) engage in any other occupation or business.

Given the record evidence before us, we conclude that the overwhelming weight of that evidence leads to the conclusion that the claimant was not an employee of Uber Technologies as of November 20, 2017 and is therefore not entitled to benefits under the Act. Having reached this conclusion, we need not, and do not, address the defendants' additional contention that the claimant was an "independent contractor" in regard to his business relationship with Uber Technologies. We simply find that the claimant was not an "employee" as that term is defined by the Act.

Accordingly, the claimant's January 29, 2018 claim, must be, and is hereby DENIED.

This matter is hereby ORDERED removed from the hearing docket.

REVIEW

Any party may appeal this decision to the Full Commission by filing a Request for Review with the Commission within thirty (30) days of the date of this Opinion.

Additional Parties

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Interested Parties

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Charge No. FE2018638374

Warren Johnson

Redacted

Complainant

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Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306(2), I conclude from our investigation that this agency **lacks jurisdiction** over the Complainant's claims of discrimination. As such, this matter is hereby dismissed.

For purposes of this instant matter, the Respondent is not an employer within the meaning of C.R.S. 24-34-401(3), as re-enacted, and thus, the jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 4 have been not been met.

The Complainant alleges that on or about September 15, 2017, he was discharged from his position as a Rideshare Driver with the Respondent based on his disability (physical) and/or in retaliation for engaging in a protected activity. The Complainant also alleges that prior to September 15, 2017, he had complained to the Respondent that the rating system used to rate Rideshare Drivers unfairly disadvantages and discriminates against Rideshare Drivers who have a limiting, physical disability.

The Respondent contends that this Division lacks jurisdiction over the Complainant's Charge of Discrimination because the Complainant is not appropriately classified as an "employee." The Respondent also denies that the Complainant was discharged because of his disability or in retaliation for engaging in any protected activities. Instead, the Respondent avers that the Complainant's access to its technology services application was cancelled after he violated relevant law and policy in refusing to transport an application user with a service animal.

The Respondent is a technology services company that offers a "ridesharing" or "peer-to-peer" smartphone application to facilitate transportation services between independently contracted drivers and application patrons. The Respondent operates within the State of Colorado and employs more than 15 employees.

The record reflects that the Complainant first entered into an agreement with the Respondent on or about April 28, 2016. The Technology Services Agreement entered into by the Complainant with the Respondent and its subsidiary states, in relevant part:

[T]he relationship between the parties under this Agreement is solely that of independent contracting parties. The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship, between [the Respondent and the Complainant]; and (b) no joint venture, partnership, or agency relationship exists between [the Respondent and the Complainant].

* * *

[The Respondent] does not, and shall not be deemed to, direct or control [the Complainant] generally or in [the Complainant's] performance under this Agreement specifically, including in connection with [the Complainant's] provision of Transportation Services, [the Complainant's] acts or omissions, or [the Complainant's] operation and maintenance of [his] Vehicle. [The Complainant] retain[s] the sole right to determine when, where, and for how long [he] will utilize the Driver App or the Uber Services. [The Complainant] retain[s] the option, via the Driver App, to attempt to accept or decline or ignore a User's request for Transportation Services via the Uber Services, or to cancel an accepted request for Transportation Services via the Driver App, subject to [the Respondent's] then-current cancellation policies.

The Agreement between the Complainant and the Respondent continues on to expressly disclaim the ability of the Respondent or its subsidiary to require the Complainant to display the Respondent's name or logo, or to restrict the Complainant's participation in other economic activities (such as using other technology platforms in conjunction with the Respondent's own, including the ridesharing technologies of direct competitors).

The Complainant asserts that the Respondent's rating system unfairly disadvantages drivers who have a limiting physical disability. Specifically, the Complainant asserts that drivers who are incapable of safely lifting heavy objects (e.g., bags and luggage) or generally assisting riders with loading their belongings into the vehicle will receive lower ratings. The Complainant asserts that when a driver reaches a certain level of low-rating, his contract with the Respondent is cancelled.

The Complainant alleges that on or about September 15, 2017, he accepted a transportation request from an application user who was seeking a ride to the airport. The Complainant avers that when he arrived to pick-up the would-be rider, he noticed she had a dog with her. The Complainant purportedly inquired as to whether or not the woman would be keeping the dog in a carrier cage for the entire trip. The Complainant claims that the woman responded by stating that the dog was a “service animal.” The Complainant alleges that he then asked “one of the two allowed questions;” namely, whether the dog was a service animal for a disability. The Complainant contends that the woman became “irate” in response to this legally permissible question. The Complainant determined that, because of the anger the woman was expressing towards him, he no longer wished to drive her, and therefore, he cancelled the trip using the application. The Complainant later reported this incident and the reason for his cancellation to the Respondent. The Complainant asserts that, as a result of this incident, his application account with the Respondent was placed on suspension, and ultimately, revoked entirely.

The Respondent avers that it launched an internal investigation into the above incident after receiving a complaint from the would-be rider, as well as the Complainant’s report regarding the cancellation. The Respondent asserts that the Complainant admitted during the course of the internal investigation that he did not believe that the would-be rider’s dog was actually a service animal. The Respondent also spoke to the would-be rider regarding her version of events. The woman allegedly reported that when she told the Complainant that her dog was a service dog, he became angry and asked questions not permitted by law, such as the specific nature of her disability. When the woman reportedly challenged the Complainant about his lawful ability to ask such questions, the Complainant is alleged to have abruptly informed her, “I can’t do this ride, we’re done.” The woman supposedly informed the Respondent that as a result of this cancellation by the Complainant, she was unable to make it to the airport in time for her flight.

The Respondent alleges that after it completed its internal investigation, it decided to deactivate the Complainant’s account, as it had determined that the Complainant’s actions were in violation of its policy. Such policy prohibits drivers “from denying service to riders with service animals because of the service animals, and from otherwise discriminating against riders with service animals.” The policy goes on to expressly state that drivers who act “in violation of this legal obligation will lose their ability to use the Driver App,” and that such a loss may be permanent.

The Complainant admits that, for all intents and purposes, he was self-employed and that the Respondent did not control the hours of his work as a driver. The Complainant, however, alleges that the Respondent does “not allow[] a driver to decide for themselves [that] they don’t want to enter into a possible [sic] dangerous situation with passengers,” and that such control undercuts his purported classification as an independent contractor. The Complainant did not submit specific

evidence of how the Respondent purportedly prevents drivers from excusing themselves from potentially dangerous situations with passengers.

The Respondent's express policies appear in direct conflict with the Complainant's allegations that he had no control over his choice of passengers. Moreover, the fact that the Complainant was able to effectively cancel his ride with the would-be-rider and her service dog reflects that the driver is indeed able to cancel rides at their election.

The Respondent argues that a review of the relevant factors distinguishing employees from independent contractors plainly favors a determination that the Complainant was operating as an independent contractor. The Respondent asserts that the Complainant's services were on behalf of his own independent business. In other words, the Respondent alleges that it provides a service (i.e., use of the smartphone application) to the Complainant to further his own business venture (i.e., independent transportation services), not the other way around. Further, the Respondent claims that it exercised no control over the Complainant's choice to use, or not use, its technology service. The Respondent avers that discretion by the Complainant purportedly included his ability to: (1) accept or reject rides; (2) determine how to perform his transportation services (e.g., which route to drive); (3) use other lead-generating technology services, including those offered by the Respondent's competitors; (4) own and operate his own vehicles; (5) dress as he desired (no uniform requirement); and (6) use the application as frequently or infrequently as he would like—or not use it at all.

Although offered an opportunity to rebut the above assertions by the Respondent, the Complainant elected not to expressly address the foregoing (with the exception of his bald assertion that the Respondent prevents drivers from extricating themselves from potentially dangerous situations with passenger).

Based on the totality of the evidence referenced above, no employer-employee relationship was established between the Respondent and the Complainant. The evidence supports that the Complainant was operating as an independent contractor, and thus, is beyond this Division's jurisdiction.

Based on the evidence contained above, I determine that the Respondent is not an employer as defined by C.R.S. 24-34-402, as re-enacted, and therefore, this agency has no jurisdiction over the Complainant's claims. As such, the Complainant's Charge of Discrimination is hereby dismissed for want of jurisdiction.

In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission's Rules of Practice and Procedure, the Complainant may appeal the dismissal of this claim to the Commission within ten (10) days, as set forth in the enclosed form.

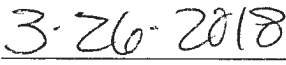
If the Complainant wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety (90) days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission; or
- b. Within ninety (90) days of the mailing of the final notice of the Commission dismissing the appeal.

If the Complainant does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action (C.R.S. 24-34-306(l)).

On Behalf of the Colorado Civil Rights Division


Aubrey Elenis, Director
Or Authorized Designee


Date

HOW TO FILE AN APPEAL OF THE DIRECTOR'S DETERMINATION

Commission's Authority

You have been issued a Determination dismissing your case regarding your charge of discrimination. If you disagree with the Director's decision in the dismissal of your charge, you have the right to appeal that determination [C.R.S. 24-34-306(1)(A)] to the Colorado Civil Rights Commission (Commission). The Commission is a separate and distinct body from the Colorado Civil Rights Division (CCRD). The Commission is composed of seven members appointed by the Governor and one of its many functions is to review properly filed appeals.

The Commission has the option to either:

- 1) *Uphold* the Director's determination, thus dismissing your case;
- 2) *Remand* the case to the Division for further investigation on a specific issue; or
- 3) *Reverse* the Director's determination.

Filing Requirements

The appeal process is **not** intended to simply review the evidence already submitted, which formed the basis of the Director's determination. The Commission will only consider a properly filed appeal wherein:

- *Available, substantial, and relevant evidence exists now that was previously not available, presented, and considered during the investigation; or*
- *There is clear evidence that existing evidence was misinterpreted or the determination was based on erroneous information.*

In both, it is your responsibility to submit the above information along with your Notice of Appeal.

Filing Procedure

The Notice of Appeal form and relevant documentation **MUST** be received in the Civil Rights Division's office **WITHIN 10 DAYS** from the date of the mailing of the Director's Determination.

If your appeal is not received within the 10-day time limit, you will lose your right to appeal. Filling out any other form included in this mailing does not change the 10-day deadline for appeal. If you wish to appeal, but cannot file a written appeal within the 10-day time limit, contact the Appeal Coordinator *before* the 10-day period is over to request an extension of the filing deadline. A verbal request for an extension must be confirmed in writing and an extension is not official until approved by the Commission.

If you are asserting that *relevant evidence exists now that was previously not available, presented, and considered during the investigation*, you will need to attach a copy of that evidence with your Notice of Appeal. If you assert that there is witness testimony to support your appeal, please submit a statement from your witness(es). It is not sufficient for you to simply provide the name of the witness(es). The witness statement(s) should include testimony that is specifically relevant to your case and argument. It must also include the current telephone number(s) and address(es) of the witness(es). Witness statements need not be notarized.

If you are asserting that *existing evidence was misinterpreted or the determination was based on erroneous information*, you will need to identify the particular evidence and specific facts that were misinterpreted. You must also specify how this misinterpretation effected the overall case decision. It is not sufficient to simply state that you disagree with the Director's decision.

Upon receipt of your Notice of Appeal, if it is determined that the appeal is either:

- 1) untimely;
- 2) you have failed to provide new evidence that was previously unavailable; or
- 3) you have failed to identify specific information regarding a misinterpretation of evidence or erroneous basis for the determination;

you will be notified in writing that your appeal has been denied. You will also be provided with a Notice of Dismissal and, in Employment cases, you will be provided with a notification regarding the allowable time frames in which you may file an action in civil court.

If you have submitted the necessary information required for consideration, your case will be reviewed on appeal by the Commission at a regularly scheduled Commission meeting. You will be notified of the time and date of the Commission meeting for your appeal review, and will be asked to be available by telephone during the meeting for possible questions by the Commission.

General Information

If it is necessary for you to examine the information in your file in conjunction with preparing your appeal, please make arrangements to review your case file prior to your submission of the Notice of Appeal. Since your Notice of Appeal must be filed within ten (10) days, it is advisable that you make this appointment as soon as possible. Please contact the Commission Coordinator at (303) 894-2997, or 1-800-262-4845 (outside Denver area only), if you wish to review the file.

It is not necessary for you to file an appeal in order to exhaust the administrative process. In Employment cases, the enclosed Letter of Determination includes the notice of Right to Sue, which allows you to file your case in the civil court having appropriate jurisdiction.

If you are filing an appeal, please return the Notice of Appeal and documentation to:

COLORADO CIVIL RIGHTS DIVISION

Attn.: Appeal Coordinator
1560 Broadway, Suite 1050
Denver, CO 80202-5143

By fax: (303) 894-7830

By e-mail: CCRD@dora.state.co.us

NOTICE OF APPEAL to the COLORADO CIVIL RIGHTS COMMISSION

Instructions:

If you are filing an Appeal, this form must be submitted within ten (10) days of the date of the mailing of the Director's determination of no probable cause. If you wish to obtain an extension to file, you must contact the Appeal Coordinator **before** the 10-day period is over and a verbal request for an extension must be confirmed in writing. An extension of time to file the appeal is not official until approved by the Commission.

Please type or use black ink. Attach additional pages and/or documents as necessary.

Charge No.: _____

Charging Party: _____

Current Address: _____ Apt. #: _____

City: _____ State: _____ Zip Code: _____

Telephone No(s): _____

Respondent: _____

A. **New Information Available**: What evidence is now available that was not available and presented during the investigation? What is the relevance and significance of this information to your case? Please attach copies of the new information, including any witness statements.

B. **Facts in Dispute**: What material facts presented in the Director's determination are incorrect or were misinterpreted? Please attach your argument and documentation to support your claim or make specific reference to evidence previously submitted in the investigation.

PLEASE NOTE: Failure to state a specific reason or reasons for appeal will result in automatic denial of a review of your appeal by the Commission.

After it is determined your appeal filing is accepted and warrants consideration, the appeal will be scheduled for review at a regularly scheduled Commission meeting. You will be notified of the date and time of your scheduled appeal review. The parties will only be contacted during the Commission meeting if the Commission has questions of the Charging Party or Respondent.

- Can you be available by telephone during working hours for the Commission meeting? Yes ____ No ____

Signature

Date

Please return this form to:
Colorado Civil Rights Division
Attn.: Appeal Coordinator
1560 Broadway, Suite 1050
Denver, CO 80202-5143
or Fax: 303-894-7830
or E-mail: CCRD@dora.state.co.us

CERTIFICATE OF MAILING

This is to certify that on **March 27, 2018** a true and exact copy of the Closing Action of the above-referenced charge was deposited in the United States mail, postage prepaid, addressed to the parties and/or representatives listed below.

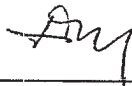
CCRD Case Number:
FE2018638374

EEOC Case Number:
32A-2018-00007

Warren Johnson
Redacted

Uber Technologies, Inc.
1455 Market Street, 4th Floor
San Francisco, CA 94103

Michelle Gomez, Esq.
Littler Mendelson, P.C.
1900 Sixteenth Street, Suite 800
Denver, CO 80202



David L. Martinez
Colorado Department of
Regulatory Agencies
Division of Civil Rights
1560 Broadway, Suite 825
Denver, CO 80202
david.l.martinez@state.co.us
www.dora.state.co.us

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

LITTLER MENDELSON

To: Jesus J. Medina

Redacted

From: Tampa Field Office
501 East Polk Street
Room 1000
Tampa, FL 33602

JUN 13 2018

RECEIVED

☐On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

550-2018-00124

Jearlean Johnson,
Investigator

(813) 202-7913

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☒

Other (briefly state)

No Employee-Employer Relationship

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Evangeline Hawthorne

Evangeline Hawthorne,
Director

5/31/18

(Date Mailed)

Enclosures(s)

cc:

Michael Chan
Paralegal II
UBER TECHNOLOGIES INC.
1455 Market Street
San Francisco, CA 94103Sophia Behnia
Littler Mendelson
333 Bush St., 34th Floor
San Francisco, CA 94115

DISMISSAL AND NOTICE OF RIGHTSTo: **Tyreice D. Moore**
Redacted

Received

From: **Detroit Field Office**
477 Michigan Avenue
Room 865
Detroit, MI 48226

OCT 13 2017

Littler Mendelson, P.C.

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

23A-2017-00718**Kiron R. Kothari,**
Investigator**(313) 226-7809****THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

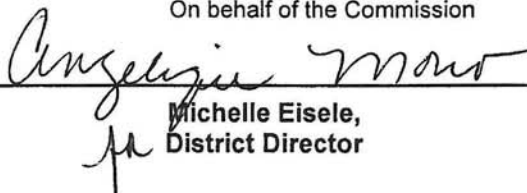
No employer employee relationship**- NOTICE OF SUIT RIGHTS -**

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

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On behalf of the Commission



Michelle Eisele,
District Director

10-6-2017

(Date Mailed)

Enclosures(s)

cc: **Uber**
c/o Shelley Vail
Attorney
Littler Mendelson, P.C.
2301 McGee St., Suite 800
Kansas City, MO 64108

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10 – not 12/1/10** -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.



GEORGIA DEPARTMENT OF LABOR

148 ANDREW YOUNG INTERNATIONAL BLVD., N.E. ATLANTA, GEORGIA 30303-1751

MARK BUTLER
COMMISSIONER

February 22, 2017

Employer:

Portier, LLC dba
Uber (Eats) Technologies
1455 Market Street
San Francisco, CA 94103

Claimant:

Petronia Norman

Redacted

As a result of a claim for unemployment benefits filed by Petronia Norman above, and based upon a field and wage investigation, this office received a request for a determination as to whether an employer-employee relationship covered by Georgia's Employment Security Law existed between Portier, LLC dba Uber (Eats) Technologies and Petronia Norman.

Before determining whether or not an individual was an employee, it must first be determined whether or not Ms. Norman was performing personal services for wages under the law. The statutory definition of "wages" includes "...all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash." O.C.G.A. Section 34-8-49(a)(1).

"Employment" is defined in the Georgia Employment Security Law as any service performed for wages or under any contract of hire, written or oral, expressed or implied. This definition covers full-time, part-time and temporary workers.

Official Code of Georgia Annotated Section 34-8-35(f), as amended, sets forth criteria which a wage payer must prove to exempt a worker's services for wages from the above definition of "employment." Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown that:

(1)(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of service and in fact; and
(B) Such individual is customarily engaged in an independently established trade, occupation, profession, or business; or

(2) Such individual and the services performed for wages are the subject of an SS-8 determination by the Internal Revenue Service, which decided against employee status.

O.C.G.A. Section 34-8-250 states: Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under this chapter shall be void.

Our investigation revealed that Portier, LLC dba Uber (Eats) Technologies, Inc. is a San Francisco-based technology company that connects independent delivery providers, to restaurants, merchants and individuals seeking delivery services through an innovative technology platform accessed through a software application ("App") available on many modern smartphones. Rather, any delivery provider who wants to access the Company's technology platform does so by entering into a Technology Services agreement with Uber's subsidiary, Portier. Portier is not a transportation company. Its sole business is offering the APP to delivery providers as a lead generation tool, in exchange for, a contractual fee. There was a written, unsigned Technology services agreement and a Transportation Provider Agreement. Alex H. Scherbatskoy, Attorney at Law for the firm, submitted a word document with answers to the requested questions. The Firm did not require Ms. Norman to undergo any training nor was she given any instructions covering how to perform her work. She received her assignments by logging into the Uber App. The Claimant determined the methods by which the assignments were performed. There were no reports required from Ms. Norman. There is no requirement that Ms. Norman contact anyone following a problem or complaint. The Firm does not set any schedule or routine that the worker must adhere to. She can access the Uber app at any time, and as much or as little as she likes. Her services are not overseen, monitored and/or reviewed. She was not required to attend any meetings. She is not required to provide her services personally. Ms. Norman is generally responsible for supplying all tools necessary to provide transportation services. She is not allowed a drawing account for advances. The Firm does not carry workers compensation insurance for her. There were no benefits provided to her nor any tax deductions made. Ms. Norman was not prohibited from providing similar services to others. Ms. Norman indicated that she received instructions covering how to perform her work; specifically, handout reading materials. Ms. Norman stated that both she and the Firm determine the methods by which the assignments are performed. She is required to contact UBER for the resolution of any problems or complaints that may arise. She determines her daily schedule or routine. She was required to provide her services personally. She stated that the Firm provided Insulated bags, reading materials and vehicle light displays and she provided her personal cell phone and vehicle. She indicated that insurance benefits and a gas card were the benefits available to her.

The testimony given supports that Ms. Petronia Norman was substantially free of direction and control and that she was independently established in her own trade, occupation profession and/or business.

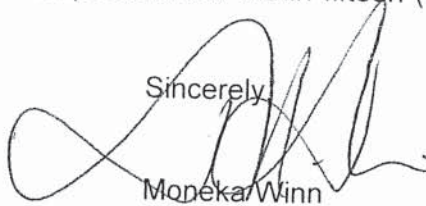
Portier, LLC dba Uber (Eats) Technologies did not provide an IRS SS-8 determination with respect to Petronia Norman and/or the services that were performed for wages which indicates a finding of no-coverage under the Georgia Employment Security Law is appropriate.

It is therefore determined that the claimant, Petronia Norman, was not an employee of Portier, LLC dba Uber (Eats) Technologies and her wages are exempt from coverage under the Employment Security Law. This determination relates to the services of the claimant, Petronia Norman, and also applies to all other individuals performing similar services as a Delivery Driver for Portier, LLC dba Uber (Eats) Technologies under similar circumstances.

Portier, LLC dba Uber (Eats) Technologies
DOL Account No.
February 22, 2017
Page Two

This determination on coverage becomes final unless an appeal, in writing, setting forth grounds for appeal is filed with this office and postmarked within fifteen (15) days from the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Moneka Winn', written over the word 'Sincerely,'.

Moneka Winn
Employer Liability Adjudicator
Suite 850
(404) 232-3301

cc: Petronia Norman
Claims Administration/Recon Unit
Melanie Clark, Field Tax Auditor
Files

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Kevin Palardy
Redacted

From: Philadelphia District Office
801 Market Street
Suite 1300
Philadelphia, PA 19107

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

12F-2018-00654

Elizabeth Wjasow
State & Local Coordinator

(267) 589-9728

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☒

Other (briefly state)

No employer/employee relationship between the parties

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

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On behalf of the Commission


Enclosures(s)

Jamie R. Williamson
District Director

12/11/2018

(Date Mailed)

cc: RAISER, LLC d/b/a UBER

S. Libby Henninger, Esq.
Littler Mendelson, P.C.
815 Connecticut Avenue, NW
Suite 400
Washington, DC 20006

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
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Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

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ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA): The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one** major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of “mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it **would be substantially limiting when active**.
- An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months**.

“Regarded as” coverage:

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **BOTH** transitory (lasting or expected to last six months or less) **AND** minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the “regarded as” definition of “disability.”

Note: *Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.* For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

to: Lawrence S. [REDACTED]
RedactedFrom: San Francisco District Office
450 Golden Gate Avenue
5 West, P.O. Box 36025
San Francisco, CA 94102On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

550-2013-00209

Patricia A. Finnegan,
Investigator

(415) 522-3021

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

No Jurisdiction

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

for [Signature]
Michael P. Connolly,
Acting District Director

03/30/2015

(Date Mailed)

Enclosures(s)

cc: Andrew M. Spurchise
LITTLER, MENDELSON, PC
650 California Street, 20th Floor
San Francisco, CA 94108

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do **not** relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

BEFORE THE IDAHO HUMAN RIGHTS COMMISSION

Robert Stucker, Complainant

Case Nos.: A-0616-374
38C-2016-00146

vs.

Uber Technologies, Inc., Respondent
Boise, Idaho

Basis: Age

Issue: Harassment

INVESTIGATOR'S REPORT AND
COMMISSION DETERMINATION

SUMMARY OF INVESTIGATION

A. Complainant's Position & Evidence

Complainant states that he applied to be a driver for Respondent, a taxi service, in Boise, ID.

Complainant asserts that he first received a letter from Respondent dated December 22, 2015, stating that "Because you are 67, you must prove 1+ year of licensing history, or 2+ years in Washington and Oregon." Then Complainant states he received a letter from Respondent dated January 5, 2016, which declined his application stating that he must be issued a driver's license in "state where applying." However, Complainant states he had applied for work in Boise, ID and has been a resident of Idaho with an Idaho driver's since 1976. Complainant stated that finally, on or about January 14, 2016, he received a message from Respondent indicating he had some questionable background records which Complainant disputes.

Complainant alleges these issues are all a pretext for Respondent to deny Complainant employment based upon his age (67).

B. Respondent's Position & Evidence

Respondent denies discriminating against Complainant.

Respondent also denies that the Idaho Human Rights Commission (IHRC) and the Equal Employment Opportunity Commission (EEOC) have jurisdiction over this matter. Under both the Age Discrimination in Employment Act of 1967 (ADEA) and the Idaho Human Rights Act (IHRA), Respondent assert that charges of discrimination may only be brought by "employees". The ADEA

states that "[A]n individual is only protected if s/he was an "employee" at the time of the alleged discrimination, rather than an independent contractor, partner, or other non-employee."¹

Respondent provided a copy of the *Technology Services Agreement* between Complainant and Rasier, LLC.², a subsidiary of Uber Technologies, Inc. ("Uber"). The agreement states that Uber will provide "lead generation to independent providers of rideshare or peer-to-peer (collectively, "P2P") passenger transportation services using the Uber Services..."

Section "13. Relationship of the Parties" of the *Technology Services Agreement* defines the relationship between Complainant and Respondent's subsidiary as follows:

13.1 ...The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship, between Company and you; and (b) no joint venture, partnership, or agency relationship exists between Company and you.

C. Other Evidence Considered

Complainant does not dispute agreeing to the *Technology Services Agreement* between the parties.

The EEOC guidelines for defining employees states the following:

"In most circumstances, an individual is only protected if s/he was an "employee" at the time of the alleged discrimination, rather than an independent contractor, partner, or other non-employee.⁽⁶⁸⁾ An "employee" is "an individual employed by an employer."⁽⁶⁹⁾ An individual may have more than one employer.⁽⁷⁰⁾ The question of whether an employer-employee relationship exists is fact-specific and **depends on whether the employer controls the means and manner of the worker's work performance.** (emphasis added) This determination requires consideration of all aspects of the worker's relationship with the employer."

The EEOC guidance in this area offers a non-exhaustive list of factors in determining whether an employment relationship exists. It goes on to state:

"Other aspects of the relationship between the parties may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met. Rather, the determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship."³

¹ Respondent's response refers to: <https://www.eeoc.gov/policy/docs/threshold.html#2-III-A-1>.

² Respondent provided a copy of the *Technology Services Agreement* between the parties.

³ See <https://www.eeoc.gov/policy/docs/threshold.html#2-III-A-1> 1. Who Is an "Employee"?

Complainant contends that Respondent controlled the means and manner of his work performance in the following ways:

- Respondent has ability to dismiss him if it does not approve of his background check.
- Respondent requires Complainant to have a recent model car, keep it clean, and keep it insured.
- Respondent has the ability to dismiss Complainant if he frequently declines to accept requests for transportation services.

Respondent contends that Complainant is an independent contractor for a number of reasons:

- The *Technology Services Agreement* between the parties states that Complainant is an independent contractor.
- Section 13.1 of the *Technology Services Agreement* states "Company does not, and shall not be deemed to, direct or control you generally or in your performance under this Agreement specifically, including in connection with your provision of Transportation Services, your acts or omissions, or your operation and maintenance of your Vehicle. You retain the sole right to determine when, where or for how long you will utilize the Driver App or the Uber Services. You retain the option, via the Driver App, to attempt to accept or to decline or ignore a User's request for Transportation Services via the Driver App, subject to the Company's then-current cancellation policies."
- Section 2.4 of the *Technology Services Agreement* states "The Agreement also explicitly disclaims any ability on the part of Rasier to require Driver-Partners to display Uber's name, logo, etc., or to restrict their participation in other economic activities:..."
- Section 2.4 of the *Technology Services Agreement* allows Driver-Partners the freedom to use other technology platforms in conjunction with their own and "engage in any other occupation or business."
- Respondent asserts that Complainant was free from direction and control over the performance of his work with full discretion to accept or deny ride requests; set his own hours; was not required to report to a supervisor; was not restricted to any particular territory; owned, operated, maintained and insured his own vehicle; paid his own taxes; retained control over the details of how he performed his work including the selection of appropriate routes; did not receive any healthcare, pension, or other non-wage benefits from Respondent.

D. Discussion of Evidence and Analysis

The threshold issue is whether or not Complainant was applying for an independent contractor position. If he was, then the ADEA affords him no protection because the act applies only to "employees" and to those applying for "employee" positions.

Federal courts apply the "common law agency test" in ferreting out whether an individual is an employee or independent contractor under the ADEA and other federal acts. The United State

Supreme Court Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323 & n. 3, 112 S.Ct. 1344, 117 L.Ed.2d 581 (1992), described this test as follows:

In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hiring party.

Id. at 323–24, 112 S.Ct. 1344 (internal quotation marks omitted). *Accord*, EEOC guidance quoted above.

The facts in this matter do not show that the driver position Complainant applied for was an “employee” position. There is minimal skill involved in driving a vehicle. Complainant would have been free to pick and choose when to accept rides. He had no set hours. He was required to use his own car and be responsible for its upkeep. Further, while not determinative, the agreement for use of Uber’s lead generating services plainly describes an independent contractor relationship.

A review of the evidence suggests that Respondent had little to no control over the “means and manner” of Complainant’s work performance. Thus, Complainant has not demonstrated that he was an “employee” of Respondent and therefore, lacks standing under the applicable statutes.

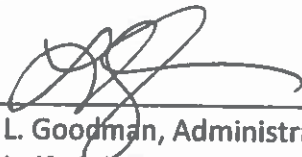
COMMISSION DETERMINATION AND ORDER OF DISMISSAL

Based upon the evidence submitted, we find **no probable cause**. Therefore, pursuant to the Rules of the Idaho Human Rights Commission, this case is **dismissed**, pursuant to IDAPA Section 45.01.01.300.24.

NOTICE OF RIGHT TO SUE

This determination concludes the processing of this charge. Idaho law permits Complainants to file court actions, despite findings of "no probable cause" by the Human Rights Commission. A private action under the Human Rights Act must be filed in court within 90 days of the date of issuance of this notice of administrative dismissal. Failure to comply with this timeline may cause Complainant to lose the right to go to court. Complainant should consult with an attorney if litigation is a consideration.

2/24/17
Date



Linda L. Goodman, Administrator
On behalf of the Commission

CS

DETERMINACIÓN DE LA COMISIÓN Y ORDEN DE DESPIDO

Según la evidencia presentada, encontramos **no causa probable**. Por lo tanto, de conformidad con las Reglas de la Comisión de Derechos Humanos de Idaho, este caso se **descarta**. Sección de IDAPA 45.01.01.300.24.

AVISO DEL DERECHO DE DEMANDA

Esta determinación concluye el procedimiento de esta querella. La ley de Idaho permite que Querellantes registren acciones judiciales, a pesar de hallazgos de "no causa probable" por la Comisión de Derechos Humanos. Una acción privada bajo el Acta de Derechos Humanos se debe registrar con una corte dentro de 90 días de la fecha de la emisión de este aviso de desecha administrativa. La avería de cumplir con esta línea de tiempo puede causar que Querellante pierda el derecho de acudir a los tribunales. Querellante debe consultar con un/a abogado/a si se considera el litigio.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of Feb. 2017, I caused a true and correct copy of the foregoing document to be served as follows:

Robert L. Stucker

Redacted

☒ U.S. Mail
☐ Hand Delivery
☐ Via Facsimile

Alex H. Scherbatskoy
Attorney At Law
Uber Technologies, Inc
1455 Market Street
San Francisco, CA 94103

☒ U.S. Mail
☐ Hand Delivery
☐ Via Facsimile

MPt

EXHIBIT F



FLSA2019-6

April 29, 2019

Dear Name*:

This letter responds to your request for an opinion on whether service providers working for a virtual marketplace company (VMC) are employees or independent contractors under the Fair Labor Standards Act (FLSA). This opinion is based exclusively on the facts you have presented. You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for use in any litigation that commenced prior to your request.

BACKGROUND

You write on behalf of your client,¹ a virtual marketplace company that operates in the so-called “on-demand” or “sharing” economy. Generally, a VMC is an online and/or smartphone-based referral service that connects service providers to end-market consumers to provide a wide variety of services, such as transportation, delivery, shopping, moving, cleaning, plumbing, painting, and household services. VMCs help consumers to obtain these services with greater efficiency—days, weeks, or months faster than they would outside the virtual marketplace. VMCs accomplish this through a software platform called an analytic hierarchy process—a technological structure for organizing data that uses objective criteria to match consumers to service providers.

Regarding your client specifically, before your client allows service providers to use your platform, it requires them to provide certain basic information: the service provider’s name, contact information, and social security number. Service providers must also self-certify their experience and qualifications, complete a background check through an accredited third party, and complete an identity check through a different vendor. Your client also requires them to acknowledge and accept a terms of use agreement and a service agreement, which states that your client provides only a platform for connecting providers with customers and disclaims any employment relationship between your client and the service providers. Additionally, these agreements state that only the service providers, and not your client, will provide services to consumers in the virtual marketplace. The agreements also classify the service providers as independent contractors.

Your client does not interview service providers or require them to undergo training. Once the service providers begin to use its virtual platform, it provides them with information on how the virtual marketplace works, such as tips on best practices through an online resource center, and feedback from existing users (both consumers and service providers) on the level of service that

¹ WHD draws the following background information from the representations that you make in your letter.

consumers generally expect. Your client does its entire onboarding process online and does not require service providers to review any of these materials. Your client also allows service providers to immediately begin providing work to customers once their account is activated and does not require them to report to a physical office.

Your client's platform consolidates information from a consumer's service request (such as the kind of service needed, location, and date and time) and provides that information to service providers through its virtual platform. The platform also allows its service providers to communicate with consumers—including through mobile app messaging or masked telephone calls—to exchange details about the requested service, including adjustments to the scope, price, or time. Your client allows service providers to arrange for repeat business with a consumer, including future jobs outside the virtual marketplace.

Customers using your client's platform pay service providers on a per job basis. Your client sets default prices based on the region and scope of the service provider's work and uses default price tiers that correspond to the number and type of services being offered. It also allows its service providers to request (presumably from the customer) to charge different prices based on other factors, including their work experience outside of the virtual marketplace. Finally, your client issues its service providers Form 1099s reflecting their earnings through your client's platform.

Your client's service agreement allows service providers the right to, among other things: accept, reject, or ignore any service opportunity on the virtual platform; determine whether to accept any service opportunities at all; select service opportunities by time and place; determine the tools, equipment, and materials needed to deliver their services; and hire assistants or personnel. Your client's agreement provides that it will not inspect a service provider's work for quality or rate the service provider's performance. Your client does, however, let consumers rate its service providers' performance. Your client's service agreement also allows service providers to provide their services to consumers through other means, including competing VMC platforms.

Your client does not require a service provider to accept or complete a minimum number of service opportunities. Your client designates a service provider as "inactive" if they have not taken a job for a certain period of time, but inactive service providers can reactivate their account with a telephone call or email. Your client also gives service providers the right to "multi-app"—that is, to simultaneously acquire work on a competitor VMC platform in order to determine the most desirable or profitable service opportunity available at any given time. Your client's service providers often make use of this ability to "multi-app."

Your client's service providers design their own schedules and determine exactly when, where, and how much to work in the virtual marketplace. Few of them spend full-time hours providing services through your client's platform. Service providers may consider a variety of factors when determining whether to accept work—such as, for example, fee amount, expected time, dynamic pricing in effect, location, availability of parking, traffic, and access to additional consecutive service opportunities—in order to maximize their profit or fit their work into their individual schedules. Moreover, service providers may choose between more difficult jobs that are more lucrative, and jobs with less revenue potential, according to their personal needs and profit motives. However, if a service provider cancels an accepted service opportunity without

sufficient notice, your client will charge a cancellation fee on behalf of the consumer. Your client collects these fees to maintain the integrity of its platform.

Your client does not impose requirements on how its service providers must perform their work, such as what transportation route to take, the order in which to clean an apartment, or the make, model, type, brand, source, or amount of their working materials. Your client is not present when the service provider works and does not monitor, supervise, or control the particulars of that work. Moreover, your client requires service providers to purchase, at their expense, all of their own supplies and equipment. Your client does not reimburse them for operating expenses, such as transportation costs, vehicles, professional certifications, or licensing.

Your client will seek to terminate its relationship only if a service provider who commits a material breach, such as: inappropriate behavior toward a consumer or the VMC; fraud; repeated canceling or rescheduling of service opportunities on short notice; or receiving an aggregate consumer rating below a certain minimum threshold. Your client will initiate this termination process only in these instances to maintain the integrity of its virtual marketplace.

GENERAL LEGAL PRINCIPLES

The FLSA applies to those workers whom the FLSA defines as “employees.” *See* 29 U.S.C. §§ 206, 207. An “employee” is any individual whom an employer suffers, permits, or otherwise employs to work. *See* 29 U.S.C. §§ 203(e)(1), (g). This definition is very broad, but it was “obviously not intended to stamp all persons as employees.” *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152 (1947). For example, independent contractors are not “employees.” *See, e.g., Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947) (recognizing that workers may be independent contractors when their work does not “in its essence ... follow[] the usual path of an employee”).

Over its history, WHD has consistently applied an interpretation of “employee” that adheres to the text of the FLSA and judicial precedent interpreting it:

An employee, as distinguished from a person who is engaged in business for himself or herself, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent upon the business to which he or she renders service. The employer-employee relationship under the FLSA is tested by economic reality rather than technical concepts. It is not determined by common law standards relating to master and servant.

WHD Opinion Letter, 2002 WL 32406602, at *2 (quotation marks omitted).²

² *See, e.g.,* WHD Opinion Letter, 2000 WL 34444342, at *3 (Dec. 7, 2000); WHD Opinion Letter, 2000 WL 34444352, at *1 (Jul. 5, 2000); WHD Opinion Letter, 1999 WL 1788137, at *1 (Jul. 12, 1999); WHD Opinion Letter, 1995 WL 1032489, at *1 (June 5, 1995); WHD Opinion Letter, 1995 WL 1032469, at *1 (Mar. 2, 1995); WHD Opinion Letter, 1986 WL 740454, at *1 (June 23, 1986); WHD Opinion Letter, 1986 WL 1171083, at *1 (Jan. 14, 1986); WHD Opinion Letter WH-476, 1978 WL 51437, at *2 (Oct. 19, 1978); WHD Opinion Letter WH-361, 1975 WL 40984, at *1 (Oct. 1, 1975).

As reflected by this longstanding interpretation, the touchstone of employee versus independent contractor status has long been “economic dependence.” See, e.g., *Parrish v. Premier Directional Drilling, L.P.*, 917 F.3d 369, 379–80 (5th Cir. 2019); *Saleem v. Corp. Transp. Grp., Ltd.*, 854 F.3d 131, 138–40 (2d Cir. 2017); *Keller v. Miri Microsystems LLC*, 781 F.3d 799, 806–07 (6th Cir. 2015). The Supreme Court has instructed that a worker’s “dependence” should be assessed “in light of the purposes of the Act.” *Bartels v. Birmingham*, 332 U.S. 126, 130 (1947). Thus, for example, as “broad” as the definitions of “employ” and “employee” are, “they cannot be interpreted so as to make a person whose work serves only his own interest an employee of another person who gives him aid and instruction.” *Portland Terminal*, 330 U.S. at 152; see also, e.g., *Tony & Susan Alamo Found. v. Sec. of Labor*, 471 U.S. 290, 295 (1985) (“While the statutory definition is exceedingly broad, ... it does have its limits.” (citation omitted)); *Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1311 (11th Cir. 2013) (“These ‘broad definitions’ do not, however, bring ‘independent contractors’ within the FLSA’s ambit.”).

Whether a worker is economically dependent on a potential employer is a fact-specific inquiry that is individualized to each worker. See *Barrattine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981). The inability of the worker to work on his or her own terms often suggests dependence. See, e.g., *Saleem*, 854 F.3d at 148; *Scantland*, 721 F.3d at 1312 (citing *Usery v. Pilgrim Equip. Co., Inc.*, 527 F.2d 1308, 1311–12 (5th Cir. 1976)); see also *Sec’y of Labor, U.S. Dep’t of Labor v. Lauritzen*, 835 F.2d 1529, 1542 (7th Cir. 1987) (“The usual argument that workers are ‘dependent’ on employers ... is that they are immobile.”) (Easterbrook, J., concurring). Accordingly, independent contractors are often characterized by their ability to, for example, regularly negotiate working conditions or simultaneously work for another business. See *Parrish*, 917 F.3d at 387 (holding that work “on a ‘project-by-project basis’ ... counsels heavily in favor of [independent contractor] status” (citation omitted)); *Saleem*, 854 F.3d at 141–43 (holding that the ability to simultaneously “draw income through work for others,” such as by working for a competitor, indicates “considerable independence”). When determining economic dependence, WHD considers six factors derived from Supreme Court precedent:

- (1) The nature and degree of the potential employer’s control;
- (2) The permanency of the worker’s relationship with the potential employer;
- (3) The amount of the worker’s investment in facilities, equipment, or helpers;
- (4) The amount of skill, initiative, judgment, or foresight required for the worker’s services;
- (5) The worker’s opportunities for profit or loss; and
- (6) The extent of integration of the worker’s services into the potential employer’s business.³

See *Rutherford*, 331 U.S. at 730; *United States v. Silk*, 331 U.S. 704, 716 (1947) (Social Security Act case).

³ Encompassed within these factors is the worker’s degree of independent organization and operation.

Other factors may also be relevant, and the appropriate weight to give to each factor depends on the facts. *See Silk*, 331 U.S. at 716. Additionally, “the determination of [employee status] does not depend on such isolated factors but rather upon the circumstances of the whole activity.” *Rutherford*, 331 U.S. at 730. Therefore, WHD does not determine employee status by simply counting factors, but by weighing these factors in order to answer the ultimate inquiry of whether the worker is “engaged in business for himself or herself,” or “is dependent upon the business to which he or she renders service.” WHD Opinion Letter, 2002 WL 32406602, at *2.

Control. The first factor is the nature and degree of the potential employer’s control. A business may have control where it, for example, requires a worker to work exclusively for the business; disavow working for or interacting with competitors during the working relationship; work against the interests of a competitor; work inflexible shifts, achieve large quotas, or work long hours, so that it is impracticable to work elsewhere; or otherwise face restrictions on or sanctions for external economic conduct, among others. *See, e.g., Saleem*, 854 F.3d at 141–42 (collecting cases finding that a business “relinquishes control” over a worker and thereby makes the worker “less economically dependent” when it allows the worker “to work for its competitors” or “draw income through work for others”); *Pilgrim Equip.*, 527 F.2d at 1312 (noting control that causes a worker to have “no viable economic status that can be traded to other ... companies,” such that the worker cannot operate as “a separate economic entity”); WHD Opinion Letter, 2000 WL 34444342, at *4 (Dec. 7, 2000) (finding “significant control” where the workers were “not permitted to work for other businesses while ... in the company’s service”); *cf.* WHD Opinion Letter, 2002 WL 32406602, at *3 (noting that employees generally work for only one employer, sometimes using an “exclusive employment agreement”).

Permanency of relation. The second factor is the permanency of the worker’s relationship with the potential employer. Permanence arises where a business, for example, requires a worker to agree to a fixed term of work; disavow working for or interacting with competitors after the working relationship ends; or otherwise face restrictions on or sanctions for leaving the job in order to pursue external economic opportunities, among others. *See Saleem*, 854 F.3d at 142 (citing *Freund v. Hi-Tech Satellite, Inc.*, 185 F. App’x 782, 784 (11th Cir. 2006)) (observing that permanency of relation restricts external opportunities). Additionally, the existence of a long-term working relationship may indirectly indicate permanence. *See, e.g., Scantland*, 721 F.3d at 1319 (finding permanency where the workers “could not work for other companies, were required to work long hours, and could not turn down work orders,” such that their relationship “was not only of long duration, but ... was also exclusive”); *Donovan v. Brandel*, 736 F.2d 1114, 1117 (6th Cir. 1984) (finding no permanency where the length of the working relationship “was a product of a mutually satisfactory arrangement”).

Investment in facilities, equipment, or helpers. The third factor is the amount of the worker’s investment in facilities, equipment, or helpers. If a business makes these investments and provides them to a worker, that worker may come to rely on the business to supply those investments in order to perform his or her services. *See Keller*, 781 F.3d at 810 (“[T]he capital investment factor is most significant if it reveals that the worker performs a specialized service that requires a tool or application which he has mastered or that the worker is simply using implements of the [company] to accomplish the task.” (alteration in original) (quotation marks omitted)). That reliance could make it more difficult for the worker to pursue other economic opportunities, thereby increasing the worker’s economic dependence. *See Saleem*, 854 F.3d at

144–46 (noting, conversely, that greater investments enable workers to more easily pursue external opportunities, thereby increasing their independence); *Scantland*, 721 F.3d at 1318 (noting that worker investments are analogous to the “independence any employee has who has gained experience and the ability to market [themselves] to competing employers”).

Skill, initiative, judgment, and foresight required. The fourth factor is the amount of skill, initiative, judgment, and foresight required for the worker’s services. In *Rutherford*, for example, while the business profited from the alleged independent contractors’ work, the business’s profits were not because of the workers’ “initiative, judgment[,] or foresight,” as would be expected from a “typical independent contractor.” *Rutherford*, 331 U.S. at 730. Instead, the profits resulted from work that was simply “more like piecework.” *Id.*; see also *Saleem*, 854 F.3d at 143–44 (concluding that drivers, “[b]y toggling back and forth between different car companies and personal clients, and by deciding how best to obtain business from ... clients,” increased their personal profits “through the[ir] initiative, judgment[,] or foresight,” indicating their “considerable independence” (internal quotation marks omitted)). This factor may also look to, for example, whether the worker has the “skills necessary to locate and manage discrete work projects [that are] characteristic of independent contractors,” as opposed to skills “of the task-specific, specialized kind that form a piece of a larger enterprise.” *Wilson v. Guardian Angel Nursing, Inc.*, 2008 WL 2944661, at *13 (M.D. Tenn. 2008). How the worker acquired his skill is also relevant. Among other things, if “the company provides all workers with the skills necessary to perform the job,” that suggests employee status. *Keller*, 781 F.3d at 809; see *Scantland*, 721 F.3d at 1318; see also, e.g., *Hughes v. Family Life Care Inc.*, 117 F. Supp. 3d 1365, 1372 (N.D. Fla. 2015) (“The relevant inquiry [for the skill factor] is whether [the worker] is dependent upon [the company] to equip her with the skills necessary to perform her job.”).

Opportunity for profit and loss. The fifth factor is the worker’s opportunities for profit or loss. These opportunities typically exist where the worker receives additional compensation based, not on greater efficiency, but on the exercise of initiative, judgment, or foresight (e.g., commission); has flexibility to renegotiate compensation throughout the working relationship; or has capital expenditure at risk in the job. See, e.g., *Scantland*, 721 F.3d at 1316–17 (examining whether a worker’s ability to earn more is due to “being more technically proficient,” which indicates employee status, or instead to “managerial skill,” which indicates independent contractor status); WHD Opinion Letter, 2002 WL 32406602, at *2–3 (noting, that “courts focus on who, the alleged employer or employee, controls the major determinants of profit or loss and who exercises the managerial skills on which profit or loss depend”); WHD Opinion Letter, 2000 WL 34444342, at *5 (discussing how placing capital expenditure at risk indicates independent contractor status). Opportunities for profit or loss can indicate independent contractor status even if the worker is not “solely in control of [his or her] profits or losses.” *Chao v. Mid-Atl. Installation Servs., Inc.*, 16 Fed. App’x 104, 107 (4th Cir. 2001) (emphasis in original).

Integrality. The sixth factor is the extent of the integration of the worker’s services into the potential employer’s business. For example, a worker’s services are integrated into a business if they form the “primary purpose” of that business. *Werner v. Bell Family Med. Ctr., Inc.*, 529 F. App’x 541, 545 (6th Cir. 2013) (observing that an ultrasound technician was not integrated into a medical center’s business because ultrasounds were not “[t]he heart of [its] business”).

In short, while the FLSA has a very broad scope of coverage, it is not so broad that all workers are caught within its reach—far from it. See *Walling*, 330 U.S. at 152; cf. *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018) (noting “the flawed premise that the FLSA pursues its remedial purpose at all costs” (quotation marks omitted)). Recognizing this limitation on coverage protects the freedom of workers to operate as independent contractors and remain outside the FLSA’s scope.

OPINION

Based on the facts you provide in your letter, it appears that the service providers who use your client’s virtual marketplace are independent contractors.

Your client provides a referral service. As such, it does not receive services from service providers, but empowers service providers to provide services to end-market consumers. The service providers are not working for your client’s virtual marketplace; they are working for consumers through the virtual marketplace. They do not work directly for your client to the consumer’s benefit; they work directly for the consumer to your client’s benefit. It is therefore inherently difficult to conceptualize the service providers’ “working relationship” with your client, because as a matter of economic reality, they are working for the consumer, not your client. Indeed, they are similar to certain healthcare providers who use a homecare registry to obtain clients—workers whom WHD has previously stated can be classified as independent contractors under appropriate circumstances. See WHD Field Assistance Bulletin 2018-4, at *1 (July 13, 2018) [hereinafter “FAB 2018-4”] (discussing, through the application of numerous factors, how “a [homecare] registry that simply facilitates matches between clients and caregivers ... is not an employer”). Thus, it appears that your client’s service providers “do not fit any ‘traditional employment paradigm covered by the Act.’” WHD Opinion Letter FLSA2018-29, 2018 WL 6839426, at *2 (Dec. 21, 2018) (quoting *Harker v. State Use Indus.*, 990 F.2d 131, 133 (4th Cir. 1993)).

Upon consideration of “the circumstances of the whole activity,” *Rutherford*, 331 U.S. at 730, WHD does not see any indication that the service providers are economically dependent on your client within the meaning of the FLSA. A discussion of the following factors demonstrates why.

Control. Your client does not appear to exert control over its service providers. Rather, your client gives the service providers significant flexibility, including the ability to pursue external economic opportunities.

First, your client does not impose any duties, such as strict shifts, large quotas, or long hours. Instead, your client gives them flexibility to choose if, when, where, how, and for whom they will work, and they regularly use this flexibility to their own profit and personal advantage. The service providers therefore have complete autonomy to choose the hours of work that are most beneficial to them. Indeed, your client does not even require them to perform a minimum amount of work. This freedom enables them to pursue any and all external opportunities at their leisure. Moreover, they are able to work full-time in your client’s virtual marketplace, but most of them choose not to do so, which may indicate that they are pursuing other jobs outside your client’s platform.

Your client provides its service providers the right to work simultaneously for competitors, and they routinely do so in order to maximize their profit. In fact, they will “multi-app”—that is, simultaneously run your client’s virtual platform alongside the platform of a competitor to compare virtual opportunities in real time and pick the best opportunity on a job-by-job basis. *See Parrish*, 917 F.3d at 387 (holding that work “on a ‘project-by-project basis’ ... counsels heavily in favor of [independent contractor] status” (citation omitted)). By providing them the right to “multi-app,” your client has relinquished control over their external opportunities. *See Saleem*, 854 F.3d at 141–42. Your client even allows service providers to cancel jobs in order to pursue external opportunities on a competitor’s platform. Your client also requires service providers to pay a cancellation fee only if they cancel a job without providing the consumer adequate notice.⁴

Moreover, your client does not inspect a service provider’s work for quality or rate a service provider’s performance. Indeed, your client does not impose requirements on how its service providers must perform their work, is not present when the service provider works, and does not monitor, supervise, or control the particulars of that work. Your client’s lack of control weighs in favor of the service providers being in business for themselves. The service providers have complete autonomy to choose the hours of work that are most beneficial to them, may simultaneously work for competitors of your client without repercussions, and are subject to minimal, if any, supervision by your client. Accordingly, this factor weighs heavily in favor of independent contractor status.

Permanency of relation. Your client does not appear to have a permanent working relationship with its service providers that would be indicative of an employer-employee relationship. In fact, the service providers appear to maintain a high degree of freedom to exit the working relationship. Most importantly, your client does not restrict them from interacting with competitors, either during the relationship itself (since service providers may work on multiple platforms simultaneously) or after the relationship ends.

Your letter does not indicate how long service providers typically remain “active” on your client’s virtual marketplace. However, even assuming, in light of your client’s promise that it will terminate a relationship with a service provider only for cause, that service providers maintain a lengthy working relationship with your client, they do so only “on a ‘project-by-

⁴ Your client does reserve the right to remove a service provider from its virtual marketplace if that person frequently cancels jobs without adequate notice. However, this or other neutral requirements that your client imposes—such as background and identity checks before gaining access to the platform—are less relevant given the general lack of control that your client exercises over when, where, how, and for whom the service providers work. *See, e.g., Thornton v. Charter Commc’ns, LLC*, 2014 WL 4794320, at *11 (E.D. Mo. 2014) (“Quality control and compliance-monitoring that stem from the nature of the business—that is, from the nature of the goods or services being delivered—are qualitatively different from control that stems from the nature of the relationship between the employees and the putative employer.” (quotation marks omitted)); *FAB 2018-4*, at *2 (noting that a homecare registry may “confirm caregiver credentials, conduct background checks, contact professional references, and engage in other quality-control measures,” without establishing an employment relationship).

project basis” *Parrish*, 917 F.3d at 387. This factor weighs strongly in favor of independent contractor status.

Investment in facilities, equipment, or helpers. Your client does not invest in facilities, equipment, or helpers on behalf of its service providers. Instead, your client requires its service providers to purchase all necessary resources for their work, and your client does not reimburse those purchases.

Your client primarily invests in its virtual referral platform, but those investments do not, alone, establish an employment relationship with the service providers who use that platform because they are not investments in the work the service providers perform. *See* FAB 2018-4, at *8 (stating that a homecare registry’s investments in “office space, payroll software, timekeeping systems, and other products to operate its business” do not, without more, establish an employment relationship with a caregiver on its registry, but that “investments in the tools necessary for the caregiver to perform his or her services may indicate” economic dependence). To be sure, the service providers rely on your client’s software to quickly obtain jobs, but that reliance only marginally decreases their relative independence, because they can use similar software on competitor platforms. Overall, this factor weighs in favor of independent contractor status.

Skill, initiative, judgment, or foresight required. Your letter does not specifically identify what types of services are offered on your client’s virtual marketplace. However, regardless of the specific services they perform, your client’s service providers, like the drivers in *Saleem*, choose between different service opportunities and competing virtual platforms and exercise managerial discretion in order to maximize their profits, thereby showing “considerable independence” from your client. *See Saleem*, 854 F.3d at 143–44. Additionally, your client’s service providers do not undergo mandatory training. The fact that they do not appear to rely on your client to provide them with training also increases their economic independence. *See Scantland*, 721 F.3d at 1318 (skills obtained through an employer’s training are less indicative of independent contractor status). The exercise of managerial discretion and the lack of training weighs in favor of independent contractor status.

Opportunity for profit and loss. Your client’s service providers do not “receive [a] predetermined amount” of compensation for their work, but instead “control[] the major determinants of profit or loss.” WHD Opinion Letter, 2002 WL 32406602, at *2–3. Your client sets default prices, but it allows service providers to choose different types of jobs with different prices, take as many jobs as they see fit, and negotiate the price of their jobs. They can further control their profit or loss by “toggl[ing] back and forth between different” competing VMC platforms. *See Saleem*, 854 F.3d at 144. Additionally, because your client charges a fee for cancelled services, the service providers risk losing money if they do not complete a job they have accepted. These opportunities for profit or loss give them a substantial amount of control over their level of compensation, and therefore independence from your client. Moreover, service providers’ flexibility to work for different platforms, choose how to perform the job, choose different jobs with different prices, negotiate the prices of their jobs, and choose whether or not cancelling a job is worthwhile indicates that their opportunity for profit or loss is driven by their own managerial skill, not simply their productivity. This factor therefore weighs in favor of

independent contractor status, even though your client—by setting default prices—retains some control over their profits and losses. *Mid-Atl. Installation Servs.*, 16 F. App'x at 107.

Integrity. Your client's service providers are not integrated into your client's referral business. First, the service providers who use your client's virtual platform do not develop, maintain, or otherwise operate that platform; rather, they use that platform to acquire service opportunities. Your client offers a finished product to its service providers; its business operations effectively terminate at the point of connecting service providers to consumers and do not extend to the service provider's actual provision of services. In other words, the service providers are not an integral part of your client's referral service; they are consumers of that service from your client and negotiate with your client over the terms and conditions of using that service. Accordingly, they are not operationally integrated into your client's business.

Relatedly, the business's "primary purpose" is not to provide services to end-market consumers, but to provide a referral system that connects service providers with consumers. *Werner*, 529 F. App'x at 545. This lack of integration weighs in favor of independent contractor status. *See Saleem*, 854 F.3d at 142.

CONCLUSION

Under the facts described in your letter, we conclude that your client's service providers are independent contractors, not employees of your client. The facts in your letter demonstrate economic independence, rather than economic dependence, in the working relationship between your client and its service providers. The FLSA therefore recognizes your client's status as independent contractors.

We trust that this letter is responsive to your inquiry.

Sincerely,



Keith E. Sonderling
Acting Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).**