

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

DENNIS MURPHY, as Personal Representative of the
Wrongful Death Estate of James Patrick Porter, deceased,
MONICA SALAZAR and JIMMY PORTER.

Plaintiffs,

v.

No. D-101-CV-2019-00898

UBER USA, LLC, UBER TECHNOLOGIES, INC.,
TRAVIS KALANICK, EMIL MICHAEL,
DARA KHOSROVSHAHI, and
CLAYTON BENEDICT,

Defendants.

**UBER'S MOTION TO STAY THE ACTION OR IN THE ALTERNATIVE COMPEL
ARBITRATION**

Defendants Uber USA, LLC and Uber Technologies, Inc. (herein collectively referred to as "Uber"), by and through Uber's counsel of record, Modrall, Sperling, Roehl, Harris & Sisk, P.A. (Tim L. Fields and Nathan T. Nieman), hereby move this Court to enter an Order staying this case or in the alternative, compelling arbitration of all claims brought by Plaintiff Dennis Murphy, as Personal Representative of the Wrongful Death Estate of James Porter, Monica Salazar and Jimmy Porter ("Plaintiffs"). Plaintiffs' claims against Uber fall within the scope of the Terms of Use to which decedent James Porter ("Mr. Porter") agreed. Pursuant to the Terms of Use, Mr. Porter agreed that any dispute with Uber related to his use of its services would be resolved by binding arbitration. Uber has filed an action in federal court seeking to enforce the Terms and compel Plaintiffs to proceed with arbitration. Accordingly, this Court should stay this case and while the federal case is pending. In the alternative, if the Court decides not to stay this action due to the pendency of a federal court action, the Court should order Plaintiffs to arbitrate their claims and

stay the case pending the completion of arbitration. Counsel for Plaintiffs have been contacted and Uber did not receive concurrence from Plaintiffs for this Motion.

FACTUAL BACKGROUND

Uber is a global technology company headquartered in San Francisco, California. Uber develops proprietary software that is operated through app-based platforms (the “Uber Apps”). Through the use of proprietary algorithms, the Uber Apps connect individual consumers in need of goods and services with those willing to provide them, including individuals in need of a ride (“riders”) and available independent transportation providers (“drivers”) willing to provide transportation services. In order to request a ride via the Rider App, riders, such as Mr. Porter, must first register with Uber by creating an account. Uber also licenses the Driver App to Rasier, LLC and Hinter-NM, LLC which in turn sublicenses the Driver App to independent transportation providers, such as Mr. Benedict.

A. Mr. Porter’s Agreement to Uber’s Terms of Service

Before riders can use the Rider App to request transportation services, they ***must*** create a rider account and ***accept*** Uber’s Terms of Service (“Terms”). Riders cannot create an account without affirmatively accepting the Terms. *See* Declaration of Kyle Gabriel at ¶ 4(c) attached to the Brief as Exhibit 1; *see also* Declaration of Ryan Buoscio, attached hereto as Exhibit 2.

On December 26, 2015, Mr. Porter registered his Rider App account and accepted the Terms at <https://get.uber.com>. Ex. 1 at ¶ 3, and Exhibit 1. The Rider App rider registration process that Mr. Porter completed on December 26, 2015, was simple and straightforward. It involved basic steps, each confined to a single, simple screen. *See* Ex. 1 at ¶ 4. To create his Rider App account, Mr. Porter had to register using his Facebook account, all within a single screen. *Id.* Mr. Porter was then prompted to create a profile by entering her first and last name. *Id.* Before completing the registration process, he was informed that “[b]y creating an Uber account, you

agree to the Terms & Conditions and Privacy Policy[,]” part of which is a hyperlink that directs users to the Terms & Conditions and Privacy Policy. *Id.* at ¶ 4(f). As demonstrated by ¶ 4(f), Exhibit L, the hyperlink is immediately visible when the user arrives on the screen.

When Mr. Porter created his Rider App account on December 26, 2015, the hyperlinks directed him to the then-effective Terms, which were effective on December 26, 2015 (“December 2015 Terms”). *See* Ex. 2 at ¶ 10. The December 2015 Terms included an arbitration provision, and Mr. Porter agreed to arbitrate, “any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services.” *See* Ex. 2-C (“Dispute Resolution”). The December 2015 Terms also explained that Uber had a right to modify the December 2015 Terms, but riders, such as Mr. Porter, also had the right to reject any changes to the Dispute Resolution section by following the included instructions on how to do so. *See Id.* Exhibit 2-B (“Changes”).

Pursuant to and consistent with the modification language, on November 22, 2016, Uber sent an email to Mr. Porter titled, “We’ve Updated our Terms of Use.” *See* Ex. 2 at ¶ 11 associated Ex. C-E. Mr. Porter received and opened the email containing the November 2016 Terms. *See* Ex. 2 at ¶¶ 11-12 and associated Ex. D. The email concisely highlighted key updates included in the November 2016 Terms, and expressly stated:

A. “We revised our arbitration agreement which explains how legal disputes are handled” and that the “updated Terms are effective as of November 21, 2016, so please make sure to read them fully.”

B. The email instructs that the reader can “access [the Terms] here.” The word “here” is displayed in bright blue hyperlinked text that, when clicked, takes the reader to a screen that displays the November 21, 2016 Terms of Use.

C. The email also states that “[i]f you use our app or other services on or after that date, you’re confirming you’ve read and agree to the updated Terms.”

See Exhibit 2-D. The November 22, 2016 email Mr. Porter received clearly and unequivocally indicated that continued use of the App constituted his acceptance of those November 2016 Terms. *See Id.* Mr. Porter continued to use the Rider App after November 22, 2016, and through March 17, 2019, (the date of the subject incident), thus assenting to the November 2016 Terms. *Id.*

As discussed above, Mr. Porter assented to the December 2015 Terms when he created his Uber rider account. He then additionally and continually consented to the November 2016 Terms by using the Rider App to connect with independent drivers for transportation services from the time he created his account through March 17, 2019.

C. Terms of the Arbitration Agreement

When Mr. Porter registered for the Rider App in 2015, the December 2015 Terms contained the following arbitration provision:

You agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, "*Disputes*") will be settled by binding arbitration between you and Uber, except that each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. You acknowledge and agree that you and Uber are each waiving the right to a trial by jury or to participate as a plaintiff or class in any purported class action or representative proceeding. Further, unless both you and Uber otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as

provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms.

See Ex. 2-B. Significantly, the December 2015 Terms also provided Mr. Porter with the opportunity to opt out of arbitration should any changes be made to the December 2015 Terms, by sending written notice within 30 days of such changes to Uber. *See Id.* at "Changes". The December 2015 Terms further delineate that failing to reject any change, a user is agreeing that they will arbitrate any Dispute between themselves and Uber. *Id.*

Similar to the December 2015 Terms, the November 2016 Terms in effect on the date of accident, included clear and conspicuous Arbitration Agreement. *See* Exhibit 2-E.

On page 1 of the November 16 Terms, a bold and capitalized clause warns:

IMPORTANT: PLEASE REVIEW THE ARBITRATION AGREEMENT SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH UBER ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. BY ENTERING THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.

The Arbitration Agreement continues in Section 2 of the November 2016 Terms. Section 2 begins with the following bolded clause:

By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration, as set forth in this Arbitration Agreement.

Exhibit 2-E, at 2. Over the next three pages, the details of the Arbitration Agreement are specified.

Id. at pp. 2-4.

Most importantly, Mr. Porter agreed that:

You and Uber agree that any dispute, claim or controversy arising out of or relating to (a) these Terms or the existence, breach, termination, enforcement, interpretation or validity thereof, or (b) your access to or use of the Services at any time, whether before or after the date you agreed to the Terms, will be settled by binding arbitration between you and Uber, and not in a court of law.

Id. at p. 2. The November 2016 Terms govern parties’ “access or use . . . of the applications, websites, content, products, and services”. *See Id.* at p. 1, ¶ 1. And, “[t]he Services comprise mobile applications and related services (each, an “Application”), which enable users to arrange and schedule transportation, logistics and/or delivery services and/or to purchase certain goods . . . [and i]n certain instances the Services may also include an option to receive transportation, logistics, and/or delivery services for an upfront price. . .” *See Id.* at p. 4, ¶ 3. The Arbitration Agreement also includes, but is not limited to, the following important provisions:

- (1) Mr. Porter’s acknowledgement and agreement to waive the right to a trial;
- (2) Mr. Porter’s agreement that the Arbitrator, not any court, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of the Arbitration Agreement;
- (3) Mr. Porter’s agreement that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. shall govern the interpretation and enforcement of the arbitration; and
- (4) Mr. Porter’s agreement that the arbitration will be administered by the American Arbitration Association in accordance with its Consumer Arbitration Rules and Supplementary Procedures for Consumer Related Disputes.

See Id. at p. 2.

The Arbitration Agreement also contains several provisions designed to secure consumers’ ability to pursue their claims through arbitration. For example, riders may arbitrate any disputes in the counties where they reside. *See Id.* at p. 3. (“*Location and Procedure*”). Only

riders, not defendant(s) who waives such right, may recover attorneys' fees and expenses. *Id.* (“*Arbitrator’s Decision*”). And, unless the consumer makes a claim for more than \$75,000 or the arbitrator finds that a rider’s claims are frivolous or brought for an improper purpose, defendant(s) agree to pay all filing, administrative, and arbitrator fees associated with the arbitration. *Id.* (“*Fees*”).

In order to protect and enforce the mandatory arbitration provision Uber has, prior to filing this Motion and the accompanying Brief, filed a Complaint to Compel Arbitration in the United States District Court for the District of New Mexico, styled *Uber Technologies, Inc. et al. v. Dennis Murphy et al.*, Case No. 1:20-cv-00463.

WHEREFORE, based upon the foregoing, and for the reasons set forth in the accompanying brief, Uber respectfully requests that the Court grant its Motion to Stay the Action or in the Alternative Compel Arbitration.

Respectfully submitted,
MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing pleading was submitted for e-filing and service through “Odyssey File & Serve” and e-mailed to the following counsel of record this 14th day of May, 2020:

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By: /s/ Nathan T. Nieman
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Defendants.

DECLARATION OF RYAN BUOSCIO

I, Ryan Buoscio, hereby declare and state as follows:

1. I am over the age of 18 and a resident of Chicago, Illinois. I submit this declaration in support of Motion of Defendants UBER TECHNOLOGIES, INC. and UBER, USA, LLC (collectively “Uber”) to Compel Arbitration and to Stay Action. I have personal knowledge of each fact stated in this declaration and, if called as a witness, I could and would competently and truthfully testify thereto.

2. I am presently employed with Uber as Senior Legal Program Manager. I have been employed by Uber since 2016.

3. I make this Declaration based upon my personal knowledge and information available to me, including records maintained in the ordinary course of Uber’s business.

4. Uber Technologies, Inc. and its affiliates (collectively “Uber”) is a software company that develops proprietary software to create digital marketplaces that are operated through app-based platforms. The first and most widely known marketplace the company built is

for consumers to connect with independent businesses offering transportation services, known within Uber as the Rides marketplace.

5. The Rides marketplace connects independent transportation providers (“drivers”) with individuals seeking transportation services (“riders”). Rasier, LLC and its affiliated companies are wholly-owned subsidiaries of Uber Technologies, Inc. engaged in the business of providing lead generation services to independent providers of transportation services through the Rider marketplace, using the driver version of the Uber App (“Driver App”).

6. Uber has created several mobile applications available via smartphone or tablet that allow riders, eaters, drivers, and delivery providers to access its various marketplaces. Uber’s marketplaces, including the Rides marketplace, are available in over 175 cities across the country.

7. Riders download the rider version of the Uber App (“Rider App”), and after completing all the necessary steps required to gain access to the Rider App, the Rider App enables riders and drivers to connect.

MR. PORTER’S ACCOUNT CREATION AND ASSENT TO TERMS

8. In the normal course of its business, Uber maintains records regarding when and how riders register, rider trip history, the Terms & Conditions (also referred to as “Terms of Service” or “Terms of Use,” hereafter the “Terms”) in effect and as amended from time to time, and correspondence regarding the Terms. As a Senior Legal Program Manager, I have access to these records and am familiar with them.

9. Based on my review of records maintained by Uber in the regular course of business, I was able to identify the date and method by which Mr. James Porter (“Mr. Porter”) registered for Uber: Mr. Porter registered on December 26, 2015, via the Rider App on a

smartphone using an iOS operating system. Attached hereto as **Exhibit A** is a true and correct copy of Uber's rider sign-up date and operating system.

10. I am familiar with the Terms that went into effect for U.S. riders on February 12, 2015, which were in effect on December 26, 2015, when Mr. Porter registered for an account. Attached hereto as **Exhibit B** is a true and correct copy of the February 12, 2015 Terms. The February 12, 2015 Terms contains a Dispute Resolution-Arbitration provision.

NOVEMBER 2016 EMAIL

11. On November 22, 2016, Uber sent Mr. Porter an email with the subject line "We've Updated Our Terms of Use" that provided notice of updates to the Uber Apps' Terms & Conditions. On the same day at 14:50:55, Mr. Porter opened the email. Attached hereto as **Exhibit C** is a true and correct copy of the records confirming that Mr. Porter was sent and opened the aforementioned email.

12. This email expressly stated that continued use of the Uber Apps would constitute assent to the updated Terms. The Terms were available via hyperlink from the email. Attached hereto as **Exhibit D** is a true and correct copy of the content of the email.

13. I accessed Uber's business records and reviewed the Terms that went into effect for U.S. riders on November 21, 2016. Attached hereto as **Exhibit E** is a true and correct copy of the November 21, 2016 U.S. Terms.

14. Pursuant to its Terms, Uber has provided Mr. Porter with access to its services. Mr. Porter has accessed those services and continued to use the Rider App after November 21, 2016. The trip at issue in this litigation took place on March 17, 2019.

I declare under penalty of perjury and the laws of the State of New Mexico, including Rule 1-011 NMRA, that the foregoing is true and correct and that this Declaration was executed on May 13, 2020 _____, 2020 at Chicago, Illinois.

Ryan Buoscio

Ryan Buoscio

CONFIDENTIAL

First Name

James

Last Name

Porter

Signup Timestamp (UTC)

12/26/15 21:38:24

Signup Form

iphone

CONFIDENTIAL

Exhibit A

<% include ../header.html %>

Terms and Conditions

Last Updated: February 10, 2015

<% include ../country-picker-terms.html %>

1. Contractual Relationship

These Terms of Use (“*Terms*”) govern the access or use by you, an individual, from within the United States and its territories and possessions of applications, websites, content, products, and services (the “*Services*”) made available in the United States and its territories and possessions by Uber USA, LLC and its subsidiaries and affiliates (collectively, “*Uber*”). PLEASE READ THESE TERMS CAREFULLY BEFORE ACCESSING OR USING THE SERVICES. In this Agreement, the words “including” and “include” mean “including, but not limited to.”

Your access and use of the Services constitutes your agreement to be bound by these Terms, which establishes a contractual relationship between you and Uber. If you do not agree to these Terms, you may not access or use the Services. These Terms expressly supersede prior agreements or arrangements with you. Uber may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason.

Supplemental terms may apply to certain Services, such as policies for a particular event, activity or promotion, and such supplemental terms will be disclosed to you in connection with the applicable Services. Supplemental terms are in addition to, and shall be deemed a part of, the Terms for the purposes of the applicable Services. Supplemental terms shall prevail over these Terms in the event of a conflict with respect to the applicable Services.

Uber may amend the Terms related to the Services from time to time. Amendments will be effective upon Uber’s posting of such updated Terms at this location or the amended policies or supplemental terms on the applicable Service. Your continued access or use of the Services after such posting constitutes your consent to be bound by the Terms, as amended.

Our collection and use of personal information in connection with the Services is as provided in Uber’s Privacy Policy located at <https://www.uber.com/legal/usa/privacy>.

2. The Services

The Services constitute a technology platform that enables users of Uber’s mobile applications or websites provided as part of the Services (each, an “*Application*”) to arrange and schedule transportation and/or logistics services with third party providers of such services, including independent third party transportation providers and third party logistics providers under agreement with Uber or certain of Uber’s subsidiaries (“*Third Party Providers*”). Unless otherwise agreed by Uber in a separate written agreement with you, the Services are made available solely for your personal, noncommercial use.

YOU ACKNOWLEDGE THAT UBER DOES NOT PROVIDE TRANSPORTATION OR LOGISTICS SERVICES OR FUNCTION AS A TRANSPORTATION CARRIER. UBER’S SERVICES MAY BE USED BY YOU TO REQUEST AND SCHEDULE TRANSPORTATION OR LOGISTICS SERVICES WITH THIRD PARTY PROVIDERS, BUT YOU AGREE THAT UBER HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO ANY TRANSPORTATION OR LOGISTICS PROVIDED TO YOU BY THIRD PARTY PROVIDERS

THROUGH THE USE OF THE SERVICES OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS.

UBER DOES NOT GUARANTEE THE SUITABILITY, SAFETY OR ABILITY OF THIRD PARTY PROVIDERS. IT IS SOLELY YOUR RESPONSIBILITY TO DETERMINE IF A THIRD PARTY PROVIDER WILL MEET YOUR NEEDS AND EXPECTATIONS. UBER WILL NOT PARTICIPATE IN DISPUTES BETWEEN YOU AND A THIRD PARTY PROVIDER. BY USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU MAY BE EXPOSED TO SITUATIONS INVOLVING THIRD PARTY PROVIDERS THAT ARE POTENTIALLY UNSAFE, OFFENSIVE, HARMFUL TO MINORS, OR OTHERWISE OBJECTIONABLE, AND THAT USE OF THIRD PARTY PROVIDERS ARRANGED OR SCHEDULED USING THE SERVICES IS AT YOUR OWN RISK AND JUDGMENT. UBER SHALL NOT HAVE ANY LIABILITY ARISING FROM OR IN ANY WAY RELATED TO YOUR TRANSACTIONS OR RELATIONSHIP WITH THIRD PARTY PROVIDERS.

License.

Subject to your compliance with these Terms, Uber grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferrable license to: (i) access and use the Applications on your personal device solely in connection with your use of the Services; and (ii) access and use any content, information and related materials that may be made available through the Services, in each case solely for your personal, noncommercial use. Any rights not expressly granted herein are reserved by Uber and Uber's licensors.

Restrictions.

You may not: (i) remove any copyright, trademark or other proprietary notices from any portion of the Services; (ii) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services except as expressly permitted by Uber; (iii) decompile, reverse engineer or disassemble the Services except as may be permitted by applicable law; (iv) link to, mirror or frame any portion of the Services; (v) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Services or unduly burdening or hindering the operation and/or functionality of any aspect of the Services; or (vi) attempt to gain unauthorized access to or impair any aspect of the Services or its related systems or networks.

Provision of the Services.

You acknowledge that portions of the Services may be made available under Uber's various brands or request options associated with transportation or logistics, including, without limitation, "*Uber*," "*UberX*," "*UberXL*," "*UberBLACK*," "*UberSUV*," and "*UberLUX*." You also acknowledge that the Services may be made available under such brands or request options by or in connection with: (i) certain of Uber's subsidiaries and affiliates; or (ii) independent Third Party Providers, including Transportation Network Company drivers, Transportation Charter Permit holders or holders of similar transportation permits, authorizations or licenses.

Third-Party Services and Content.

The Services may be made available or accessed in connection with third-party services and content (including advertising) that Uber does not control. You acknowledge that different terms of use and privacy policies may apply to your use of such third-party services and content. Uber does not endorse such third party services and content and in no event shall Uber be responsible or liable for any products or services of such third party providers. Additionally, Apple Inc., Google, Inc., Microsoft Corporation or BlackBerry Limited will be a third-party beneficiary to this contract if you access the Services using Applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third-party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Services in any manner. Your access to the Services using these devices is subject to terms set forth in the applicable third-party beneficiary's terms of service.

Ownership.

The Services and all rights therein are and shall remain Uber's property or the property of Uber's licensors. Neither these Terms nor your use of the Services convey or grant to you any rights: (i) in or related to the Services except for the limited license granted above; or (ii) to use or reference in any manner Uber's company names, logos, product and service names, trademarks or services marks or those of Uber's licensor.

3. Your Use of the Services

User Accounts.

In order to use most aspects of the Services, you must register for and maintain an active personal user Services account ("*Account*"). You must be at least 18 years of age, or the age of legal majority in your jurisdiction (if different than 18), to obtain an Account. Account registration requires you to submit to Uber certain personal information, such as your name, address, mobile phone number and age, as well as at least one valid credit card. You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired credit card on file, may result in your inability to access and use the Services or Uber's termination of this Agreement with you. You are responsible for all activity that occurs under your Account, and, as such, you agree to maintain the security and secrecy of your Account username and password at all times. Unless otherwise permitted by Uber in writing, you may only possess one Account.

User Requirements and Conduct.

The Service is not available for use by persons under the age of 18. You may not authorize third parties to use your Account, and you may not allow persons under the age of 18 to receive transportation or logistics services from Third Party Providers unless they are accompanied by you. You may not assign or otherwise transfer your Account to any other person or entity. You agree to comply with all applicable laws when using the Services, and you may only use the Services for lawful purposes (*e.g.*, no transport of unlawful or hazardous materials). You will not in your use of the Services cause nuisance, annoyance, inconvenience, or property damage, whether to the Third Party Provider or any other party. In certain instances Uber may require you to provide proof of identity to access or use the Services, and you agree that you may be denied access or use of the Services if you refuse to provide proof of identity.

Text Messaging.

By creating an Account, you agree that the Services may send you informational text (SMS) messages as part of the normal business operation of your use of the Services. You may opt-out of receiving text (SMS) messages from Uber at any time by texting the word STOP to 89203 from the mobile device receiving the messages. You acknowledge that opting out of receiving text (SMS) messages may impact your use of the Services.

Promotional Codes.

Uber may, in Uber's sole discretion, create promotional codes that may be redeemed for Account credit or other features or benefits related to a Third Party Provider's services, subject to terms that Uber establish on a per promotional code basis ("*Promo Codes*"). You agree that Promo Codes: (i) must be used for the intended audience and purpose, and in a lawful manner; (ii) may not be duplicated, sold or transferred in any manner, or made available to the general public, unless expressly permitted by Uber; (iii) may be disabled by Uber at any time for any reason without liability to Uber; (iv) may only be used pursuant to the specific terms that Uber establish for such Promo Code; (v) are not valid for cash; and (vi) may expire prior to your use. Uber reserves the right to withhold or deduct credits or other features or benefits obtained through the use of Promo Codes by you or any other user in the event that Uber determines or believes that the use or redemption of the Promo Code was in error, fraudulent, illegal, or in violation of the applicable Promo Code

terms or these Terms.

User Provided Content.

Uber may, in Uber's sole discretion, permit you from time to time to submit, upload, publish or otherwise make available to Uber through the Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, initiation of support requests, and submission of entries for competitions and promotions ("*User Content*"). Any User Content provided by you remains your property. However, by providing User Content to Uber, you grant Uber a worldwide, perpetual, irrevocable, transferrable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Services and Uber's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.

You represent and warrant that: (i) you either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases necessary to grant Uber the license to the User Content as set forth above; and (ii) neither the User Content nor your submission, uploading, publishing or otherwise making available of such User Content nor Uber's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by Uber in its sole discretion, whether or not such material may be protected by law. Uber may, but shall not be obligated to, review, monitor, or remove User Content, at Uber's sole discretion and at any time and for any reason, without notice to you.

Network Access and Devices.

You are responsible for obtaining the data network access necessary to use the Services. Your mobile network's data and messaging rates and fees may apply if you access or use the Services from a wireless-enabled device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Services and Applications and any updates thereto. Uber does not guarantee that the Services, or any portion thereof, will function on any particular hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

4. Payment

You understand that use of the Services may result in payments by you for the services you receive from a Third Party Provider ("*Charges*"). After you have received services obtained through your use of the Service, Uber will facilitate payment of the applicable Charges on behalf of the Third Party Provider, as such Third Party Provider's limited payment collection agent, using the preferred payment method designated in your Account, and will send you a receipt by email. Payment of the Charges in such manner shall be considered the same as payment made directly by you to the Third Party Provider. Charges will be inclusive of applicable taxes where required by law. Charges paid by you are final and non-refundable, unless otherwise determined by Uber. You retain the right to request lower Charges from a Third Party Provider for services received by you from such Third Party Provider at the time you receive such services. Uber will respond accordingly to any request from a Third Party Provider to modify the Charges for a particular service.

All Charges are due immediately and payment will be facilitated by Uber using the preferred payment method designated in your Account. If your primary Account payment method is determined to be expired, invalid or otherwise not able to be charged, you agree that Uber may, as the Third Party Provider's limited payment collection agent, use a

secondary payment method in your Account, if available.

Uber reserves the right to establish, remove and/or revise Charges for any or all aspects of the Services at any time in Uber's sole discretion. Further, you acknowledge and agree that Charges applicable in certain geographical areas may increase substantially during times of high demand of the Services. Uber will use reasonable efforts to inform you of Charges that may apply, provided that you will be responsible for Charges incurred under your Account regardless of your awareness of such Charges or the amounts thereof. Uber may from time to time provide certain users with promotional offers and discounts that may result in different Charges for the same or similar Services, and you agree that such promotional offers and discounts, unless also made available to you, shall have no bearing on your use of the Services or the Charges applied to you. You may elect to cancel your request for Services from a Third Party Provider at any time prior to such Third Party Provider's arrival, in which case you may be charged a cancellation fee.

This payment structure is intended to fully compensate the Third Party Provider for the services provided. Except with respect to taxicab transportation services requested through the Application, Uber does not designate any portion of your payment as a tip or gratuity to the Third Party Provider. Any representation by Uber (on Uber's website, in the Application, or in Uber's marketing materials) to the effect that tipping is "voluntary," "not required," and/or "included" in the payments you make for services provided is not intended to suggest that Uber provides any additional amounts, beyond those described above, to the Third Party Provider. You understand and agree that, while you are free to provide additional payment as a gratuity to any Third Party Provider who provides you with services obtained through the Service, you are under no obligation to do so. Gratuities are voluntary. After you have received services obtained through the Service, you will have the opportunity to rate your experience and leave additional feedback about your Third Party Provider. In the event you feel unwelcome pressure to provide a gratuity, you may factor that experience into the rating or additional feedback you give.

Repair or Cleaning Fees.

You shall be responsible for the cost of repair for damage to, or necessary cleaning of, Third Party Provider vehicles and property resulting from your use of the Services in excess of normal "*wear and tear*" damages and necessary cleaning ("*Repair or Cleaning*"). In the event that a Third Party Provider reports the need for Repair or Cleaning, and such Repair or Cleaning request is verified by Uber in Uber's reasonable discretion, Uber reserves the right to facilitate payment for the reasonable cost of such Repair or Cleaning on behalf of the Third Party Provider using your preferred payment method designated in your Account. Such amounts will be transferred by Uber to the applicable Third Party Provider and are non-refundable.

5. Disclaimers; Limitation of Liability; Indemnity

DISCLAIMER.

THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." UBER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN ADDITION, UBER MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF THE SERVICES OR ANY GOODS OR SERVICES OBTAINED THROUGH THE USE OF THE SERVICES, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY THIRD PARTY GOOD OR SERVICES OBTAINED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

THIS DISCLAIMER DOES NOT ALTER YOUR RIGHTS AS A CONSUMER TO THE EXTENT NOT PERMITTED UNDER THE LAW IN THE JURISDICTION OF YOUR PLACE OF RESIDENCE.

LIMITATION OF LIABILITY.

UBER SHALL NOT BE LIABLE TO YOU FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UBER SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES INCURRED BY YOU ARISING OUT OF: (i) YOUR USE OF OR RELIANCE ON THE SERVICES OR YOUR INABILITY TO ACCESS OR USE THE SERVICES; OR (ii) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY THIRD PARTY PROVIDER, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UBER SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND UBER'S REASONABLE CONTROL. YOU ACKNOWLEDGE THAT THIRD PARTY TRANSPORTATION PROVIDERS PROVIDING TRANSPORTATION SERVICES REQUESTED THROUGH UBERX MAY OFFER RIDESHARING OR PEER-TO-PEER TRANSPORTATION SERVICES AND MAY NOT BE PROFESSIONALLY LICENSED OR PERMITTED. IN NO EVENT SHALL UBER'S TOTAL LIABILITY TO YOU IN CONNECTION WITH THE SERVICES FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION EXCEED FIVE HUNDRED U.S. DOLLARS (US \$500).

THESE LIMITATIONS DO NOT PURPORT TO LIMIT LIABILITY THAT CANNOT BE EXCLUDED UNDER THE LAW IN THE JURISDICTION OF YOUR PLACE OF RESIDENCE.

Indemnity.

You agree to indemnify and hold Uber and its officers, directors, employees and agents, harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in connection with: (i) your use of the Services; (ii) your breach or violation of any of these Terms; (iii) Uber's use of your User Content; or (iv) your violation of the rights of any third party, including Third Party Providers.

6. Dispute Resolution

Arbitration.

You agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, "*Disputes*") will be settled by binding arbitration between you and Uber, except that each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. You acknowledge and agree that you and Uber are each waiving the right to a trial by jury or to participate as a plaintiff or class in any purported class action or representative proceeding. Further, unless both you and Uber otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms.

Arbitration Rules and Governing Law.

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "*AAA Rules*") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the

interpretation and enforcement of this Section.

Arbitration Process.

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at www.adr.org/aaa/ShowPDF?doc=ADRSTG_004175 and a separate form for California residents at www.adr.org/aaa/ShowPDF?doc=ADRSTG_015822.) The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of California and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Arbitration Location and Procedure.

Unless you and Uber otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Uber submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator's Decision.

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. Uber will not seek, and hereby waives all rights Uber may have under applicable law to recover, attorneys' fees and expenses if Uber prevail in arbitration.

Fees.

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Uber will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

Changes.

Notwithstanding the provisions of the modification-related provisions above, if Uber changes this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by providing Uber written notice of such rejection by mail or hand delivery to: Uber USA, LLC, Attn: Dispute Resolutions, 160 Greentree Drive, Suite 101, Dover, DE 19904, or by email from the email address associated with your Account to: change-dr@uber.com, within 30 days of the date such change became effective, as indicated in the "Last update" date above. In order to be effective, the notice must include your full name and clearly indicate your intent to reject changes to this "Dispute Resolution" section. By rejecting changes, you are agreeing that you will arbitrate any Dispute between you and Uber in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

7. Other Provisions

Choice of Law.

These Terms are governed by and construed in accordance with the laws of the State of California, U.S.A., without giving effect to any conflict of law principles.

Claims of Copyright Infringement.

Claims of copyright infringement should be sent to Uber's designated agent. Please visit Uber's web page at <https://www.uber.com/legal/usa/copyright> for the designated address and additional information.

Notice.

Uber may give notice by means of a general notice on the Services, electronic mail to your email address in your Account, or by written communication sent by first class mail or pre-paid post to your address in your Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Uber, with such notice deemed given when received by Uber, at any time by first class mail or pre-paid post to Uber USA, LLC, Attn: User Notices - Legal, 160 Greentree Drive, Suite 101, Dover, DE 19904.

General.

You may not assign these Terms without Uber's prior written approval. Uber may assign these Terms without your consent to: (i) a subsidiary or affiliate; (ii) an acquirer of Uber's equity, business or assets; or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. No joint venture, partnership, employment, or agency relationship exists between you, Uber or any Third Party Provider as a result of this Agreement or use of the Services. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced to the fullest extent under law. Uber's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Uber in writing.

<% include ../footer.html %>

CONFIDENTIAL

Email Address

[REDACTED]

Event Date & Time

11/22/16 10:10:03 AM
11/22/16 2:50:55 PM

Event Type

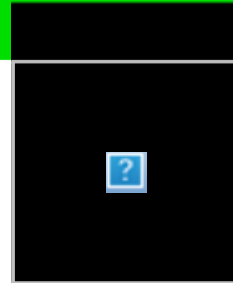
Sent
Open

Email Subject

We've updated our Terms of Use
We've updated our Terms of Use

CONFIDENTIAL

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Hi %%=ProperCase(Trim(first_name))=%%,

With your help, we've been able to bring Uber to more than 400 cities in 72 countries. And that's in just a little over 6 years. In light of that growth and some changes to our services, we've made some updates to our US Terms of Use. These updates won't change the way you usually use Uber to request rides or deliveries.

Some key highlights:

- We included updated information about our expanding services, like UberEATS
- We updated information about charges and payment options
- We revised our arbitration agreement which explains how legal disputes

are handled

- We reorganized and clarified our terms

Our updated Terms are effective as of November 21, 2016, so please make sure to read them fully (you can access them [here](#)). If you use our app or other services on or after that date, you're confirming you've read and agree to the updated Terms. If you have any questions, please check out our help portal [here](#).

Thanks for being part of our growing community!

The Uber Team

UBER

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Legal | Uber

U.S. Terms of Use

Effective: November 21, 2016

1. Contractual Relationship

These Terms of Use ("Terms") govern your access or use, from within the United States and its territories and possessions, of the applications, websites, content, products, and services (the "Services," as more fully defined below in Section 3) made available in the United States and its territories and possessions by Uber USA, LLC and its parents, subsidiaries, representatives, affiliates, officers and directors (collectively, "Uber"). PLEASE READ THESE TERMS CAREFULLY, AS THEY CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND UBER. In these Terms, the words "including" and "include" mean "including, but not limited to."

By accessing or using the Services, you confirm your agreement to be bound by these Terms. If you do not agree to these Terms, you may not access or use the Services. These Terms expressly supersede prior agreements or arrangements with you. Uber may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason.

IMPORTANT: PLEASE REVIEW THE ARBITRATION AGREEMENT SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH UBER ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. BY ENTERING THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.

Supplemental terms may apply to certain Services, such as policies for a particular event, program, activity or promotion, and such supplemental terms will be disclosed to you in separate region-specific disclosures (e.g., a particular city webpage on Uber.com) or in connection with the applicable Service(s). Supplemental terms are in addition to, and shall be deemed a part of, the Terms for the purposes of the applicable Service(s). Supplemental terms shall prevail over these Terms in the event of a conflict with respect to the applicable Services.

Uber may amend the Terms from time to time. Amendments will be effective upon Uber's posting of such updated Terms at this location or in the amended policies or supplemental terms on the applicable Service(s). Your continued access or use of the Services after such posting confirms your consent to be bound by the Terms, as amended. If Uber changes these Terms after the date you first agreed to the Terms (or to any subsequent changes to these Terms), you may reject any such change by providing Uber written notice of such rejection within 30 days of the date such change became effective, as indicated in the "Effective" date above. This written notice must be provided either (a) by mail or hand delivery to our registered agent for service of process, c/o Uber USA, LLC (the name and current contact information for the registered agent in each state are available online [here](#)), or (b) by email from the email address associated with your Account to: change-dr@uber.com. In order to be effective, the notice must include your full name and clearly indicate your intent to reject changes to these Terms. By rejecting changes, you are agreeing that you will continue to be bound by the provisions of these Terms as of the date you first agreed to the Terms (or to any subsequent changes to these Terms).

Uber's collection and use of personal information in connection with the Services is described in Uber's Privacy Statements located at www.uber.com/legal/privacy.

2. Arbitration Agreement

By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration, as set forth in this Arbitration Agreement. This will preclude you from bringing any class, collective, or representative action against Uber, and also preclude you from participating in or recovering relief under any current or future class, collective, consolidated, or representative action brought against Uber by someone else.

Agreement to Binding Arbitration Between You and Uber.

You and Uber agree that any dispute, claim or controversy arising out of or relating to (a) these Terms or the existence, breach, termination, enforcement, interpretation or validity thereof, or (b) your access to or use of the Services at any time, whether before or after the date you agreed to the Terms, will be settled by binding arbitration between you and Uber, and not in a court of law.

You acknowledge and agree that you and Uber are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Unless both you and Uber otherwise agree in writing, any arbitration will be conducted only on an individual basis and not in a class, collective, consolidated, or representative proceeding. However, you and Uber each retain the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

Rules and Governing Law.

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Consumer Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this Arbitration Agreement. The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.

The parties agree that the arbitrator ("Arbitrator"), and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the Terms are unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel.

Notwithstanding any choice of law or other provision in the Terms, the parties agree and acknowledge that this Arbitration Agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"), will govern its interpretation and enforcement and proceedings pursuant thereto. It is the intent of the parties that the FAA and AAA Rules shall preempt all state laws to the fullest extent permitted by law. If the FAA and AAA Rules are found to not apply to any issue that arises under this Arbitration Agreement or the enforcement thereof, then that issue shall be resolved under the laws of the state of California.

Process.

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration - Consumer Arbitration Rules at www.adr.org or by calling the AAA at 1-800-778-7879). The Arbitrator will be either (1) a retired judge or (2) an attorney specifically licensed to practice law in the state of California and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an Arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the Arbitrator in accordance with the AAA Rules.

Location and Procedure.

Unless you and Uber otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Uber submit to the Arbitrator, unless you request a hearing or the Arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the Arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator's Decision.

The Arbitrator will render an award within the time frame specified in the AAA Rules. Judgment on the arbitration award may be entered in any court having competent jurisdiction to do so. The Arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. An Arbitrator's decision shall be final and binding on all parties. An Arbitrator's decision and judgment thereon shall have no precedential or collateral estoppel effect. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. Uber will not seek, and hereby waives all rights Uber may have under applicable law to recover, attorneys' fees and expenses if Uber prevails in arbitration.

Fees.

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Uber will pay all such fees, unless the Arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

Changes.

Notwithstanding the provisions in Section I above, regarding consent to be bound by amendments to these Terms, if Uber changes this Arbitration Agreement after the date you first agreed to the Terms (or to any subsequent changes to the Terms), you may reject any such change by providing Uber written notice of such rejection within 30 days of the date such change became effective, as indicated in the "Effective" date above. This written notice must be provided either (a) by mail or hand delivery to our registered agent for service of process, c/o Uber USA, LLC (the name and current contact information for the registered agent in each state are available online [here](#)), or (b) by email from the email address associated with your Account to: change-dr@uber.com. In order to be

effective, the notice must include your full name and clearly indicate your intent to reject changes to this Arbitration Agreement. By rejecting changes, you are agreeing that you will arbitrate any dispute between you and Uber in accordance with the provisions of this Arbitration Agreement as of the date you first agreed to the Terms (or to any subsequent changes to the Terms).

Severability and Survival.

If any portion of this Arbitration Agreement is found to be unenforceable or unlawful for any reason, (1) the unenforceable or unlawful provision shall be severed from these Terms; (2) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of the Arbitration Agreement or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement; and (3) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

3. The Services

The Services comprise mobile applications and related services (each, an "Application"), which enable users to arrange and schedule transportation, logistics and/or delivery services and/or to purchase certain goods, including with third party providers of such services and goods under agreement with Uber or certain of Uber's affiliates ("Third Party Providers"). In certain instances the Services may also include an option to receive transportation, logistics and/or delivery services for an upfront price, subject to acceptance by the respective Third Party Providers. Unless otherwise agreed by Uber in a separate written agreement with you, the Services are made available solely for your personal, noncommercial use. YOU ACKNOWLEDGE THAT YOUR ABILITY TO OBTAIN TRANSPORTATION, LOGISTICS AND/OR DELIVERY SERVICES THROUGH THE USE OF THE SERVICES DOES NOT ESTABLISH UBER AS A PROVIDER OF TRANSPORTATION, LOGISTICS OR DELIVERY SERVICES OR AS A TRANSPORTATION CARRIER.

License.

Subject to your compliance with these Terms, Uber grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to: (i) access and use the Applications on your personal device solely in connection with your use of the Services; and (ii) access and use any content, information and related materials that may be made available through the Services, in each case solely for your personal, noncommercial use. Any rights not expressly granted herein are reserved by Uber and Uber's licensors.

Restrictions.

You may not: (i) remove any copyright, trademark or other proprietary notices from any portion of the Services; (ii) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services except as expressly permitted by Uber; (iii) decompile, reverse engineer or disassemble the Services except as may be permitted by applicable law; (iv) link to, mirror or frame any portion of the Services; (v) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Services or unduly burdening or hindering the operation and/or functionality of any aspect of the Services; or (vi) attempt to gain unauthorized access to or impair any aspect of the Services or its related systems or networks.

Provision of the Services.

You acknowledge that portions of the Services may be made available under Uber's various brands or request options associated with transportation or logistics, including the transportation request brands currently referred to as "Uber," "uberX," "uberXL," "UberBLACK," "UberSELECT," "UberSUV" and "UberLUX" and the logistics request products currently referred to as "UberRUSH," and "UberEATS." You also acknowledge that the Services may be made available under such brands or request options by or in connection with: (i) certain of Uber's subsidiaries and affiliates; or (ii) independent Third Party Providers, including Transportation Network Company drivers, Transportation Charter Permit holders or holders of similar transportation permits, authorizations or licenses.

Third Party Services and Content.

The Services may be made available or accessed in connection with third party services and content (including advertising) that Uber does not control. You acknowledge that different terms of use and privacy policies may apply to your use of such third party services and content. Uber does not endorse such third party services and content and in no event shall Uber be responsible or liable for any products or services of such third party providers. Additionally, Apple Inc., Google, Inc., Microsoft Corporation or BlackBerry Limited will be a third-party beneficiary to this contract if you access the Services using Applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Services in any manner. Your access to the Services using these devices is subject to terms set forth in the applicable third party beneficiary's terms of service.

Ownership.

The Services and all rights therein are and shall remain Uber's property or the property of Uber's licensors. Neither these Terms nor your use of the Services convey or grant to you any rights: (i) in or related to the Services except for the limited license granted above; or (ii) to use or reference in any manner Uber's company names, logos, product and service names, trademarks or services marks or those of Uber's licensors.

4. Access and Use of the Services**User Accounts.**

In order to use most aspects of the Services, you must register for and maintain an active personal user Services account ("Account"). You must be at least 18 years of age, or the age of legal majority in your jurisdiction (if different than 18), to obtain an Account. Account registration requires you to submit to Uber certain personal information, such as your name, address, mobile phone number and age, as well as at least one valid payment method supported by Uber. You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired payment method on file, may result in your inability to access or use the Services. You are responsible for all activity that occurs under your Account, and you agree to maintain the security and secrecy of your Account username and password at all times. Unless otherwise permitted by Uber in writing, you may only possess one Account.

User Requirements and Conduct.

The Service is not available for use by persons under the age of 18. You may not authorize third parties to use

your Account, and you may not allow persons under the age of 18 to receive transportation or logistics services from Third Party Providers unless they are accompanied by you. You may not assign or otherwise transfer your Account to any other person or entity. You agree to comply with all applicable laws when accessing or using the Services, and you may only access or use the Services for lawful purposes (e.g., no transport of unlawful or hazardous materials). You may not in your access or use of the Services cause nuisance, annoyance, inconvenience, or property damage, whether to the Third Party Provider or any other party. In certain instances you may be asked to provide proof of identity to access or use the Services, and you agree that you may be denied access to or use of the Services if you refuse to provide proof of identity.

Text Messaging and Telephone Calls.

You agree that Uber may contact you by telephone or text messages (including by an automatic telephone dialing system) at any of the phone numbers provided by you or on your behalf in connection with an Uber account, including for marketing purposes. You understand that you are not required to provide this consent as a condition of purchasing any property, goods or services. You also understand that you may opt out of receiving text messages from Uber at any time, either by texting the word "STOP" to 89203 using the mobile device that is receiving the messages, or by contacting help.uber.com. If you do not choose to opt out, Uber may contact you as outlined in its User Privacy Statement, located at www.uber.com/legal/privacy.

Referrals and Promotional Codes.

Uber may, in its sole discretion, create referral and/or promotional codes ("Promo Codes") that may be redeemed for discounts on future Services and/or a Third Party Provider's services, or other features or benefits related to the Services and/or a Third Party Provider's services, subject to any additional terms that Uber establishes. You agree that Promo Codes: (i) must be used for the intended audience and purpose, and in a lawful manner; (ii) may not be duplicated, sold or transferred in any manner, or made available to the general public (whether posted to a public form or otherwise), unless expressly permitted by Uber; (iii) may be disabled by Uber at any time for any reason without liability to Uber; (iv) may only be used pursuant to the specific terms that Uber establishes for such Promo Code; (v) are not valid for cash; and (vi) may expire prior to your use. Uber reserves the right to withhold or deduct credits or other features or benefits obtained through the use of the referral system or Promo Codes by you or any other user in the event that Uber determines or believes that the use of the referral system or use or redemption of the Promo Code was in error, fraudulent, illegal, or otherwise in violation of Uber's Terms.

User Provided Content.

Uber may, in Uber's sole discretion, permit you from time to time to submit, upload, publish or otherwise make available to Uber through the Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, initiation of support requests, and submission of entries for competitions and promotions ("User Content"). Any User Content provided by you remains your property. However, by providing User Content to Uber, you grant Uber a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Services and Uber's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.

You represent and warrant that: (i) you either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases necessary to grant Uber the license to the User Content as set forth above; and (ii) neither the User Content, nor your submission, uploading, publishing or otherwise making available of such User Content, nor Uber's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by Uber in its sole discretion, whether or not such material may be protected by law. Uber may, but shall not be obligated to, review, monitor, or remove User Content, at Uber's sole discretion and at any time and for any reason, without notice to you.

Network Access and Devices.

You are responsible for obtaining the data network access necessary to use the Services. Your mobile network's data and messaging rates and fees may apply if you access or use the Services from your device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Services and Applications and any updates thereto. Uber does not guarantee that the Services, or any portion thereof, will function on any particular hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

5. Payment

You understand that use of the Services may result in charges to you for the services or goods you receive ("Charges"). Uber will receive and/or enable your payment of the applicable Charges for services or goods obtained through your use of the Services. Charges will be inclusive of applicable taxes where required by law. Charges may include other applicable fees, tolls, and/or surcharges including a booking fee, municipal tolls, airport surcharges or processing fees for split payments. Please visit www.uber.com/cities for further information on your particular location.

All Charges and payments will be enabled by Uber using the preferred payment method designated in your Account, after which you will receive a receipt by email. If your primary Account payment method is determined to be expired, invalid or otherwise not able to be charged, you agree that Uber may use a secondary payment method in your Account, if available. Charges paid by you are final and non-refundable, unless otherwise determined by Uber.

As between you and Uber, Uber reserves the right to establish, remove and/or revise Charges for any or all services or goods obtained through the use of the Services at any time in Uber's sole discretion. Further, you acknowledge and agree that Charges applicable in certain geographical areas may increase substantially during times of high demand. Uber will use reasonable efforts to inform you of Charges that may apply, provided that you will be responsible for Charges incurred under your Account regardless of your awareness of such Charges or the amounts thereof. Uber may from time to time provide certain users with promotional offers and discounts that may result in different amounts charged for the same or similar services or goods obtained through the use of the Services, and you agree that such promotional offers and discounts, unless also made available to you, shall have no bearing on your use of the Services or the Charges applied to you. You may elect to cancel your request for

Services at any time prior to the commencement of such Services, in which case you may be charged a cancellation fee on a Third Party Provider's behalf. After you have received services or goods obtained through the Service, you will have the opportunity to rate your experience and leave additional feedback. Uber may use the proceeds of any Charges for any purpose, subject to any payment obligations it has agreed to with any Third Party Providers or other third parties.

In certain cases, with respect to Third Party Providers, Charges you incur will be owed directly to Third Party Providers, and Uber will collect payment of those charges from you, on the Third Party Provider's behalf as their limited payment collection agent, and payment of the Charges shall be considered the same as payment made directly by you to the Third Party Provider. In such cases, you retain the right to request lower Charges from a Third Party Provider for services or goods received by you from such Third Party Provider at the time you receive such services or goods, and Charges you incur will be owed to the Third Party Provider. Uber will respond accordingly to any request from a Third Party Provider to modify the Charges for a particular service or good. This payment structure is intended to fully compensate a Third Party Provider, if applicable, for the services or goods obtained in connection with your use of the Services. In all other cases, Charges you incur will be owed and paid directly to Uber or its affiliates, where Uber is solely liable for any obligations to Third Party Providers. In such cases, you retain the right to request lower Charges from Uber for services or goods received by you from a Third Party Provider at the time you receive such services or goods, and Uber will respond accordingly to any request from you to modify the Charges for a particular service or good. Except with respect to taxicab transportation services requested through the Application, Uber does not designate any portion of your payment as a tip or gratuity to a Third Party Provider. Any representation by Uber (on Uber's website, in the Application, or in Uber's marketing materials) to the effect that tipping is "voluntary," "not required," and/or "included" in the payments you make for services or goods provided is not intended to suggest that Uber provides any additional amounts, beyond those described above, to a Third Party Provider you may use. You understand and agree that, while you are free to provide additional payment as a gratuity to any Third Party Provider who provides you with services or goods obtained through the Service, you are under no obligation to do so. Gratuities are voluntary.

Repair or Cleaning Fees.

You shall be responsible for the cost of repair for damage to, or necessary cleaning of, vehicles and property resulting from use of the Services under your Account in excess of normal "wear and tear" damages and necessary cleaning ("Repair or Cleaning"). In the event that a Repair or Cleaning request is verified by Uber in Uber's reasonable discretion, Uber reserves the right to facilitate payment for the reasonable cost of such Repair or Cleaning using your payment method designated in your Account. Such amounts will be transferred by Uber to a Third Party Provider, if applicable, and are non-refundable.

6. Disclaimers; Limitation of Liability; Indemnity.

DISCLAIMER.

THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." UBER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN ADDITION, UBER MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF

THE SERVICES OR ANY SERVICES OR GOODS REQUESTED THROUGH THE USE OF THE SERVICES, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. UBER DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY OR ABILITY OF THIRD PARTY PROVIDERS. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY SERVICE OR GOOD REQUESTED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

LIMITATION OF LIABILITY.

UBER SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE SERVICES, REGARDLESS OF THE NEGLIGENCE (EITHER ACTIVE, AFFIRMATIVE, SOLE, OR CONCURRENT) OF UBER, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

UBER SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES ARISING OUT OF: (i) YOUR USE OF OR RELIANCE ON THE SERVICES OR YOUR INABILITY TO ACCESS OR USE THE SERVICES; OR (ii) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY THIRD PARTY PROVIDER, EVEN IF UBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UBER SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND UBER'S REASONABLE CONTROL. YOU ACKNOWLEDGE THAT THIRD PARTY PROVIDERS PROVIDING TRANSPORTATION SERVICES REQUESTED THROUGH SOME REQUEST PRODUCTS MAY OFFER RIDESHARING OR PEER-TO-PEER TRANSPORTATION SERVICES AND MAY NOT BE PROFESSIONALLY LICENSED OR PERMITTED.

THE SERVICES MAY BE USED BY YOU TO REQUEST AND SCHEDULE TRANSPORTATION, GOODS, OR LOGISTICS SERVICES WITH THIRD PARTY PROVIDERS, BUT YOU AGREE THAT UBER HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO ANY TRANSPORTATION, GOODS OR LOGISTICS SERVICES PROVIDED TO YOU BY THIRD PARTY PROVIDERS OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS.

THE LIMITATIONS AND DISCLAIMER IN THIS SECTION DO NOT PURPORT TO LIMIT LIABILITY OR ALTER YOUR RIGHTS AS A CONSUMER THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, UBER'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. THIS PROVISION SHALL HAVE NO EFFECT ON UBER'S CHOICE OF LAW PROVISION SET FORTH BELOW.

Indemnity.

You agree to indemnify and hold Uber and its affiliates and their officers, directors, employees, and agents harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in connection with: (i) your use of the Services or services or goods obtained through your use of the Services; (ii) your breach or violation of any of these Terms; (iii) Uber's use of your User Content; or (iv) your violation of the rights of any third party, including Third Party Providers.

7. Other Provisions

Choice of Law.

These Terms are governed by and construed in accordance with the laws of the State of California, U.S.A., without giving effect to any conflict of law principles, except as may be otherwise provided in the Arbitration Agreement above or in supplemental terms applicable to your region. However, the choice of law provision regarding the interpretation of these Terms is not 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 2 of these Terms, are only intended to specify the use of California law to interpret these Terms and the forum for disputes asserting a breach of these Terms, and these provisions shall not be interpreted as generally extending California law to you if you do not otherwise reside in California. The foregoing choice of law and forum selection provisions do not apply to the arbitration clause in Section 2 or to any arbitrable disputes as defined therein. Instead, as described in Section 2, the Federal Arbitration Act shall apply to any such disputes.

Claims of Copyright Infringement.

Claims of copyright infringement should be sent to Uber's designated agent. Please visit Uber's web page at <https://www.uber.com/legal/intellectual-property/copyright/global> for the designated address and additional information.

Notice.

Uber may give notice by means of a general notice on the Services, electronic mail to your email address in your Account, telephone or text message to any phone number provided in connection with your account, or by written communication sent by first class mail or pre-paid post to any address connected with your Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email or telephone). You may give notice to Uber, with such notice deemed given when received by Uber, at any time by first class mail or pre-paid post to our registered agent for service of process, c/o Uber USA, LLC. The name and current contact information for the registered agent in each state are available online [here](#).

General.

You may not assign these Terms without Uber's prior written approval. Uber may assign these Terms without your consent to: (i) a subsidiary or affiliate; (ii) an acquirer of Uber's equity, business or assets; or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. No joint venture, partnership, employment, or agency relationship exists between you, Uber or any Third Party Provider as a result of this Agreement or use of the Services. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced to the fullest extent under law. Uber's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Uber in writing. This provision shall not affect the Severability and Survivability section of the Arbitration Agreement of these Terms.