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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on  
Regulations Relating to Passenger Carriers,  
Ridesharing, and New Online-Enabled  
Transportation Services.

Rulemaking 12-12-011  
(Filed December 20, 2012)

**RESPONSE OF UBER TECHNOLOGIES, INC. TO  
ADMINISTRATIVE LAW JUDGE ROBERT M. MASON III'S RULING DATED  
SEPTEMBER 17, 2015**

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September 24, 2015

Attorneys for Uber Technologies, Inc.

**RESPONSE OF UBER TECHNOLOGIES, INC. TO  
ADMINISTRATIVE LAW JUDGE ROBERT M. MASON III'S RULING  
DATED SEPTEMBER 17, 2015**

Pursuant to Administrative Law Judge Robert M. Mason III's ruling dated September 17, 2015 ("Ruling"), Uber Technologies, Inc. ("UTI") is re-filing the Response of Uber Technologies, Inc. to Assigned Commissioner and Administrative Law Judge's Ruling ("Response"). UTI initially filed this Response on July 1, 2015. UTI concurrently filed a motion for leave to file the confidential version of its response under seal, consistent with long-accepted practice and procedure before the Commission. On the same date, UTI served a redacted version of the Response on the service list to this proceeding. Although UTI respectfully disagrees with the conclusions reached in the Ruling, UTI is submitting a true and correct copy of the unredacted version of the Response in Appendix A under protest.

The conclusions reached in the Ruling have cross-industry implications. The protections afforded by Public Utilities Code Section 583 and General Order ("G.O.") 66-C are being addressed in a concurrent rulemaking (R.14-11-011) before the Commission. Specifically, the Scoping Ruling in that proceeding offers legal analyses of Public Utilities Code Section 583 and G.O. 66-C that are similar to those found in this Ruling. However, that Scoping Ruling correctly recognizes that these analyses are "preliminary legal conclusions" and explicitly invited comments from parties who dispute the analyses.<sup>1</sup> The comment cycle is ongoing and parties in

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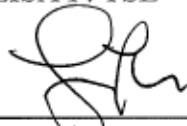
<sup>1</sup> Rulemaking (R.) 14-11-001, Assigned Commissioner's Scoping Memo and Ruling, August 11, 2015, at A-2 (Inviting comments if "parties dispute the preliminary legal conclusions reached [in the Scoping Ruling].")

that proceeding have already submitted comments disagreeing with these analyses.<sup>2</sup> The legal analyses presented in the Ruling are far from settled and are being prematurely applied to UTI in this proceeding. The appropriate forum to address these issues is in R.14-11-011. UTI, and its subsidiary Rasier-CA, LLC, will continue to work with the Commission and stakeholders in that proceeding to ensure correct interpretations of law.

Dated this 24<sup>th</sup> day of September, in San Francisco, California.

Respectfully submitted,

KRISHNA JUVVADI  
NANCY CHUNG ALLRED  
LISA P. TSE



By: Lisa P. Tse

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<sup>2</sup> R.14-11-011, Opening Comments of California Water Association, September 11, 2015, at 3-6 (addressing the Scoping Ruling's characterization of Public Utilities Code Section 583), 9-11 (asserting that General Order 66-C provides substantive justifications for protection against public disclosure); R.14-11-001, Opening Comments of the Communications Industry Coalition, September 11, 2015, at 9-15 (addressing the Scoping Ruling's analyses of Section 583 and G.O. 66-C); R.14-11-011, Joint Comments of Investor-Owned Utilities, at 7 (asserting that G.O. 66-C presents a category of protected information).

**RESPONSE OF UBER TECHNOLOGIES, INC. TO ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGE'S RULING DATED JULY 1, 2015**

**APPENDIX A**



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on  
Regulations Relating to Passenger Carriers,  
Ridesharing, and New Online-Enabled  
Transportation Services

Rulemaking 12-12-011  
(Filed December 20, 2012)

**RESPONSE OF UBER TECHNOLOGIES, INC. TO ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGE'S RULING**

**(CONFIDENTIAL VERSION)**

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July 1, 2015

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on  
Regulations Relating to Passenger Carriers,  
Ridesharing, and New Online-Enabled  
Transportation Services

Rulemaking 12-12-011  
(Filed December 20, 2012)

**RESPONSE OF UBER TECHNOLOGIES, INC. TO ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGE’S RULING**

Uber Technologies, Inc. (“UTI”) submits its Response to the Assigned Commissioner and Administrative Law Judge’s Ruling Ordering Uber Technologies, Inc. to Answer Questions and Produce Documents (“Ruling”), issued June 3, 2015. UTI files this Response pursuant to the June 9, 2015 e-mail ruling of Administrative Law Judge Robert Mason granting UTI’s Motion for Extension of Time and allowing UTI to file its responses on July 1, 2015.<sup>1</sup>

UTI’s Response includes a narrative response to the questions posed in the Ruling and three appendices:

- Confidential Appendix A: Organizational Chart
- Appendix B: Corporate Documents
- Confidential Appendix C: Uber USA Software License and Online Services Agreement

UTI is requesting confidential treatment of portions of this filing and Confidential Appendices A and C. Concurrently with this response, UTI is filing a Motion for Leave to File the Confidential Version of its Response to Assigned Commissioner and Administrative Law Judge’s Ruling Under Seal.

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<sup>1</sup> E-mail Ruling of Administrative Law Judge Robert Mason, issued Jun. 9, 2015.

In these responses, UTI uses the definitions provided in the CPUC's Order:

- Uber: Uber Technologies, Inc.
- Uber App: Uber's smartphone application that allows an individual to send a request to independent providers of transportation services for transportation service.
- TCP: A transportation charter party carrier of passengers as that term is defined by Pub. Util. Code § 5360.
- TCP Holder or TCP Holders: Commission-licensed charter party carrier or carriers who have entered into a contract with Uber to provide transportation service through the Uber App.
- TCP Holder Driver: A driver affiliated with a TCP Holder.

**A. UTI's Responses to Questions Posed in the Ruling**

1. *Explain the business relationship (such as parent, affiliate, subsidiary, wholly-owned subsidiary, limited liability company, or corporation) between Uber, Rasier LLC, Rasier-CA, LLC, and UberX.*

**Response:** Rasier-CA, LLC ("Rasier-CA") is a direct wholly-owned subsidiary of Rasier, LLC ("Rasier"). Rasier is a direct wholly-owned subsidiary of UTI. Following an upcoming corporate restructuring, Rasier will become a direct wholly-owned subsidiary of Uber USA, LLC. Uber USA, LLC is a direct wholly-owned subsidiary of UTI. Rasier-CA will remain a direct wholly-owned subsidiary of Rasier. The corporate structure is depicted on the attached Confidential Appendix A.

uberX is not a corporate entity. Rather, uberX is a vehicle type that is available on the Uber technology platform through the Uber App.

2. *Produce all documents (including, but not limited to, organizational charts, articles of incorporation, certificates of formation, certificates of registration, statements of information, and applications to register a foreign limited liability company) that explain the business relationship between Uber, Rasier LLC, Rasier-CA, LLC, and UberX.*

**Response:** Relevant documents are attached as **Confidential Appendix A** and **Appendix B**.

3. *Explain the roles that Uber, Rasier LLC, Rasier-CA, LLC, and UberX play in facilitating the provision of prearranged transportation services using the Uber App.*

**Response:** UTI is a technology company with a proprietary technology platform that provides lead generation and related services to independent providers of transportation services (“Uber Service”). The Uber Service is licensed to such independent providers and enables them to accept on-demand requests from riders requesting transportation services through the Uber App. “Uber” is a registered trademark owned by UTI.

uberX is not a corporate entity, it is a vehicle type available on the Uber technology platform through the Uber App. Rasier-CA holds a Class P Transportation Network Company (“TNC”) Permit issued by the Commission. Rasier-CA enters into a Software License and Online Services Agreement with TNC drivers (“TNC Driver Agreement”) who desire to have access to the Uber Service. Pursuant to the TNC Driver Agreement, TNC drivers agree that, as a fee for their use of the Uber Service, Rasier-CA retains a percentage of each fare paid by a rider to a driver for transportation services provided by the driver. Rasier-CA complies with the CPUC’s TNC regulations, including vehicle inspections, TNC driver background checks, and insurance.

Rasier, which is Rasier-CA’s direct parent company, does not currently have operations in California.

Pursuant to certain license and sublicense agreements between UTI and Rasier-CA, and certain other affiliates of UTI, Rasier-CA has been granted a perpetual and non-exclusive license to use Uber’s intellectual property, including the Uber application and the registered trademark “Uber,” in its TNC operations.

UTI has also granted a perpetual and non-exclusive license to Uber USA, LLC (“Uber USA”) to use Uber’s intellectual property, including the Uber platform and the registered

trademark “Uber.” Uber USA, which, in California, is primarily focused on providing the Uber Service for TCP Holders, provides riders access to the Uber rider app (“Uber Rider APP”), subject to Terms of Use. The Uber Rider App allows riders to submit on-demand requests for prearranged transportation services.

4. *Explain the roles that Uber, Rasier LLC, and Rasier-CA, LLC play in giving a TCP access to the Uber App.*

**Response:** Rasier and Rasier-CA contract exclusively with independent TNC vehicle operators and do not interact or play any role in providing TCP Holders or TCP Holder Drivers access to the Uber Service.

Pursuant to the agreement entered into between Uber USA and TCP Holders (“TCP Agreement”), TCP Holders request and agree that, as a fee for their use of the Uber Service, Uber USA, LLC retains a fixed percentage of each fare paid by a rider to the TCP Holder for transportation services provided by TCP Holder Drivers. In certain limited circumstances, the TCP Agreement was entered into by UTI instead of Uber USA; however, UTI is in the process of assigning these legacy agreements from UTI to Uber USA.

5. *In order to access the Uber App, must a TCP execute a software sublicense and online services agreement? If so, please provide a specimen copy of the operative software sublicense and online services agreement.*

**Response:** TCP Holder Drivers that wish to utilize the Uber Service must execute a Software License and Online Services Agreement with Uber USA to receive access. A copy of the operative agreement is attached as Confidential Appendix C.

6. *Are persons who submit ride requests through the Uber App able to request or choose a particular TCP Holder and/or TCP Holder driver?*

**Response:** While a rider may select from a range of offerings based on vehicle type and/or number of riders (e.g., uberX, uberXL, UberSELECT, UberPLUS, UberBLACK,



UberSUV, UberLUX), she cannot choose a particular TCP Holder or TCP Holder Driver when requesting a ride through the Uber app. Ride requests submitted by riders are transmitted to the nearest available TCP Holder Driver, who then has the option to accept or decline each request.

7. *Are TCP holder drivers able to view all ride requests in their vicinity?*

**Response:** No, TCP Holder Drivers using the Uber App will only see the specific ride requests that are forwarded to them. The software is optimized to forward ride requests to the vehicle located in closest proximity to the rider requesting transportation services, in order to minimize arrival times for both the rider and travel time for the TCP Holder Driver, creating an efficient marketplace.

8. *If the answer to question 7 is yes, are TCP Holder drivers able to choose which ride requests to accept?*

**Response:** While TCP Holder Drivers using the Uber App will only receive the ride requests that are forwarded to them, all TCP Holder Drivers have the right to accept or decline any trip request.

9. *Do TCP Holder drivers have a time limit for either accepting or not accepting a ride request?*

**Response:** Yes.

10. *If the answer to question 9 is yes, specify the time limit (in seconds) for either accepting or not accepting a ride request.*

**Response:** Each driver who receives a request has up to fifteen (15) seconds to accept or decline a ride request. If the request is declined, it is then forwarded to the driver who is next nearest to the requesting rider.

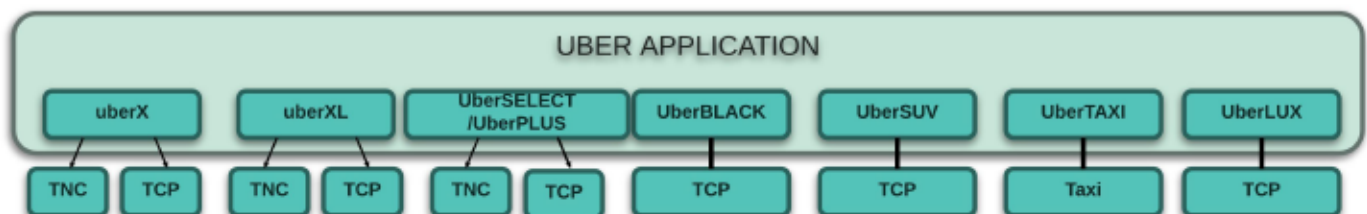
11. Define the transportation service (i.e. TCP and/or TNC) provided by UberX, Uber Black, UberTaxi, UberSUV, and UberLUX.

**Response:** uberX, uberXL, UberSELECT (a/k/a UberPLUS), UberBLACK, UberTAXI, UberSUV, and UberLUX are different offerings provided by drivers based on vehicle type and/or number of riders. Not all vehicle types are available in all markets.

uberX and uberXL are low-cost vehicle types that allow riders to request rides from both TNC drivers and TCP Holders. UberSELECT (a/k/a UberPLUS) is a mid-tier vehicle type that allows rider to request a ride from a TNC driver or TCP Holder driving an entry-level luxury vehicle such as a BMW 3-series or Audi A4. UberBLACK currently allows riders to request rides from TCP Holders with high-range/luxury vehicles; while UberSUV currently allows riders to request rides from TCP Holders with luxury sports utility vehicles. Similarly, UberLUX allows riders to request rides from TCP Holders with ultra-luxury vehicles. UberTAXI can be used to request and pay for a taxicab at standard taxi rates. Drivers who use UberTAXI are not affiliated with TCPs or a TNC.

Figure 1 below sets forth the types of transportation providers who may receive and accept trip requests from the vehicle types discussed above in response to Question 11 (the information in the diagram is subject to change as our business evolves to meet the needs of Californians):

**FIGURE 1**



12. *Are UberX drivers required to hold a TCP permit?*

**Response:** uberX is a vehicle type and is not limited to TCP Holders. Drivers who receive trip requests for the uberX vehicle type may also be TNC drivers that have entered into agreements with Rasier-CA, a Commission-regulated TNC. Pursuant to Commission Decision 13-09-045, individual TNC drivers are not required to hold a TCP permit. TCP Holders may also choose to receive trip requests for the uberX vehicle type. Thus, a rider who requests the uberX vehicle type through the Uber Rider App could secure a ride with either a TNC driver or a TCP Holder Driver.

13. *Are Uber Black drivers required to hold a TCP permit?*

14. *Are UberSUV drivers required to hold a TCP permit?*

15. *Are UberLUX drivers required to hold a TCP permit?*

**Response to Questions 13, 14, and 15:** As noted above, UberBLACK, UberSUV, and UberLUX are luxury vehicle types available on the Uber platform. All drivers who currently accept trips for the UberBLACK, UberSUV, and UberLUX vehicle type in California are affiliated with a TCP Holder.

16. *Do TCP Holders have the ability to set their own rates?*

**Response:** From a rider perspective, it is a better experience to have certainty as to the method by which the fare for transportation is calculated. As a service to drivers, we recommend a fare for the transportation services provided by drivers to riders and disclose the methodology for such fares on the City Page for a particular city on the Uber website. However, the fare is a recommended fare and TCP Holders and TCP Holder Drivers retain the right to charge riders a lower fare than the recommended fare. Further, there is no exclusivity required on the Uber platform. Therefore, TCP drivers always retain the option to provide service to clients acquired



via other means, e.g., their own limousine business, by subcontracting with other TCP providers, etc.

17. *If the answer to question 16 is yes, demonstrate how TCP Holders are able to specify the rates at which they will provide transportation service.*

**Response:** TCP Holders and TCP Holder Drivers who want to charge a fare lower than the recommended fare may contact support to request a modification to fare charged on a particular ride. As noted in the response to Question 16, the methodology for the recommended fare is disclosed on the City Page for a particular city on the Uber website.

18. *Do TCP Holders collect money directly from passengers for the compensation of their transportation service?*

**Response:** Pursuant to the TCP Agreement, TCP Holders designate UTI or Uber USA to act as their limited payment collection agent to collect the fare on behalf of the TCP Holders (through third party vendors) from riders and to remit the fare, net of the service fee for use of the Uber Service, to the TCP Holders. The service fee is a fixed percentage of each fare paid by a rider for transportation services. The full fare is credited to the TCP Holder, who receives an IRS 1099-K (Payment Cards and Third Party Network Transactions) for the full value of the fare and any fees (e.g., tolls).

19. *If the answer to question 18 is no, describe the process by which TCP Holder drivers receive compensation for providing transportation service arranged through the Uber App.*

**Response:** Please see response to # 18.

20. *After a subscribing passenger has been transported by an UberX driver, how is the charge for the fare allocated between the UberX driver and Uber?*

21. *After a subscribing passenger has been transported by an Uber Black driver, how is the charge for the fare allocated between the Uber Black driver and Uber?*

22. *After a subscribing passenger has been transported by an UberSUV driver, how is the charge for the fare allocated between the UberSUV driver and Uber?*

23. *After a subscribing passenger has been transported by an UberLUX driver, how is the charge for the fare allocated between the UberLUX driver and Uber?*

**Response:** To the extent that that Questions 20-23 seeks information regarding fares, UTI objects on the grounds that the Commission does not have the authority to regulate fares charged by charter-party carriers. It is beyond dispute that the Commission does not set or alter TNC or TCP fares. Indeed, the “Commission does not exercise any control over the rates charged other than to enforce [Public Utilities Code] Section 5401 which provides that charges shall be computed and assessed on a vehicle mileage or time of use basis, or a combination thereof, and that no individual fare rates shall be charged.” D.86670, 80 CPUC 769, at \*13-14 (1976). The Commission itself held that Section 5401 allows charter-party carriers “considerable latitude” in calculating and assessing fares, and that the “only express statutory prohibition is on compensation on an “individual fare basis.” D.96-08-034, 67 CPUC2d 437, at \*31.

To the extent that Questions 20-23 are limited to the logistics of collecting a fare on behalf of drivers from a rider, we answer as follows: A rider who completes a TNC ride requested on the uberX product is charged a fare by the driver that is comprised of a combination of a base fare, time and distance, a Safe Rides fee, and any applicable tolls and surcharges. Pursuant to the TNC Driver Agreement, drivers request and agree that, as a fee for their use of the Uber Service, Rasier-CA retains a fixed percentage of each fare paid by a rider to a driver for transportation services provided by the driver. In addition, pursuant to the TNC Driver Agreement, drivers designate Rasier-CA to act as their limited payment collection agent to collect the entire fare on behalf of drivers (through third party vendors) from riders and to remit the fare, net of applicable fees, to the drivers. The fees paid by the drivers include: (i) the Safe Rides fee to support safety efforts for the uberX vehicle type, including, among other

things, a background check process, motor vehicle checks, driver safety education, and development of safety features in the Uber App, (ii) the service fee (which is a fixed percentage) for use of the Uber Service from the time and distance portion of the fare and (iii) applicable airport surcharges, if any, which are forwarded to the appropriate airport authority.

A rider who completes a ride provided by a TCP Holder/TCP Holder Driver that was requested on the uberX, UberBLACK, UberSUV, or UberLUX products is charged a fare that is comprised of a combination of a base fare, time and distance, and applicable tolls and surcharges. TCP Holders designate Uber USA to act as their limited payment collection agent to collect the fare on their behalf and remit the fare, net of applicable fees, to the drivers. The fees paid by the drivers cover the license granted to the TCP Holder for use of the Uber lead-generation software and related services. The remainder of the fare is remitted to the TCP Holder. If the ride provided by a TCP Holder/TCP Holder Driver was requested on the uberX product, a Safe Rides fee is charged and the TCP Holder/TCP Holder Driver will remit to UTI or Uber USA a percentage of that fee.

*24. Are TCP Holders' drivers permitted to use any type of vehicle (e.g. make, model, specifications, and/or year) when providing transportation service arranged through the Uber App? If not, identify the limitations on the type of vehicle that TCP Holders' drivers are permitted to use.*

**Response:** A TCP Holder/TCP Holder Driver who accepts trip requests for the uberX vehicle type must have a 2000 model year or newer vehicle that has four or more seats, and four doors.

A TCP Holder/TCP Holder Driver who accepts trip requests for the UberBLACK vehicle type in California must use a sedan, crossover SUV, or a full-size SUV that has a black interior and exterior, comfortably seats at least four riders, has four doors, and is a 2010 model year or newer.

A TCP Holder/TCP Holder Driver who accepts trip requests for the UberSUV vehicle type must use a full-size SUV that has a black interior and exterior, comfortably seats at least six riders, has four doors, and is a 2008 model year or newer.

Finally, a TCP Holder/TCP Holder Driver who accepts trip requests for the UberLUX vehicle type must, at present, use a luxury vehicle that has a black interior and exterior, four doors, and is a 2010 model year or newer. Vehicles currently eligible for UberLUX include, but are not limited to, the Audi A8, BMW 7-Series, Lexus LS, Mercedes-Benz S & G-Classes, and a Tesla Model S.

*25. Do either Uber, Rasier LLC, or Rasier-CA, LLC provide incentives in order to have TCP Holders operate during certain time periods? If so, describe those incentives and explain how those time periods (during which incentives are offered) are determined.*

**Response:** TCP Holders are independent charter-party carriers. Neither UTI nor Uber USA has any control over the number of hours or days of the week that TCP Holders actively use the Uber App. TCP Holders retain complete discretion and control over their schedules. Subject only to any applicable statute and/or Commission rule, TCP Holders decide when and where to operate.

While it is not considered an incentive, the Uber Service uses a dynamic pricing model that increases the factor applied to the calculation of the recommended fare during times of high demand in order to encourage more third party TCP transportation providers (supply) to become available to receive requests from riders seeking transportation service (demand) from them. The dynamic pricing model is implemented on a neighborhood by neighborhood basis and the model increases the factor automatically pursuant to an algorithm. Alternatively, when supply and demand reach greater equilibrium, the factor is decreased until it comes to rest at 1x. TCP Holders have full discretion to choose to operate at times when dynamic pricing has increased the applicable fare factor.



For special events and holidays, certain markets may choose to run ad hoc promotions, such as guaranteed minimum hourly fares for specific time periods, to encourage additional usage of the software application service by third-party transportation providers. These promotions are conducted on a city-by-city basis and the time periods during which incentives are offered are also determined on a case-by-case basis depending on projected demand.

26. *Do TCP Holders receive the passenger's full name, phone number, originating address, and destination address? If so, who is the custodian of records of this information?*

**Response:** As independent charter-party carriers, TCP Holders are responsible for complying with applicable statutes and Commission rules, including waybill and trip record requirements.<sup>2</sup>

The rider information that a TCP Holder receives when she accepts a trip request from a rider using the Uber Rider App does not substitute for the Commission's waybill requirements. Upon accepting a trip request from the Uber App, a TCP Holder is provided the following information through the Uber App: the rider's first name, the pickup address, and an anonymized phone number to call or text the rider during the course of the ride. Moreover, if the rider enters a destination address into the Uber Rider App, the TCP Holder will be provided with that information. The rider's last name and personal telephone number are NOT provided to the TCP Holder.

Question 26 does not define the term "custodian of records." To the extent that "custodian of records" has the same meaning as used in federal or state litigation, there is no "custodian of records" for this information. A rider has full access to her trip information and is able to download her information at any time. We would welcome the opportunity to discuss with the Commission to better understand Question 26.

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<sup>2</sup> See Cal. Pub. Util. Code § 5381.5.

*27. Describe Uber's process for resolving complaints (including the types of disciplinary actions that may be taken) regarding either a TCP Holder or TCP Holder driver.*

**Response:** UTI and Uber USA provide riders with multiple avenues by which to inform Uber of a service issue related to transportation service provided by a TCP Holder or TCP Holder Driver. For example, a rider may submit a request by replying to the emailed receipt or provide comments from within Uber application service.

Moreover, riders have the ability to rate TCP Holders and TCP Holder Drivers on a scale of one to five stars after each trip. TCP Holders or TCP Holder Drivers whose overall rating falls below the minimum average rating set for that city will be notified that failure to maintain the minimum rating constitutes a breach of the terms of the Agreement and may constitute grounds for termination of the Agreement.

Uber may also forward rider feedback, anonymously, to TCP Holders or TCP Holder Drivers on issues such as an inefficient trip route or slow arrival time to the rider's pickup location. For more serious rider complaints, Uber may exercise its right to "waitlist" the TCP Holder or TCP Holder Driver, pending an investigation. This right is exercised in the interest of public safety. Uber's investigation of rider complaints includes, at a minimum, interview(s) with the TCP Holder or TCP Holder Driver and a review of any evidence submitted by the rider. If the investigation confirms a breach of the terms and conditions of the Agreement, Uber may exercise its right to terminate the Agreement. The TCP Holder Driver also retains the right to terminate the Agreement with Uber at any time.

28. *How far into the future are passengers able to submit ride requests through the Uber App?*

**Response:** At this time, the Uber application service is only available to connect passengers seeking on-demand transportation services with drivers willing to provide that service.

29. *Are TCP Holders permitted to utilize subcarriers to transport passengers?*

**Response:** The Commission has defined a subcarrier as carrier holding Commission authority as a charter-party carrier who provides use of its vehicles and drivers to another licensed charter-party carrier in order to fulfill requests for prearranged transportation services. See, e.g., General Order 157-D. While UTI and Uber USA currently has TCP Holders that accept trip requests on a shared account, we are not aware of any TCP Holders who work with subcarriers on our digital platform.

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30. *Does Uber, Rasier LLC, or Rasier-CA, LLC provide trade dress to TCP Holders?*

**Response:** Neither UTI nor Uber USA require TCP Holders or TCP Holder Drivers to use trade dress. If a TCP Holder or TCP Holder Driver requests trade dress, UTI or Uber USA would provide it.

Respectfully submitted,

KRISHNA K. JUVVADI  
NANCY CHUNG ALLRED  
PATRICIA C. ROBBINS

/s/  
By: Krishna K. Juvvadi

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July 1, 2015

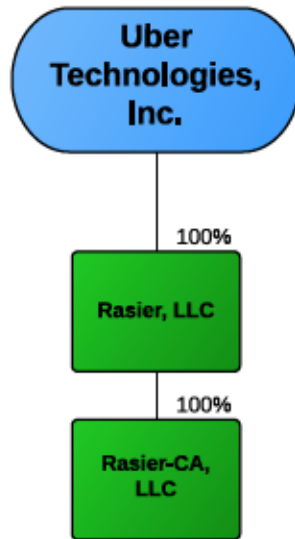


**CONFIDENTIAL APPENDIX A**  
**ORGANIZATIONAL CHART**

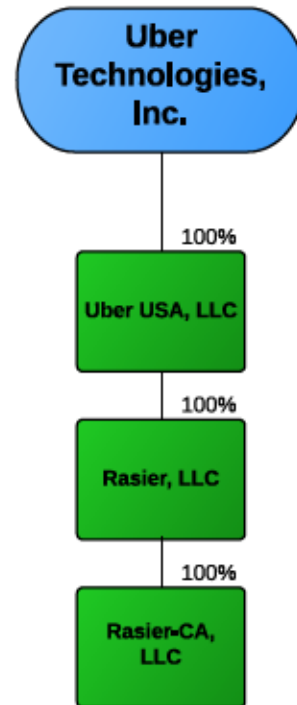
**CALIFORNIA ORGANIZATIONAL CHART**

**PROPRIETARY & CONFIDENTIAL**

Current Structure  
(as of June 15, 2015)



Proposed Structure  
(Late 2015)



**APPENDIX B**  
**CORPORATE DOCUMENTS**

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "UBER TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE TWENTY-SIXTH DAY OF MAY, A.D. 2015, AT 8:37 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

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Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 2405880

DATE: 05-26-15

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**UBER TECHNOLOGIES, INC.**

The undersigned, Travis Kalanick, hereby certifies that:

1. He is the duly elected and acting President of Uber Technologies, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware under the name UberCab, Inc., on July 16, 2010.
3. The Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor.
4. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

**ARTICLE I**

The name of this corporation is Uber Technologies, Inc. (the "Corporation").

**ARTICLE II**

The address of the Corporation's registered office in the State of Delaware is 160 Greentree Dr., Ste 101, Dover, Delaware, County of Kent, 19904. The name of its registered agent at such address is National Registered Agents, Inc.

**ARTICLE III**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

**ARTICLE IV**

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 3,251,721,763 shares, each with a par value of \$0.00001 per share. The total number of shares of Common Stock authorized to be issued is 2,496,670,392 of which 1,558,693,776 shares are designated "Class A Common Stock" and 937,976,616 shares are designated "Class B Common Stock." The total number of shares of Preferred Stock authorized to be issued is 755,051,371 of which 174,029,880 shares are designated "Series Seed Preferred Stock," 152,053,436 shares are designated "Series A Preferred Stock," 123,645,856 shares are designated "Series B Preferred Stock," 76,551,280 shares are designated "Series C-1 Preferred Stock," 31,003,680 shares are designated "Series C-2 Preferred Stock," 841,864 shares are designated "Series C-3 Preferred Stock," 87,193,208 shares are designated "Series D Preferred Stock," 84,504,220 shares are designated "Series E Preferred Stock" and 25,227,947 shares are designated "Series F Preferred Stock." The Series

Seed Preferred Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C-1 Preferred Stock, the Series C-2 Preferred Stock, the Series C-3 Preferred Stock, the Series D Preferred Stock, Series E Preferred Stock and the Series F Preferred Stock are herein collectively referred to as the "Preferred Stock." The Series C-1 Preferred Stock, the Series C-2 Preferred Stock, and the Series C-3 Preferred Stock are herein collectively referred to as the "Series C Preferred Stock".

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B).

1. **Dividend Provisions.** The holders of shares of Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Class A Common Stock, Class B Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Class A Common Stock or Class B Common Stock of the Corporation, provided that an adjustment to the respective Conversion Price (as defined below) of such other securities or rights has been made in accordance with Section 4(d)(ii) below) on the Class A Common Stock or Class B Common Stock of the Corporation, at the rate of (a) \$0.000725 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the filing of this Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time")) per annum on each outstanding share of Series Seed Preferred Stock, (b) \$0.0058425 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) per annum on each outstanding share of Series A Preferred Stock, (c) \$0.0283575 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) per annum on each outstanding share of Series B Preferred Stock, (d) \$0.28508 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) per annum on each outstanding share of Series C-1 Preferred Stock, (e) \$0.2280625 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) per annum on each outstanding share of Series C-2 Preferred Stock, (f) \$0.28508 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) per annum on each outstanding share of Series C-3 Preferred Stock, (g) \$1.241045 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) per annum on each outstanding share of Series D Preferred Stock, (h) \$2.6654 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) per annum on each outstanding share of Series E Preferred Stock, and (i) \$3.171086 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) per annum on each outstanding share of Series F Preferred Stock, payable quarterly when, as and if declared by the Board of Directors of the Corporation (the "Board of Directors"). Such dividends shall not be cumulative. After payment of such dividends, any additional dividends or distributions shall be distributed among the holders of Preferred Stock, Class A Common Stock, and Class B Common Stock pro rata based on the number of shares of Class A Common Stock and Class B Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Class A Common Stock and Class B Common Stock).

2. **Liquidation.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets, funds or proceeds (the "Proceeds") available for distribution from such Liquidation Transaction (as defined below) of the Corporation to the holders of Class A Common Stock or Class B Common Stock by reason of their ownership thereof, an amount equal to (a) \$0.0090625 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) for each share of Series Seed Preferred Stock (the "Series Seed Original Purchase Price"), (b) \$0.0924825 per share (as adjusted for stock splits, stock dividends,

reclassification and the like occurring after the Effective Time) for each share of Series A Preferred Stock (the "Series A Original Purchase Price"), (c) \$0.354475 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) for each share of Series B Preferred Stock (the "Series B Original Purchase Price"), (d) the product obtained by multiplying (i) 1.25 by (ii) the Series C-1 Original Purchase Price for each share of Series C-1 Preferred Stock (such product, the "Series C-1 Liquidation Preference"), (e) the product obtained by multiplying (i) 1.25 by (ii) the Series C-2 Original Purchase Price for each share of Series C-2 Preferred Stock (such product, the "Series C-2 Liquidation Preference"), (f) the product obtained by multiplying (i) 1.25 by (ii) the Series C-3 Original Purchase Price for each share of Series C-3 Preferred Stock (such product, the "Series C-3 Liquidation Preference"), (g) \$15.51305 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) for each share of Series D Preferred Stock (the "Series D Original Purchase Price"), (h) \$33.317575 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) for each share of Series E Preferred Stock (the "Series E Original Purchase Price") and (i) \$39.638581 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time) for each share of Series F Preferred Stock (the "Series F Original Purchase Price"), then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the Proceeds available for distribution to stockholders shall be insufficient to permit the payment to the holders of the Preferred Stock of the full aforesaid preferential amounts, the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive. The "Series C-1 Original Purchase Price" shall mean \$3.5635 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time). The "Series C-2 Original Purchase Price" shall mean \$2.8508 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time). The "Series C-3 Original Purchase Price" shall mean \$3.5635 per share (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time). The Series Seed Original Purchase Price, Series A Original Purchase Price, Series B Original Purchase Price, Series C-1 Original Purchase Price, Series C-2 Original Purchase Price, Series C-3 Original Purchase Price, Series D Original Purchase Price, Series E Original Purchase Price and Series F Original Purchase Price are each sometimes referred to as an "Original Purchase Price."

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) above, if Proceeds remain, the holders of the Class A Common Stock and Class B Common Stock of the Corporation shall receive all of the remaining Proceeds available for distribution to stockholders which shall be distributed ratably among such holders in proportion to their respective number of issued and outstanding shares of Class A Common Stock and Class B Common Stock then held.

Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Transaction, each such holder of shares of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of Preferred Stock into shares of Class A Common Stock or Class B Common Stock (as applicable) immediately prior to the Liquidation Transaction if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such Preferred Stock into shares of Class A Common Stock or Class B Common Stock (as applicable). If any such holder shall be deemed to have converted shares of Preferred Stock into shares of Class A Common Stock or Class B Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Class A Common Stock or Class B Common Stock.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution, or winding up of the Corporation shall be deemed to occur (A) if the Corporation shall sell, convey, or otherwise dispose of all or substantially all of its assets, property or business, (B) if the Corporation shall grant an exclusive and irrevocable license of all or substantially all of the Corporation's intellectual property to a third party, (C) if the Corporation shall merge with or into or consolidate with any other corporation, limited liability company or other entity (other than a wholly-owned subsidiary of the Corporation), except a merger or consolidation in which the stockholders of the Corporation immediately prior to the transaction own more than 50% of the voting stock of the surviving corporation following the transaction (taking into account only stock of the Corporation held by such stockholders prior to the transaction)), or (D) upon the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting stock of the Corporation (or the surviving or acquiring entity); provided, however, that none of the following shall be considered a Liquidation Transaction: (i) a merger effected exclusively for the purpose of changing the domicile of the Corporation and (ii) an equity financing in which the Corporation is the surviving corporation; and provided further, that the treatment of any particular transaction or series of related transactions as a Liquidation Transaction may only be waived by (a) the vote or written consent of the holders of a majority of the outstanding Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis), (b) the vote of a majority of the outstanding shares of Series B Preferred Stock, (c) the vote of a majority of the outstanding shares of Series C-1 Preferred Stock, (d) the vote of a majority of the outstanding shares of Series C-2 Preferred Stock, or if no shares of Series C-2 Preferred Stock are outstanding, the written consent of holders of the right to acquire a majority of the shares of Series C-2 Preferred Stock pursuant to that certain Investment Agreement, dated as of August 12, 2013, between the Corporation and TPG Ubiquity Holdings, LP (the "Investment Agreement"), (e) the vote of a majority of the outstanding shares of Series D Preferred Stock, (f) the vote of a majority of the outstanding shares of Series E Preferred Stock and (g) the vote of a majority of the outstanding shares of Series F Preferred Stock (any such transaction, unless elected otherwise, a "Liquidation Transaction"). For the avoidance of doubt, voting "on an as-converted basis" shall be deemed to preserve the 10 votes for each share of Class B Common Stock into which shares of Series Seed Preferred Stock, Series A Preferred Stock, and Series B Preferred Stock may be converted, and one vote for each share of Class A Common Stock into which shares of Series C-1 Preferred Stock, Series C-2 Preferred Stock, Series C-3 Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock may be converted, as set forth in Section 5(a).

(ii) **Mechanics of Payment.** In the event of a Liquidation Transaction effected by a merger or consolidation of the Corporation with or into any other entity (a "Merger Liquidation"), payment to the holders of Class A Common Stock, Class B Common Stock and Preferred Stock of the Corporation shall be made in the form of consideration specified in the definitive agreement evidencing such Merger Liquidation (with Proceeds allocated as set forth above in paragraphs 2(a) and 2(b)). In the event of a Liquidation Transaction that is effected other than by Merger Liquidation, or in the event that the definitive agreement evidencing a Merger Liquidation does not specify the form in which payment of the consideration should be made, the payment to the holders of Preferred Stock or required by this Section 2(c) shall be made 100% in cash unless the Board of Directors determines otherwise, provided, however, that (i) all holders of Preferred Stock must receive the same form or forms of consideration (and, if more than one form, in the same proportion), and (ii) all holders of Class A Common Stock and Class B Common Stock must receive the same form or forms of consideration (and, if more than one form, in the same proportion), unless the holders of a majority of the Preferred Stock then outstanding (voting together as a single class and on an as-converted basis) elect otherwise and, all series of Preferred Stock are treated equally.

(iii) **Valuation of Consideration.** In the event of a Liquidation Transaction, if all or a portion of the consideration received by the Corporation is other than cash, its



value will be deemed its fair market value as determined in good faith by the Board of Directors, provided that any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange, the value shall be based on the formula specified in the definitive agreements for the Liquidation Transaction, or if no such formula exists, then the value shall be based on a formula approved by the Board of Directors and derived from the closing prices of the securities on such exchange over a specified time period;

(2) If actively traded over-the-counter, the value shall be based on the formula specified in the definitive agreements for the Liquidation Transaction or, if no such formula exists, then the value of such securities shall be based on a formula approved by the Board of Directors and derived from the closing bid or sales prices (whichever is applicable) of such securities over a specified time period; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as specified above in Section 2(c)(iii)(A) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

(iv) **Notice of Liquidation Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of any impending Liquidation Transaction not later than 10 days prior to the stockholders' meeting called to approve such Liquidation Transaction, or 10 days prior to the closing of such Liquidation Transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Transaction. The first of such notices shall describe the material terms and conditions of the impending Liquidation Transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. Unless such notice requirements are waived, the Liquidation Transaction shall not take place sooner than 10 days after the Corporation has given the first notice provided for herein or sooner than 10 days after the Corporation has given notice of any material changes provided for herein. Notwithstanding the other provisions of this Restated Certificate of Incorporation, all notice periods or requirements in this Restated Certificate of Incorporation may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of a majority of the then outstanding shares of Preferred Stock (voting together as a single class and on an as-converted basis) that are entitled to such notice rights; provided, that, notice periods or requirements with respect to holders of a particular series of Preferred Stock required pursuant to this Restated Certificate of Incorporation may only be waived by such series of Preferred Stock.

(v) **Effect of Noncompliance.** In the event the requirements of this Section 2 are not complied with, the Corporation shall forthwith either cause the closing of the Liquidation Transaction to be postponed until the requirements of this Section 2 have been complied with, or cancel such Liquidation Transaction, in which event the rights, preferences, privileges and restrictions of the holders of Preferred Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to in Section 2(c)(iv).

(vi) **Allocation of Escrow and Contingent Consideration.** Subject to Sections 2(c)(vii)-(xi) below, in the event of a Liquidation Transaction, if any portion of the Proceeds is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, notwithstanding the operation of this Section 2, the definitive agreement with respect to such transaction shall provide that the portion of such Proceeds that is placed in escrow and/or is subject to contingencies shall be allocated among the holders of capital stock of the Corporation pro rata based on the amount of such consideration otherwise payable to each stockholder pursuant to this Section 2 (such that each stockholder has the same percentage of the Proceeds payable to it placed into escrow and/or subject to contingencies, as applicable).

(vii) Notwithstanding anything else herein to the contrary, if the per-share value of the stock, cash, other assets or any combination thereof to be distributed to the holders of Series C-1 Preferred Stock for each share of Series C-1 Preferred Stock upon a Liquidation Transaction is an amount that is less than the Series C-1 Liquidation Preference, then the Corporation will notify each holder of Series C-1 Preferred Stock at least 10 days prior to the effective date of such Liquidation Transaction, and at the sole election of the holders of a majority of the Series C-1 Preferred Stock, (A) the Preferred Stock Conversion Price applicable to the Series C-1 Preferred Stock will be adjusted immediately prior to the Liquidation Transaction such that the total value of the securities to be received by the holders of Series C-1 Preferred Stock for each share of Series C-1 Preferred Stock will be equal to the Series C-1 Liquidation Preference, (B) the Corporation shall make a cash payment (a "Cash Payment") to the holders of each share of Series C-1 Preferred Stock such that the value of the securities to be received by the holders of the Series C-1 Preferred Stock for each share of Series C-1 Preferred Stock plus such Cash Payment will equal the Series C-1 Liquidation Preference or (C) a combination of the actions described in (A) and (B) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (A) and (B) shall not, in the aggregate, exceed the Series C-1 Liquidation Preference. For the avoidance of doubt, this Section 2(c)(vii) shall only apply to the extent the per-share value to be distributed is an amount that is less than the Series C-1 Liquidation Preference, after giving effect to Section 4(b)(i).

(viii) Notwithstanding anything else herein to the contrary, if the per-share value of the stock, cash, other assets or any combination thereof to be distributed to the holders of Series C-2 Preferred Stock for each share of Series C-2 Preferred Stock upon a Liquidation Transaction will be equal to an amount that is less than the Series C-2 Liquidation Preference, then the Corporation will notify each holder of Series C-2 Preferred Stock at least 10 days prior to the effective date of such Liquidation Transaction, and at the sole election of the holders of a majority of the Series C-2 Preferred Stock, and only to the extent that the per-share value to be distributed is an amount that is less than the Series C-2 Liquidation Preference after giving effect to and including in the calculation of the per-share value to be distributed to such holders any amounts paid or payable to such holders under the Loan, Pledge, and Option Agreement, dated as of August 12, 2013, among the Corporation, TPG Ubiquity Holdings, L.P. ("TPG") and Expa-I, LLC (the "Option Agreement"), (A) the Preferred Stock Conversion Price applicable to the Series C-2 Preferred Stock will be adjusted immediately prior to the Liquidation Transaction such that the total value of the securities to be received by the holders of Series C-2 Preferred Stock for each share of Series C-2 Preferred Stock will be equal to the Series C-2 Liquidation Preference, (B) the Corporation shall make a Cash Payment to the holders of each share of Series C-2 Preferred Stock such that the value of the securities to be received by the holders of the Series C-2 Preferred Stock for each share of Series C-2 Preferred Stock plus such Cash Payment will equal the Series C-2 Liquidation Preference or (C) a combination of the actions described in (A) and (B) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (A) and (B) shall not, in the aggregate, exceed the aggregate Series C-2 Liquidation Preference. For the avoidance of doubt, this Section 2(c)(viii) shall only apply to the extent the per-share value to be distributed is an amount that is less than the Series C-2 Liquidation Preference, after giving effect to Section 4(b)(ii).

(ix) Notwithstanding anything else herein to the contrary, if the per-share value of the stock, cash, other assets or any combination thereof to be distributed to the holders of Series C-3 Preferred Stock for each share of Series C-3 Preferred Stock upon a Liquidation Transaction is an amount that is less than the Series C-3 Liquidation Preference, then the Corporation will notify each holder of Series C-3 Preferred Stock at least 10 days prior to the effective date of such Liquidation Transaction, and at the sole election of the holders of a majority of the Series C-3 Preferred Stock, (A) the Preferred Stock Conversion Price applicable to the Series C-3 Preferred Stock will be adjusted immediately prior to the Liquidation Transaction such that the total value of the securities to be received by the holders of Series C-3 Preferred Stock for each share of Series C-3 Preferred Stock will be equal to the Series C-3 Liquidation Preference, (B) the Corporation shall make a Cash Payment to the holders of each share of Series C-3 Preferred Stock such that the value of the securities to be received by the holders of the Series C-3 Preferred Stock for each share of Series C-3 Preferred Stock plus such Cash Payment will equal the Series C-3 Liquidation Preference or (C) a combination of the actions described in (A) and (B) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (A) and (B) shall not, in the aggregate, exceed the Series C-3 Liquidation Preference. For the avoidance of doubt, this Section 2(c)(ix) shall only apply to the extent the per-share value to be distributed is an amount that is less than the Series C-3 Liquidation Preference, after giving effect to Section 4(b)(iii).

(x) Notwithstanding anything else herein to the contrary, if the per-share value of the stock, cash, other assets or any combination thereof to be distributed to the holders of Series D Preferred Stock for each share of Series D Preferred Stock upon a Liquidation Transaction is an amount that is less than the Series D Original Purchase Price, then the Corporation will notify each holder of Series D Preferred Stock at least 10 days prior to the effective date of such Liquidation Transaction, and at the sole election of the holders of a majority of the Series D Preferred Stock, (A) the Preferred Stock Conversion Price applicable to the Series D Preferred Stock will be adjusted immediately prior to the Liquidation Transaction such that the total value of the securities to be received by the holders of Series D Preferred Stock for each share of Series D Preferred Stock will be equal to the Series D Original Purchase Price, (B) the Corporation shall make a Cash Payment to the holders of each share of Series D Preferred Stock such that the value of the securities to be received by the holders of the Series D Preferred Stock for each share of Series D Preferred Stock plus such Cash Payment will equal the Series D Original Purchase Price or (C) a combination of the actions described in (A) and (B) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (A) and (B) shall not, in the aggregate, exceed the Series D Original Purchase Price. For the avoidance of doubt, this Section 2(c)(x) shall only apply to the extent the per-share value to be distributed is an amount that is less than the Series D Original Purchase Price, after giving effect to Section 4(b)(iv).

(xi) Notwithstanding anything else herein to the contrary, if the per-share value of the stock, cash, other assets or any combination thereof to be distributed to the holders of Series E Preferred Stock for each share of Series E Preferred Stock upon a Liquidation Transaction is an amount that is less than the Series E Original Purchase Price, then the Corporation will notify each holder of Series E Preferred Stock at least 10 days prior to the effective date of such Liquidation Transaction, and at the sole election of the holders of a majority of the Series E Preferred Stock, (A) the Preferred Stock Conversion Price applicable to the Series E Preferred Stock will be adjusted immediately prior to the Liquidation Transaction such that the total value of the securities to be received by the holders of Series E Preferred Stock for each share of Series E Preferred Stock will be equal to the Series E Original Purchase Price, (B) the Corporation shall make a Cash Payment to the holders of each share of Series E Preferred Stock such that the value of the securities to be received by the holders of the Series E Preferred Stock for each share of Series E Preferred Stock plus such Cash Payment will equal the Series E Original Purchase Price or (C) a combination of the actions described in (A) and (B) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (A) and (B) shall not, in the aggregate, exceed the Series E Original Purchase Price. For the avoidance of

doubt, this Section 2(c)(xi) shall only apply to the extent the per-share value to be distributed is an amount that is less than the Series E Original Purchase Price, after giving effect to Section 4(b)(v).

(xii) For the purposes of the calculations set forth in Sections 2(c)(vii), (viii), (ix), (x), and (xi), the value of any securities or other consideration to be received upon conversion of the Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, shall be determined as follows: if the securities or other consideration to be received upon the Liquidation Transaction are not then publicly traded, then the value of the securities or other consideration to be received by the holders of Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, in the Liquidation Transaction shall be as determined by a nationally recognized third-party investment bank mutually agreeable to the Corporation, the holders of a majority of the Series C-1 Preferred Stock, Series C-2 Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock, voting together on an as-converted basis.

3. **Redemption.** The Preferred Stock is not redeemable at the option of the holder thereof.

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows (the "**Preferred Stock Conversion Rights**"):

(a) **Right to Convert.** Subject to Section 4(c), each share of Series Seed Preferred Stock, Series A Preferred Stock, and Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Class B Common Stock as is determined by dividing (a) \$0.0090625 in the case of the Series Seed Preferred Stock, (b) \$0.07303 in the case of the Series A Preferred Stock, and (c) \$0.354475 in the case of the Series B Preferred Stock by the Preferred Stock Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. Subject to Section 4(c), each share of Series C-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$3.5635 by the Preferred Stock Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. Subject to Section 4(c), each share of Series C-2 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$2.8508 by the Preferred Stock Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. Subject to Section 4(c), each share of Series C-3 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$3.5635 by the Preferred Stock Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. Subject to Section 4(c), each share of Series D Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$15.51305 by the Preferred Stock Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. Subject to Section 4(c), each share of Series E Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$33.317575 by the Preferred Stock Conversion Price applicable to such share, determined as hereafter provided, in effect on

the date the certificate is surrendered for conversion. Subject to Section 4(c), each share of Series F Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$39.638581 by the Preferred Stock Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial "Preferred Stock Conversion Price" per share of the (i) Series Seed Preferred Stock shall be \$0.0090625, (ii) Series A Preferred Stock shall be \$0.07303, (iii) Series B Preferred Stock shall be \$0.354475, (iv) Series C-1 Preferred Stock shall be \$3.5635, (v) Series C-2 Preferred Stock shall be \$2.8508, (vi) Series C-3 Preferred Stock shall be \$3.5635, (vii) Series D Preferred Stock shall be \$15.51305, (viii) Series E Preferred Stock shall be \$33.317575 and (ix) Series F Preferred Stock shall be \$39.638581. Such initial Preferred Stock Conversion Price shall be subject to adjustment as set forth in Section 4(d).

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Class A Common Stock or Class B Common Stock (as applicable) at the Preferred Stock Conversion Price at the time in effect for such share immediately upon the earlier of (a "Preferred Stock Conversion Event") (x) except as provided below in Section 4(c), immediately prior to the closing of the Corporation's sale of its Class A Common Stock and/or Class B Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act") which results in aggregate cash proceeds to the Corporation of not less than \$30,000,000 (net of underwriting discounts and commissions) on a national securities exchange registered with the Securities and Exchange Commission (a "Qualified IPO") or (y) the date, or the occurrence of an event, specified by written consent or agreement of the holders of a majority of the then outstanding shares of Preferred Stock (voting together as a single class and on an as-converted basis).

(i) If the per-share value of the stock, cash, other assets or any combination thereof to be received by the holders of Series C-1 Preferred Stock for each share of Series C-1 Preferred Stock to be converted in such Preferred Stock Conversion Event is an amount that is less than the Series C-1 Liquidation Preference, then the Corporation will notify each holder of Series C-1 Preferred Stock at least 15 days prior to the effective date of such Preferred Stock Conversion Event, and at the sole election of the holders of a majority of the Series C-1 Preferred Stock, (A) the Preferred Stock Conversion Price applicable to the Series C-1 Preferred Stock will be adjusted immediately prior to the Preferred Stock Conversion Event such that the total value of the securities to be received by the holders of Series C-1 Preferred Stock for each share of Series C-1 Preferred Stock to be converted in such Preferred Stock Conversion Event will be equal to the Series C-1 Liquidation Preference, (B) the Corporation shall make a Cash Payment to the holders of each share of Series C-1 Preferred Stock such that the value of the securities to be received by the holders of the Series C-1 Preferred Stock for each share of Series C-1 Preferred Stock to be converted in such Preferred Stock Conversion Event plus such Cash Payment will equal the Series C-1 Liquidation Preference or (C) a combination of the actions described in (A) and (B) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (A) and (B) shall not, in the aggregate, exceed the aggregate Series C-1 Liquidation Preference.

(ii) If the per-share value of the stock, cash, other assets or any combination thereof to be received by the holders of Series C-2 Preferred Stock for each share of Series C-2 Preferred Stock to be converted in such Preferred Stock Conversion Event is an amount that is less than the Series C-2 Liquidation Preference, then the Corporation will notify each holder of Series C-2 Preferred Stock at least 15 days prior to the effective date of such Preferred Stock Conversion Event, and at the sole election of the holders of a majority of the Series C-2 Preferred Stock, and only to the extent that the per-share value to be received by the holders of the Series C-2 Preferred Stock is an amount that is less than the Series C-2 Liquidation Preference, after giving effect to and including in the calculation of the per-share value to be distributed to such holders any amounts paid or payable to such holders under



the Option Agreement, (A) the Preferred Stock Conversion Price applicable to the Series C-2 Preferred Stock will be adjusted immediately prior to the Preferred Stock Conversion Event such that the total value of the securities to be received by the holders of Series C-2 Preferred Stock for each share of Series C-2 Preferred Stock to be converted in such Preferred Stock Conversion Event will be equal to the Series C-2 Liquidation Preference, (B) the Corporation shall make a Cash Payment to the holders of each share of Series C-2 Preferred Stock such that the value of the securities to be received by the holders of the Series C-2 Preferred Stock for each share of Series C-2 Preferred Stock to be converted in such Preferred Stock Conversion Event plus such Cash Payment will equal the Series C-2 Liquidation Preference or (C) a combination of the actions described in (A) and (B) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (A) and (B) shall not, in the aggregate, exceed the aggregate Series C-2 Liquidation Preference.

(iii) If the per-share value of the stock, cash, other assets or any combination thereof to be received by the holders of Series C-3 Preferred Stock for each share of Series C-3 Preferred Stock to be converted in such Preferred Stock Conversion Event is an amount that is less than the Series C-3 Liquidation Preference, then the Corporation will notify each holder of Series C-3 Preferred Stock at least 15 days prior to the effective date of such Preferred Stock Conversion Event, and at the sole election of the holders of a majority of the Series C-3 Preferred Stock, (A) the Preferred Stock Conversion Price applicable to the Series C-3 Preferred Stock will be adjusted immediately prior to the Preferred Stock Conversion Event such that the total value of the securities to be received by the holders of Series C-3 Preferred Stock for each share of Series C-3 Preferred Stock to be converted in such Preferred Stock Conversion Event will be equal to the Series C-3 Liquidation Preference, (B) the Corporation shall make a Cash Payment to the holders of each share of Series C-3 Preferred Stock such that the value of the securities to be received by the holders of the Series C-3 Preferred Stock for each share of Series C-3 Preferred Stock to be converted in such Preferred Stock Conversion Event plus such Cash Payment will equal the Series C-3 Liquidation Preference or (C) a combination of the actions described in (A) and (B) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (A) and (B) shall not, in the aggregate, exceed the aggregate Series C-3 Liquidation Preference.

(iv) Solely if the shares of Series D Preferred Stock are converted to shares of Class A Common Stock pursuant to clause (y) of Section 4(b) (the "Vote Conversion Event"):

(A) if the Vote Conversion Event is in connection with, or in anticipation of or contemplation of, any Liquidation Transaction (a "Liquidation Transaction Vote Conversion Event"), and the per-share value of the stock, cash, other assets or any combination thereof to be received by the holders of Series D Preferred Stock for each share of Series D Preferred Stock to be converted in the Liquidation Transaction Vote Conversion Event is an amount that is less than the Series D Original Purchase Price, then the Corporation will notify each holder of Series D Preferred Stock at least 15 days prior to the effective date of such Liquidation Transaction Vote Conversion Event, and at the sole election of the holders of a majority of the Series D Preferred Stock, (1) the Preferred Stock Conversion Price applicable to the Series D Preferred Stock will be adjusted immediately prior to the Liquidation Transaction Vote Conversion Event such that the total value of the securities to be received by the holders of Series D Preferred Stock for each share of Series D Preferred Stock to be converted in such Liquidation Transaction Vote Conversion Event will be equal to the Series D Original Purchase Price, (2) the Corporation shall make a Cash Payment to the holders of each share of Series D Preferred Stock such that the value of the securities to be received by the holders of the Series D Preferred Stock

for each share of Series D Preferred Stock to be converted in such Liquidation Transaction Vote Conversion Event plus such Cash Payment will equal the Series D Original Purchase Price or (3) a combination of the actions described in (1) and (2) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (1) and (2) shall not, in the aggregate, exceed the aggregate Series D Original Purchase Price; and

(B) if the Vote Conversion Event is not a Liquidation Transaction Vote Conversion Event, the provisions of Paragraph (A) immediately above shall not apply, and the consent of the holders of a majority of the outstanding shares of Series D Preferred Stock shall be required to automatically convert the outstanding shares of Series D Preferred Stock.

The provisions of this Section 4(b)(iv) shall not apply if the shares of Series D Preferred Stock are converted to shares of Class A Common Stock pursuant to clause (x) of Section 4(b).

(v) Solely if the shares of Series E Preferred Stock are converted to shares of Class A Common Stock pursuant to the Vote Conversion Event:

(A) if the Vote Conversion Event is a Liquidation Transaction Vote Conversion Event, and the per-share value of the stock, cash, other assets or any combination thereof to be received by the holders of Series E Preferred Stock for each share of Series E Preferred Stock to be converted in the Liquidation Transaction Vote Conversion Event is an amount that is less than the Series E Original Purchase Price, then the Corporation will notify each holder of Series E Preferred Stock at least 15 days prior to the effective date of such Liquidation Transaction Vote Conversion Event, and at the sole election of the holders of a majority of the Series E Preferred Stock, (1) the Preferred Stock Conversion Price applicable to the Series E Preferred Stock will be adjusted immediately prior to the Liquidation Transaction Vote Conversion Event such that the total value of the securities to be received by the holders of Series E Preferred Stock for each share of Series E Preferred Stock to be converted in such Liquidation Transaction Vote Conversion Event will be equal to the Series E Original Purchase Price, (2) the Corporation shall make a Cash Payment to the holders of each share of Series E Preferred Stock such that the value of the securities to be received by the holders of the Series E Preferred Stock for each share of Series E Preferred Stock to be converted in such Liquidation Transaction Vote Conversion Event plus such Cash Payment will equal the Series E Original Purchase Price or (3) a combination of the actions described in (1) and (2) shall be made, provided that the total amount of value received by such holders in any such combination of the actions described in (1) and (2) shall not, in the aggregate, exceed the aggregate Series E Original Purchase Price; and

(B) if the Vote Conversion Event is not a Liquidation Transaction Vote Conversion Event, the provisions of Paragraph (A) immediately above shall not apply, and the consent of the holders of a majority of the outstanding shares of Series E Preferred Stock shall be required to automatically convert the outstanding shares of Series E Preferred Stock.

The provisions of this Section 4(b)(v) shall not apply if the shares of Series E Preferred Stock are converted to shares of Class A Common Stock pursuant to clause (x) of Section 4(b).

(vi) Solely if the shares of Series F Preferred Stock are converted to shares of Class A Common Stock pursuant to the Vote Conversion Event that is not a Liquidation Transaction Vote Conversion Event, the consent of the holders of a majority of the outstanding shares of Series F Preferred Stock shall be required to automatically convert the outstanding shares of Series F Preferred Stock. The provisions of this Section 4(b)(vi) shall not apply if the shares of Series F Preferred Stock are converted to shares of Class A Common Stock pursuant to a Liquidation Transaction Vote Conversion Event or clause (x) of Section 4(b).

(vii) For the purposes of the calculations set forth in Sections 4(b)(i), (ii), (iii), (iv), and (v), the value of any securities or other consideration to be received upon conversion of the Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, shall be determined as follows: (x) if the Preferred Stock Conversion Event is a public offering and the Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, is to be converted into shares of the securities to be issued in the public offering, then the value of such securities shall be equal to the final per share public offering price of such securities; and (y) if the securities or other consideration to be received upon conversion of the Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, are not then publicly traded and the applicable Preferred Stock Conversion Event is other than a public offering, then the value of the securities or other consideration to be received by the holders of Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as applicable, in the Preferred Stock Conversion Event shall be as determined by a nationally recognized third-party investment bank mutually agreeable to the Corporation, the holders of a majority of the Series C-1 Preferred Stock, Series C-2 Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock, voting together on an as-converted basis.

(c) **Mechanic of Conversion.** Before any holder of Preferred Stock shall be entitled to voluntarily convert such Preferred Stock into shares of Class A Common Stock or Class B Common Stock (as applicable), the holder shall surrender the certificate or certificates therefor, duly endorsed (or a reasonably acceptable affidavit and indemnity undertaking in the case of a lost, stolen or destroyed certificate), at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Class A Common Stock or Class B Common Stock (as applicable) are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Class A Common Stock or Class B Common Stock (as applicable) to which such holder shall be entitled as aforesaid and a certificate for the remaining number of shares of Preferred Stock if less than all of the Preferred Stock evidenced by the certificate were surrendered for conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on (i) the date of such surrender of the shares of Preferred Stock to be converted or (ii) if applicable, the date of automatic conversion specified in Section 4(b) above, and the person or persons entitled to receive the shares of Class A Common Stock or Class B Common Stock (as applicable) issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock or Class B Common Stock (as applicable) as of such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act or a Liquidation Transaction the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering or the closing of such Liquidation Transaction, in which event any persons entitled to receive Class A Common Stock or Class B Common Stock (as applicable) upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities or such Liquidation Transaction.



(d) **Preferred Stock Conversion Price Adjustments for Certain Dilutive Issuances, Splits and Combinations.** The Preferred Stock Conversion Price shall be subject to adjustment from time to time as follows, and in the case of Series C-2 Preferred Stock, whether or not such Series C-2 Preferred Stock is outstanding (for the avoidance of doubt, when a share of Series C-2 Preferred Stock is issued, it shall be issued with the then applicable Preferred Stock Conversion Price), and in the case of Series C-1 Preferred Stock, whether or not such Series C-1 Preferred Stock is outstanding (for the avoidance of doubt, when a share of Series C-1 Preferred Stock is issued, it shall be issued with the then applicable Preferred Stock Conversion Price), and in the case of Series C-3 Preferred Stock, whether or not such Series C-3 Preferred Stock is outstanding (for the avoidance of doubt, when a share of Series C-3 Preferred Stock is issued, it shall be issued with the then applicable Preferred Stock Conversion Price):

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation should issue, at any time after the Effective Time, any Additional Stock (as defined below) without consideration or for a consideration per share less than the Preferred Stock Conversion Price applicable to a series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Preferred Stock Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Preferred Stock Conversion Price for a series of Preferred Stock is adjusted pursuant to this Section 4(d)(i), the new Preferred Stock Conversion Price with respect to such series shall be determined by multiplying the Preferred Stock Conversion Price then in effect for such series by a fraction, (x) the numerator of which shall be the number of shares of Class A Common Stock and Class B Common Stock outstanding immediately before such issuance (the "Outstanding Common") plus the number of shares of Class A Common Stock and Class B Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Preferred Stock Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Class A Common Stock and Class B Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) **Definition of "Additional Stock".** For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Class A Common Stock or Class B Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Effective Time) other than

(1) Shares of Class A Common Stock or Class B Common Stock issuable or issued upon conversion of the Preferred Stock;

(2) Shares of Class A Common Stock or Class B Common Stock (as adjusted for stock splits, stock dividends, reclassification and the like) issuable or issued to employees, officers, consultants or directors of the Corporation or other persons performing services for the Corporation, pursuant to a stock option plan or restricted stock plan approved by the Board of Directors;

(3) Shares of Class A Common Stock or Class B Common Stock issued upon exercise of options, warrants or convertible securities outstanding on the date hereof;

(4) Shares of Class A Common Stock or Class B Common Stock issued pursuant to stock dividends, stock splits or similar transactions, as described in Section 4(d)(ii) hereof;

(5) Shares of Class A Common Stock or Class B Common Stock, or warrants or options to purchase shares of Class A Common Stock or Class B Common Stock, issued pursuant to the acquisition of another corporation or entity pursuant to a consolidation, merger, purchase of all or substantially all the assets of such entity, or other reorganization in which the Corporation acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such entity or 50% or more of the equity ownership in such entity, provided that such transaction or series of transactions has been approved by the Board of Directors or a duly authorized committee thereof;

(6) Shares of Class A Common Stock or Class B Common Stock, or warrants or options to purchase shares of Class A Common Stock or Class B Common Stock, issued to parties that are (i) actual or potential suppliers or customers, strategic partners investing in connection with a commercial relationship with the Corporation or (ii) providing the Corporation with equipment leases, real property leases, loans, credit lines, guaranties of indebtedness, cash price reductions or similar transactions, under arrangements, in each case approved by the Board of Directors;

(7) Shares of Class A Common Stock or Class B Common Stock, or warrants or options to purchase shares of Class A Common Stock or Class B Common Stock, issued in a Qualified IPO;

(8) Up to 31,003,680 shares of Series C-2 Preferred Stock issued to TPG pursuant to the terms of the Investment Agreement and any shares of Class A Common Stock issuable or issued upon conversion thereof;

(9) Shares of Class A Common Stock or Class B Common Stock, or warrants or options to purchase shares of Class A Common Stock or Class B Common Stock, issued to persons or entities who do not at the time of issuance hold any capital stock of the Corporation (or securities convertible into such capital stock), which issuances are primarily for non-equity financing purposes and are unanimously approved by the Board of Directors, a majority of the then outstanding shares of Series C-1 Preferred Stock, a majority of the then outstanding shares of Series C-2 Preferred Stock (or if no shares of Series C-2 are outstanding, written consent of holders of right to acquire a majority of the shares of Series C-2 Preferred Stock pursuant to the Investment Agreement), a majority of the then outstanding shares of Series D Preferred Stock, a majority of the then outstanding shares of Series E Preferred Stock, and a majority of the then outstanding shares of Series F Preferred Stock and the Board of Directors and such holders of Series C-1 Preferred Stock, Series C-2 Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock specifically state that such shares are excluded from the definition of "Additional Stock".

(C) **No Fractional Adjustments.** No adjustment of the Preferred Stock Conversion Price shall be made in an amount less than one-hundredth of one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward or at such earlier date as all outstanding shares of Preferred Stock shall be converted into Class A Common Stock or Class B Common Stock (as applicable).

(D) **Determination of Consideration.** In the case of the issuance of Class A Common Stock or Class B Common Stock for cash, the consideration shall be

deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Class A Common Stock or Class B Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors, irrespective of any accounting treatment.

(E) **Deemed Issuances of Class A Common Stock and Class B Common Stock.** In the case of the issuance (whether before, on or after the Effective Time) of securities or rights convertible into, or exchangeable or exercisable for, or entitling the holder thereof to receive, directly or indirectly, additional shares of Class A Common Stock or Class B Common Stock (the "Common Stock Equivalents"), the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Class A Common Stock or Class B Common Stock (as applicable) deliverable upon conversion, exchange or exercise (assuming the satisfaction of any conditions to convertibility, exchangeability or exercisability, including, without limitation, the passage of time, and including the effect of antidilution adjustments that have already been made) of any Common Stock Equivalents and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such Common Stock Equivalents were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such Common Stock Equivalents (excluding any cancellation of debt), plus the minimum additional consideration, if any, to be received by the Corporation (but including the effect of antidilution adjustments that have already been made) upon the conversion, exchange or exercise of any Common Stock Equivalents (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(2) In the event of any change in the number of shares of Class A Common Stock or Class B Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents, other than a change resulting from the antidilution provisions thereof, the Preferred Stock Conversion Price, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Class A Common Stock or Class B Common Stock or any payment of such consideration upon the conversion, exchange or exercise of such Common Stock Equivalents.

(3) Upon the termination or expiration of the convertibility, exchangeability or exercisability of any Common Stock Equivalents, the Preferred Stock Conversion Price, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect the issuance of only the number of shares of Class A Common Stock or Class B Common Stock (and Common Stock Equivalents that remain convertible, exchangeable or exercisable) actually issued upon the conversion, exchange or exercise of such Common Stock Equivalents.

(4) The number of shares of Class A Common Stock or Class B Common Stock deemed issued and the consideration deemed paid therefor pursuant to Section 4(d)(i)(E)(1) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(2) or 4(d)(i)(E)(3).

(5) With respect to the issuance of debt securities convertible into shares of the Company's capital stock ("Convertible Debt Securities") where the number of shares is either (a) determined by reference to an event occurring after the issuance of the Convertible Debt Securities or (b) not determined until the maturity date of the Convertible Debt Securities, then an

adjustment pursuant to this Section 4(d)(i), if any, shall only take place upon the issuance of the shares resulting from the conversion of the Convertible Debt Securities (and no adjustment pursuant to this Section 4(d)(i), if any, shall take place upon the issuance of the Convertible Debt Securities); provided, that, if the issuance of the shares resulting from the conversion of the Convertible Debt Securities (the "Convertible Debt Shares") occurs on the same day as the conversion of the shares of Preferred Stock into shares of Common Stock, then the Convertible Debt Shares shall be deemed to have been issued immediately prior to the conversion of the shares of Preferred Stock into shares of Common Stock and, accordingly, an adjustment of the Preferred Stock Conversion Price of any series of Preferred Stock pursuant to Section 4(d)(i), if any, shall take place prior to conversion of the shares of Preferred Stock into shares of Common Stock.

..... **(F) No Increased Conversion Price.** Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(2) and 4(d)(i)(E)(3), no adjustment of the Preferred Stock Conversion Price of any series of Preferred Stock pursuant to this Section 4(d)(i) shall have the effect of increasing the Preferred Stock Conversion Price of such series above the Preferred Stock Conversion Price of such series in effect immediately prior to such adjustment.

**(ii) Stock Splits and Dividends.** In the event the Corporation should at any time after the Effective Time fix a record date for (A) the effectuation of a split or subdivision of the outstanding shares of Class A Common Stock and Class B Common Stock or (B) the determination of holders of Class A Common Stock and Class B Common Stock entitled to receive a dividend or other distribution payable in additional shares of Class A Common Stock and Class B Common Stock or Common Stock Equivalents without payment of any consideration by such holder other than in the form of Corporation securities, for the additional shares of Class A Common Stock and Class B Common Stock or the Common Stock Equivalents (including the additional shares of Class A Common Stock or Class B Common Stock issuable upon exchange, conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Preferred Stock Conversion Price shall be appropriately decreased so that the number of shares of Class A Common Stock or Class B Common Stock (as applicable) issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Class A Common Stock and Class B Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with, if applicable, the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

**(iii) Reverse Stock Splits.** If the number of shares of Class A Common Stock and Class B Common Stock outstanding at any time after the Effective Time is decreased by a reverse stock split or combination of the outstanding shares of Class A Common Stock and Class B Common Stock, then, following the record date of such combination, the Preferred Stock Conversion Price shall be appropriately increased so that the number of shares of Class A Common Stock or Class B Common Stock (as applicable) issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares of Class A Common Stock and Class B Common Stock.

**(e) Other Distributions.** In the event the Corporation shall declare a distribution (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2 of this Article IV(B)) payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(i) or 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Class A Common Stock or Class B Common Stock (as applicable) of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Class A Common Stock and

Class B Common Stock of the Corporation entitled to receive such distribution (or the date of such distribution if no record date is set).

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Class A Common Stock or Class B Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2 of this Article IV(B)) provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Class A Common Stock or Class B Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Preferred Stock Conversion Price then in effect and the number of shares issuable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock, and the number of shares of Class A Common Stock or Class B Common Stock (as applicable) to be issued shall be rounded down to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Class A Common Stock or Class B Common Stock (as applicable) and the number of shares of Class A Common Stock or Class B Common Stock (as applicable) issuable upon such aggregate conversion. If the conversion would result in any fractional share, the Corporation shall, in lieu of issuing any such fractional share, pay the holder thereof an amount in cash equal to the fair market value of such fractional share on the date of conversion, as determined in good faith by the Board of Directors.

(ii) Upon the occurrence of each adjustment or readjustment of the Preferred Stock Conversion Price pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Preferred Stock Conversion Price at the time in effect, and (C) the number of shares of Class A Common Stock or Class B Common Stock (as applicable) and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(h) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock and Class B Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Class A Common Stock and Class B Common Stock as

shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock or Class B Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock or Class B Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate of Incorporation.

(j) **Notices.** Any notice required by the provisions of this Restated Certificate of Incorporation to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

(k) **Waiver of Adjustment to Preferred Stock Conversion Price.** Notwithstanding anything herein to the contrary, (i) any downward adjustment of the Conversion Price for the Series Seed Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of Series Seed Preferred Stock (voting together as a single class on an as-converted basis); (ii) any downward adjustment of the Conversion Price for the Series A Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of Series A Preferred Stock (voting together as a single class on an as-converted basis); (iii) any downward adjustment of the Conversion Price for the Series B Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of Series B Preferred Stock (voting together as a single class on an as-converted basis); (iv) any downward adjustment of the Conversion Price for the Series C-1 Preferred Stock may only be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of Series C-1 Preferred Stock (voting together as a single class on an as-converted basis); (v) any downward adjustment of the Conversion Price for the Series C-2 Preferred Stock may only be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of Series C-2 Preferred Stock (voting together as a single class on an as-converted basis) or if no share of Series C-2 Preferred Stock is outstanding, by written consent of holders of the right to acquire a majority of the shares of Series C-2 Preferred Stock pursuant to the Investment Agreement; (vi) any downward adjustment of the Conversion Price for the Series D Preferred Stock may only be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of Series D Preferred Stock (voting together as a single class on an as-converted basis); (vii) any downward adjustment of the Conversion Price for the Series E Preferred Stock may only be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of Series E Preferred Stock (voting together as a single class on an as-converted basis); and (viii) any downward adjustment of the Conversion Price for the Series F Preferred Stock may only be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of Series F Preferred Stock (voting together as a single class on an as-converted basis). Any such waiver shall bind all future holders of shares of the Series Seed Preferred Stock, Series A Preferred Stock, Series B Preferred Stock, Series C-1 Preferred Stock, Series C-2 Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock, as applicable.

## **5. Voting Rights.**



(a) **General Voting Rights.** Except as expressly provided by this Restated Certificate of Incorporation or as provided by law, (i) the holders of Series Seed Preferred Stock, Series A Preferred Stock, and Series B Preferred Stock shall have the right to 10 votes for each share of Class B Common Stock into which such Series Seed Preferred Stock, Series A Preferred Stock, and Series B Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equivalent to those of the holders of Class B Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and (ii) the holders of Series C-1 Preferred Stock, Series C-2 Preferred Stock, Series C-3 Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock shall have the right to one vote for each share of Class A Common Stock into which such Series C-1 Preferred Stock, Series C-2 Preferred Stock, Series C-3 Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series F Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equivalent to those of the holders of Class A Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Except as expressly provided by this Restated Certificate of Incorporation or as provided by law, the holders of Class A Common Stock, Class B Common Stock, and Preferred Stock shall vote together as a single class on an as converted basis on all matters upon which holders of Class A Common Stock, Class B Common Stock, and Preferred Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half and greater being rounded upward).

(b) **Election of Directors.** For so long as at least 40,000,000 shares of Series A Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time), the holders of Series A Preferred Stock (voting together as a separate class and on an as-converted basis) shall be entitled to elect one (1) director of the Corporation (the "Series A Director") at any election of directors. For so long as at least 8,000,000 shares of Series C-2 Preferred Stock and/or rights to acquire at least 8,000,000 shares of Series C-2 Preferred Stock under the Investment Agreement are outstanding (in each case, as adjusted for stock splits, stock dividends, reclassification and the like occurring after the Effective Time), the holders of Series C-2 Preferred Stock (voting together as a separate class and on an as-converted basis) (or, prior to the issuance of any shares of Series C-2 Preferred Stock, the holders of the right to acquire a majority of the shares of Series C-2 Preferred Stock pursuant to the Investment Agreement, by written consent) shall be entitled to designate one director of the Corporation (the "Series C-2 Director", and together with the Series A Director, each a "Preferred Director"). The holders of Class B Common Stock (voting separately as a single class) shall be entitled to elect six directors of the Corporation at any election of directors. Notwithstanding anything to the contrary contained herein, neither the holders of Series Seed Preferred Stock, Series B Preferred Stock, Series C-1 Preferred Stock, Series C-3 Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock nor the holders of Class A Common Stock will be entitled to vote in the election or removal of any directors of the Corporation.

Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the Delaware General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the action of the Board of Directors to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director may be removed during his or her term of office, either with or without cause, by, and only

by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

**6. Protective Provisions.**

(a) So long as shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the Corporation shall not (by amendment, merger, reclassification, consolidation or otherwise, either directly or indirectly by subsidiary) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class and on an as-converted basis:

(i) liquidate, dissolve or wind-up the business and affairs of the Corporation;

(ii) effect any merger or consolidation of the Corporation with or into one or more other entities in which the stockholders of the Corporation immediately prior to such event hold, immediately after, stock representing less than a majority of the voting power of the outstanding stock of the surviving entity (other than for purposes of changing the Corporation's domicile and other than pursuant to a sale of all or substantially all of the Corporation's assets) that would result in proceeds to the holders of any series of Preferred Stock of less than the Original Purchase Price of such series of Preferred Stock;

(iii) the sale of all or substantially all of the Corporation's assets that would result in proceeds to the holders of any series of Preferred Stock of less than the Original Purchase Price of such series of Preferred Stock;

(iv) amend, alter or repeal any provision of the Restated Certificate of Incorporation or Bylaws of the Corporation so as to materially and adversely affect the Preferred Stock;

(v) create or authorize the creation of any additional class or series of shares of stock senior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends, redemption rights and voting rights, other than in connection with a bona fide equity financing transaction or series of related transactions;

(vi) reclassify any outstanding shares or securities into shares having rights, preferences or privileges senior to or on parity with the preferences of the Preferred Stock;

(vii) purchase or redeem or pay or declare any dividend or make any distribution on, any shares of stock other than the Preferred Stock as expressly authorized herein, or permit any subsidiary of the Corporation to take any such action, other than (i) dividends or other distributions payable on the Class A Common Stock or Class B Common Stock solely in the form of additional shares of Class A Common Stock or Class B Common Stock, (ii) securities repurchased from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof, pursuant to plans or agreements approved by Board of Directors or (iii) securities repurchased by the Corporation as approved by the Board of Directors, including at least one Preferred Director (so long as neither the Preferred Director whose approval is relied upon for the foregoing proviso of this clause (iii) nor any of his or her

affiliates participates in such repurchase, and if both Preferred Directors (or their affiliates) participate in such repurchase, then this clause (iii) shall be inapplicable);

(viii) amend the Bylaws to increase or decrease the authorized size of the Board of Directors (provided, that, the authorized size of the Board of Directors may be increased up to eight directors without the need to obtain approval hereunder);

(ix) cause the Corporation to enter into any transaction with any current or former officer, director or any stockholder of the Corporation who owns more than 5% of the Corporation's capital stock as of the date of such transaction, calculated on an as-converted to Common Stock basis, or any of such person's affiliates or family members or any trust for the benefit of any of the foregoing, unless such transaction has been approved by all of the disinterested members of the Board of Directors then in office; or

(x) permit any subsidiary to do any of the foregoing.

(b) The Corporation shall not (by amendment, merger, reclassification, consolidation or otherwise, either directly or indirectly by subsidiary) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series A Preferred Stock, voting as a single class, (i) alter or change the powers, preferences or special rights of the shares of Series A Preferred under the Restated Certificate of Incorporation or Bylaws of the Corporation so as to affect the holders of Series A Preferred Stock adversely as set forth in Section 242 of the Delaware General Corporation Law, but not so affect the other series of Preferred Stock, or (ii) increase or decrease the number of authorized shares of Series A Preferred Stock.

(c) The Corporation shall not (by amendment, merger, reclassification, consolidation or otherwise, either directly or indirectly by subsidiary) (i) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series B Preferred Stock, voting as a single class, alter or change the powers, preferences or special rights of the shares of Series B Preferred under the Restated Certificate of Incorporation or Bylaws of the Corporation so as to affect the holders of Series B Preferred Stock adversely as set forth in Section 242 of the Delaware General Corporation Law, but not so affect the other series of Preferred Stock, or (ii) without first obtaining the written consent of a holder of shares of Series B Preferred Stock, amend, alter or repeal any provision of the Restated Certificate of Incorporation or Bylaws of the Corporation in a manner that adversely and disproportionately affects such holder vis-à-vis any other holder of shares of Series B Preferred Stock. In addition, any action that has the effect of reducing the Series B Preferred Stock Liquidation Preference amount under Section 2(a) above, including without limitation a forced conversion of the Series B Preferred Stock into Class B Common Stock in connection with or in contemplation of a Liquidation Transaction, shall require the vote of the holders of a majority of the then outstanding shares of Series B Preferred Stock.

(d) The Corporation shall not (by amendment, merger, reclassification, consolidation or otherwise, either directly or indirectly by subsidiary), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series C-1 Preferred Stock, voting together as a single class:

(i) amend, alter or repeal Article IV, Section (B)4(d) of the Restated Certificate of Incorporation so as to affect the holders of Series C-1 Preferred Stock adversely;

(ii) amend, alter or repeal any provision of the Restated Certificate of Incorporation or Bylaws of the Corporation so as to affect the holders of Series C-1 Preferred Stock adversely as set forth in Section 242 of the Delaware General Corporation Law, but not so affect the other series of Preferred Stock;

(iii) effect any Liquidation Transaction that would result in proceeds per share to the holders of Series C-1 Preferred Stock of less than the Series C-1 Liquidation Preference; provided, however, that approval of such a transaction by holders of Series C-1 Preferred Stock shall in no way prejudice the rights of the holders of Series C-1 Preferred Stock under Article IV Section B.2(c)(vii) or the rights of the holders of Series C-2 Preferred Stock under Article IV Section B.2(c)(viii);

(iv) increase or decrease the number of authorized shares of Series C-1 Preferred Stock; or

(v) amend, alter or repeal Article IV, Sections B.4(b)(i), B.4(b)(vii), B.2(c)(vii), or B.2(c)(xii) of the Restated Certificate of Incorporation so as to affect the holders of Series C-1 Preferred Stock adversely.

(e) The Corporation shall not (by amendment, merger, reclassification, consolidation or otherwise, either directly or indirectly by subsidiary), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series C-2 Preferred Stock, voting together as a single class, or if no share of Series C-2 Preferred Stock are outstanding, by written consent of holders of the right to acquire a majority of the shares of Series C-2 Preferred Stock pursuant to the Investment Agreement:

(i) amend, alter or repeal Article IV, Section (B)4(d) of the Restated Certificate of Incorporation so as to affect the holders of Series C-2 Preferred Stock adversely;

(ii) amend, alter or repeal any provision of the Restated Certificate of Incorporation or Bylaws of the Corporation so as to affect the holders of Series C-2 Preferred Stock adversely as set forth in Section 242 of the Delaware General Corporation Law, but not so affect the other series of Preferred Stock;

(iii) increase or decrease the number of authorized shares of Series C-2 Preferred Stock; or

(iv) amend, alter or repeal Article IV, Sections (B)4(b)(ii), (B)4(b)(vii), (B)2(c)(viii), or (B)2(c)(xii) of the Restated Certificate of Incorporation so as to affect the holders of Series C-2 Preferred Stock adversely.

(f) The Corporation shall not (by amendment, merger, reclassification, consolidation or otherwise, either directly or indirectly by subsidiary), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series C-3 Preferred Stock, voting together as a single class;

(i) amend, alter or repeal any provision of the Restated Certificate of Incorporation or Bylaws of the Corporation so as to affect the holders of Series C-3 Preferred Stock adversely as set forth in Section 242 of the Delaware General Corporation Law, but not so affect the other series of Preferred Stock; or

(ii) amend, alter or repeal Article IV, Sections (B)4(b)(iii), (B)4(b)(vii), (B)2(c)(ix), or (B)2(c)(xii) of the Restated Certificate of Incorporation so as to affect the holders of Series C-3 Preferred Stock adversely.

(g) The Corporation shall not (by amendment, merger, reclassification, consolidation or otherwise, either directly or indirectly by subsidiary), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series D Preferred Stock, voting together as a single class:

(i) amend, alter or repeal Article IV, Section (B)4(d) of the Restated Certificate of Incorporation so as to affect the holders of Series D Preferred Stock adversely;

(ii) amend, alter or repeal any provision of the Restated Certificate of Incorporation or Bylaws of the Corporation so as to affect the holders of Series D Preferred Stock adversely as set forth in Section 242 of the Delaware General Corporation Law, but not so affect the other series of Preferred Stock;

(iii) increase or decrease the number of authorized shares of Series D Preferred Stock;

(iv) amend, alter or repeal Article IV, Sections (B)4(b)(iv), (B)4(b)(vii), (B)2(c)(x), or (B)2(c)(xii) of the Restated Certificate of Incorporation so as to affect the holders of Series D Preferred Stock adversely; or

(v) amend, alter or repeal (A) Article IV, Section (B)2(a) of the Restated Certificate of Incorporation (other than as a result of the creation or authorization of shares of any new class of Preferred Stock and the inclusion in Article IV, Section (B)2(a) of the Restated Certificate of Incorporation of such Preferred Stock and the original issue price of such Preferred Stock and the amendment to the definition of Original Issue Price to include reference to the original issue price of such Preferred Stock) or (B) the penultimate sentence of Article IV, Section (B)4(a) of the Restated Certificate of Incorporation (other than as a result of the creation or authorization of shares of any class of Preferred Stock and amendment to the definition of Preferred Stock Conversion Price to include reference to the conversion price of such Preferred Stock).

(h) The Corporation shall not (by amendment, merger, reclassification, consolidation or otherwise, either directly or indirectly by subsidiary), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series E Preferred Stock, voting together as a single class:

(i) amend, alter or repeal Article IV, Section (B)4(d) of the Restated Certificate of Incorporation so as to affect the holders of Series E Preferred Stock adversely;

(ii) amend, alter or repeal any provision of the Restated Certificate of Incorporation or Bylaws of the Corporation so as to affect the holders of Series E Preferred Stock adversely as set forth in Section 242 of the Delaware General Corporation Law, but not so affect the other series of Preferred Stock;

(iii) increase or decrease the number of authorized shares of Series E Preferred Stock;

(iv) amend, alter or repeal Article IV, Sections (B)4(b)(v), (B)4(b)(vii), (B)2(c)(xi), or (B)2(c)(xii) of the Restated Certificate of Incorporation so as to affect the holders of Series E Preferred Stock adversely; or

(v) amend, alter or repeal (A) Article IV, Section (B)2(a) of the Restated Certificate of Incorporation (other than as a result of the creation or authorization of shares of any new class of Preferred Stock and the inclusion in Article IV, Section (B)2(a) of the Restated Certificate of Incorporation of such Preferred Stock and the original issue price of such Preferred Stock and the amendment to the definition of Original Issue Price to include reference to the original issue price of such Preferred Stock) or (B) the penultimate sentence of Article IV, Section (B)4(a) of the Restated Certificate of Incorporation (other than as a result of the creation or authorization of shares of any class of Preferred Stock and amendment to the definition of Preferred Stock Conversion Price to include reference

to the conversion price of such Preferred Stock).

(i) The Corporation shall not (by amendment, merger, reclassification, consolidation or otherwise, either directly or indirectly by subsidiary), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series F Preferred Stock, voting together as a single class:

(i) amend, alter or repeal Article IV, Section (B)4(d) of the Restated Certificate of Incorporation so as to affect the holders of Series F Preferred Stock adversely;

(ii) amend, alter or repeal any provision of the Restated Certificate of Incorporation or Bylaws of the Corporation so as to affect the holders of Series F Preferred Stock adversely as set forth in Section 242 of the Delaware General Corporation Law, but not so affect the other series of Preferred Stock;

(iii) increase or decrease the number of authorized shares of Series F Preferred Stock;

(iv) amend, alter or repeal Article IV, Sections (B)4(b)(vi) of the Restated Certificate of Incorporation so as to affect the holders of Series F Preferred Stock adversely; or

(v) amend, alter or repeal (A) Article IV, Section (B)2(a) of the Restated Certificate of Incorporation (other than as a result of the creation or authorization of shares of any new class of Preferred Stock and the inclusion in Article IV, Section (B)2(a) of the Restated Certificate of Incorporation of such Preferred Stock and the original issue price of such Preferred Stock and the amendment to the definition of Original Issue Price to include reference to the original issue price of such Preferred Stock) or (B) the penultimate sentence of Article IV, Section (B)4(a) of the Restated Certificate of Incorporation (other than as a result of the creation or authorization of shares of any class of Preferred Stock and amendment to the definition of Preferred Stock Conversion Price to include reference to the conversion price of such Preferred Stock).

7. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. This Restated Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Rights, Powers, and Restrictions of Class A Common Stock.**

The rights, powers and restrictions granted to and imposed on the Class A Common Stock are as set forth below in this Article IV.

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Class A Common Stock shall be entitled to receive, when and as declared by the Board of Directors, such dividends as may be declared from time to time by the Board of Directors with respect to the Class B Common Stock out of any assets of the Corporation legally available therefor, and no dividend shall be declared or paid on shares of the Class B Common Stock unless the same dividend with the same record date and payment date shall be declared or paid on the shares of Class A Common Stock; provided, however, that dividends payable in shares of Class B Common Stock or rights to acquire Class B Common Stock may be declared and paid to the holders of the Class B Common Stock without the same dividend being declared and paid to the holders of the Class A Common Stock if and only if a dividend payable in shares of Class A Common Stock or rights to acquire Class A Common Stock (as the case may be) at the same rate and with the same



record date and payment date as the dividend declared and paid to the holders of the Class B Common Stock shall be declared and paid to the holders of Class A Common Stock.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, or the occurrence of a Liquidation Transaction, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. **Redemption.** The Class A Common Stock is not redeemable at the option of the holder thereof.

4. **Voting Rights.** Each holder of Class A Common Stock shall have the right to one vote per share of Class A Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. Except as expressly provided by this Restated Certificate of Incorporation or as provided by law, the holders of shares of Class A Common Stock shall at all times vote together with the holders of Class B Common Stock as a single class on all matters (including the election of directors) submitted to vote or for the consent of the stockholders of the Corporation. The number of authorized shares of Class A Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote (voting together as a single class on as converted basis), irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

5. **Subdivisions or Combinations.** If the Corporation in any manner subdivides or combines the outstanding shares of Class B Common Stock, then the outstanding shares of Class A Common Stock will be subdivided or combined in the same proportion and manner.

6. **Equal Status.** Except as expressly set forth in this Article IV, Class A Common Stock shall have the same rights and powers of, rank equally to, share ratably with and be identical in all respects and as to all matters to Class B Common Stock.

(D) **Rights, Powers, and Restrictions of Class B Common Stock.**

The rights, powers and restrictions granted to and imposed on the Class B Common Stock are as set forth below in this Article IV.

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Class B Common Stock shall be entitled to receive, when and as declared by the Board of Directors, such dividends as may be declared from time to time by the Board of Directors with respect to the Class A Common Stock out of any assets of the Corporation legally available therefor, and no dividend shall be declared or paid on shares of the Class A Common Stock unless the same dividend with the same record date and payment date shall be declared or paid on the shares of Class B Common Stock; provided, however, that dividends payable in shares of Class A Common Stock or rights to acquire Class A Common Stock may be declared and paid to the holders of the Class A Common Stock without the same dividend being declared and paid to the holders of the Class B Common Stock if and only if a dividend payable in shares of Class B Common Stock or rights to acquire Class B Common Stock (as the case may be) at the same rate and with the same record date and payment date as the dividend declared and paid to the holders of the Class A Common Stock shall be declared and paid to the holders of Class B Common Stock.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, or the occurrence of a Liquidation Transaction, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. **Redemption.** The Class B Common Stock is not redeemable at the option of the holder thereof.

4. **Voting Rights.** Each holder of Class B Common Stock shall have the right to 10 votes per share of Class B Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. Except as expressly provided by this Restated Certificate of Incorporation or as provided by law, the holders of shares of Class B Common Stock shall at all times vote together with the holders of Class A Common Stock as a single class on all matters (including the election of directors) submitted to vote or for the consent of the stockholders of the Corporation. The number of authorized shares of Class B Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote (voting together as a single class on as converted basis), irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

5. **Conversion**

(a) Each share of Class B Common Stock shall be convertible into one fully paid and nonassessable share of Class A Common Stock at the option of the holder thereof at any time upon written notice to the Corporation. Before any holder of Class B Common Stock shall be entitled to convert any shares of such Class B Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the principal corporate office of the Corporation or of any transfer agent for the Class B Common Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Class A Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Class B Common Stock, or to the nominee or nominees or such holder, a certificate or certificates for the number of shares of Class A Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior the close of business on the date of such surrender of the shares of Class B Common Stock to be converted, and the person or persons entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock as of such date. Each share of Class B Common Stock that is converted pursuant to this Section 5(a) shall be retired by the Corporation and shall not be available for reissuance.

(b) Each share of Class B Common Stock shall be automatically, without further action by the holder thereof, converted into one fully paid and nonassessable share of Class A Common Stock, upon the occurrence of a Transfer (as defined in Section (E)(2) of this Article IV), other than a Permitted Transfer (as defined in Section (E)(3) of this Article IV), of such share of Class B Common Stock. Each outstanding stock certificate that, immediately prior to such Transfer, represented one or more shares of Class B Common Stock subject to such Transfer shall, upon and after such Transfer, be deemed to represent an equal number of shares of Class A Common Stock, without the need for surrender or exchange thereof. The Corporation shall, upon the request of each such holder and upon receipt of such holder's outstanding certificate, issue and deliver to such holder new certificates representing such holder's shares of Class A Common Stock. Each share of Class B Common Stock that is converted pursuant to this Section (B)(5)(b) of Article IV shall be retired by the Corporation and shall not be available for reissuance.

(c) The Corporation may, from time to time, establish such policies and procedures, not in violation of applicable law or the other provisions of this Restated Certificate of Incorporation, relating to the conversion of the Class B Common Stock into Class A Common Stock and the dual class common stock structure contemplated by this Restated Certificate of Incorporation,

including without limitation the issuance of stock certificates in connection with any such conversion, as it may deem necessary or advisable. If the Corporation has reason to believe that a Transfer giving rise to a conversion of shares of Class B Common Stock into Class A Common Stock has occurred but has not theretofore been reflected on the books of the Corporation, the Corporation may request that the holder of such shares furnish affidavits or other evidence to the Corporation as it reasonably deems necessary to determine whether a conversion of shares of Class B Common Stock to Class A Common Stock has occurred, and if such holder does not within 10 days after the date of such request furnish sufficient evidence to the Corporation (in the manner provided in the request) to enable the Corporation to determine that no such conversion has occurred, any such shares of Class B Common Stock, to the extent not previously converted, shall be automatically converted into shares of Class A Common Stock and the same shall thereupon be registered on the books and records of the Corporation. In connection with any action of stockholders taken at a meeting or by written consent, the stock ledger of the Corporation shall be presumptive evidence as to who are the stockholders entitled to vote in person or by proxy at any meeting of stockholders or in connection with any written consent and the classes of shares held by each such stockholder and the number of shares of each class held by such stockholder.

6. **Subdivisions or Combinations.** If the Corporation in any manner subdivides or combines the outstanding shares of Class A Common Stock, then the outstanding shares of Class B Common Stock will be subdivided or combined in the same proportion and manner.

7. **Equal Status.** Except as expressly set forth in this Article IV, Class B Common Stock shall have the same rights and powers of, rank equally to, share ratably with and be identical in all respects and as to all matters to Class A Common Stock.

8. **Reservation of Stock.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of Class B Common Stock, such number of shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock into shares of Class A Common Stock

9. **Protective Provision.** The Corporation shall not, by amendment, merger, consolidation or otherwise, without first obtaining the approval (by vote at a stockholders meeting or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Class B Common Stock, voting as a separate class, amend, alter, repeal or waive Sections (B)(2)(b), (C), (D) or (E) of this Article IV.

(E) **Definitions.** For purposes of this Article IV:

1. **"Affiliate"** shall mean, with respect to any specified entity, any other entity which, directly or indirectly, controls, is controlled by, or is under common control with such specified entity, including, without limitation, any general partner, officer, director or manager of such entity and any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, is under common investment management with, shares the same management or advisory company with or is otherwise affiliated with such entity

2. **"Transfer"** of a share of Class B Common Stock shall mean any sale, assignment, transfer, conveyance, hypothecation or other transfer or disposition of such share or any legal or beneficial interest in such share, other than a Permitted Transfer, whether or not for value and whether voluntary or involuntary or by operation of law, including, without limitation, a transfer of a share of Class B Common Stock to a broker or other nominee (regardless of whether there is a corresponding change in beneficial ownership), or the transfer of, or entering into a binding agreement with respect to, Voting Control (as defined below) over such share by proxy or otherwise; provided, however, that the following shall not be considered a "Transfer" for purposes of this Article IV:

(a) the granting of a revocable proxy to officers or directors of the Corporation at the request of the Board of Directors in connection with actions to be taken at an annual or special meeting of stockholders; or

(b) entering into a voting trust, agreement or arrangement (with or without granting a proxy) solely with stockholders who are holders of Class B Common Stock that (i) is disclosed either in a Schedule 13D filed with the Securities and Exchange Commission or in writing to the Secretary of the Corporation, (ii) either has a term not exceeding one year or is terminable by the holder of the shares subject thereto at any time and (iii) does not involve any payment of cash, securities, property or other consideration to the holder of the shares subject thereto other than the mutual promise to vote shares in a designated manner.

A "Transfer" shall also be deemed to have occurred with respect to a share of Class B Common Stock beneficially held by an entity, if there occurs a Transfer on a cumulative basis of a majority of the voting power of the voting securities of such entity or any direct or indirect Parent of such entity, other than a Transfer to parties that are holders of voting securities of any such entity or Parent of such entity. "Parent" of an entity shall mean any entity that directly or indirectly owns or controls a majority of the voting power of the voting securities of such entity.

3. "Permitted Transfer" shall mean, and be restricted to:

(a) the Transfer of any or all of the Class B Common Stock held by a stockholder to a single trust for the benefit of such stockholder or such stockholder's Immediate Family. As used herein, the term "Immediate Family" will mean such stockholder's spouse or Spousal Equivalent, the lineal descendant or antecedent, father, mother, brother or sister, whether or not any of the above are adopted. As used herein, a person is deemed to be a "Spousal Equivalent" provided the following circumstances are true: (i) irrespective of whether or not the relevant person and the Spousal Equivalent are the same sex, they are the sole spousal equivalent of the other for the last 12 months, (ii) they intend to remain so indefinitely, (iii) neither are married to anyone else, (iv) both are at least 18 years of age and mentally competent to consent to contract, (v) they are not related by blood to a degree of closeness that would prohibit legal marriage in the state in which they legally reside, (vi) they are jointly responsible for each other's common welfare and financial obligations, and (vii) they have resided together in the same residence for the last 12 months and intend to do so indefinitely;

(b) any Transfer of Class B Common Stock effected pursuant to a stockholder's will or the laws of intestate succession; and/or

(c) if a stockholder is a partnership, limited liability company or a corporation, no more than five Transfers of any or all shares of Class B Common Stock to an Affiliate of such partnership, limited liability company or corporation.

4. "Voting Control" shall mean, with respect to a share of Class B Common Stock, the power (whether exclusive or shared) to vote or direct the voting of such share by proxy, voting agreement or otherwise.

## ARTICLE V

Except as otherwise provided in this Restated Certificate of Incorporation, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal the Bylaws of the Corporation.

## ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation. The authorized number of directors shall be set forth in the Corporation's Bylaws.

## ARTICLE VII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

(C) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

## ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of this corporation may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this corporation.

## ARTICLE IX

The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee or advisor of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

## ARTICLE X

In connection with repurchases by the Corporation of its Class A Common Stock or Class B Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which the corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, Sections 502 and 503 of the California Corporations Code shall not apply in all or in part with respect to such repurchases.

\* \* \*

The foregoing Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the Delaware General Corporation Law.

Executed at San Francisco, California, on May 26, 2015.

/s/ Travis Kalanick  
Travis Kalanick, President





# State of California Secretary of State

118

F

## Statement of Information

(Foreign Corporation)

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see instructions.

IMPORTANT - READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

**FILED**  
Secretary of State  
State of California

SEP 29 2014

## 1. CORPORATE NAME

Uber Technologies, Inc.

## 2. CALIFORNIA CORPORATE NUMBER

C3318029

This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.

☐ If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to Item 13.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

	CITY	STATE	ZIP CODE
4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE 1455 Market Street, 4th Floor	San Francisco	CA	94103
5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY 1455 Market Street, 4th Floor	San Francisco	CA	94103
6. MAILING ADDRESS OF THE CORPORATION, IF DIFFERENT THAN ITEM 4 Same as above.			

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

	ADDRESS	CITY	STATE	ZIP CODE
7. CHIEF EXECUTIVE OFFICER/ Travis Kalanick	1455 Market St., 4th Floor	San Francisco	CA	94103
8. SECRETARY Travis Kalanick	1455 Market St., 4th Floor	San Francisco	CA	94103
9. CHIEF FINANCIAL OFFICER/ Brent Callinicos	1455 Market St., 4th Floor	San Francisco	CA	94103

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 11 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 11 must be left blank.

## 10. NAME OF AGENT FOR SERVICE OF PROCESS

National Registered Agents, Inc.

C1941323

## 11. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY

STATE ZIP CODE

CA

## Type of Business

## 12. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION

Technology company that makes a software application.

## 13. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

09/25/2014

Travis Kalanick

CEO/President

DATE

TYPE/PRINT NAME OF PERSON COMPLETING FORM

TITLE

SIGNATURE

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "RASIER, LLC", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF SEPTEMBER, A.D. 2012, AT 3:42 O'CLOCK P.M.



5214471 8100

121042264

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9856149

DATE: 09-19-12

**STATE of DELAWARE**  
**LIMITED LIABILITY COMPANY**  
**CERTIFICATE of FORMATION**

The undersigned, being duly authorized to execute and file this Certificate of Formation for the purposes of forming a limited liability company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq., does hereby certify as follows:

**First:** The name of the limited liability company is **Rasier, LLC**.

**Second:** The address of its registered office in the State of Delaware is 3500 South Dupont Highway, in the City of Dover, 19901.

The name of its registered agent at that address is Incorporating Services, Ltd.

**IN WITNESS WHEREOF**, the undersigned authorized person has executed this Certificate of Formation this 18<sup>th</sup> day of September, 2012.

/s/Connie Duong Vincent

Connie Duong Vincent  
Authorized Person

**State of California**  
**Secretary of State**

**CERTIFICATE OF REGISTRATION**

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That on the **23rd** day of **August, 2013**, **RASIER, LLC**, complied with the requirements of California law in effect on that date for the purpose of registering to transact intrastate business in the State of California; and further purports to be a limited liability company organized and existing under the laws of **Delaware** as **RASIER, LLC** and that as of said date said limited liability company became and now is duly registered and authorized to transact intrastate business in the State of California, subject, however, to any licensing requirements otherwise imposed by the laws of this State.

**IN WITNESS WHEREOF**, I execute  
this certificate and affix the Great Seal  
of the State of California this day of  
August 26, 2013.



*Debra Bowen*

**DEBRA BOWEN**  
Secretary of State

SFB

201323810228

LLC-5

**Application to Register a Foreign  
Limited Liability Company (LLC)**

To register an LLC from another state or country in California, fill out this form, and submit for filing along with:

- A \$70 filing fee, and
- A certificate of good standing, issued within the last six (6) months by the agency where the LLC was formed.
- A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form.

**Important!** LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs cannot provide *professional* services in California.

**FILED**

Secretary of State  
State of California

AUG 23 2013

This Space For Office Use Only

For questions about this form, go to [www.sos.ca.gov/business/be/filing-tips.htm](http://www.sos.ca.gov/business/be/filing-tips.htm)

**Name to be used for this LLC in California**① Rasier, LLC*Proposed LLC Name*

The name **must** end with: "LLC," "L.L.C.," "Limited Liability Company," "Limited Liability Co.," "Ltd. Liability Co." or "Ltd. Liability Company;" and **may not** include: "bank," "trust," "trustee," "incorporated," "inc.," "corporation," or "corp.," "insurer," or "insurance company."

**LLC History**

② a. If the proposed LLC name you listed above is different than the LLC name you use **now** (as listed on your certificate of good standing), list the complete LLC name used now:

b. Date your LLC was formed (MM, DD, YYYY): 09/18/2012

c. State or country where your LLC was formed: Delaware

d. Your LLC currently has powers and privileges to conduct business in the state or country listed above.

**Service of Process** (List a California resident or an active 1505 corporation in California that agrees to be your agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may **not** list an LLC as the agent. Do not list an address if the agent is a 1505 corporation.)

③ a. National Registered Agents, Inc.*Agent's Name*

b. CA  
*Agent's Street Address (if agent is not a corporation) City (no abbreviations) State Zip*

If the agent listed above has resigned or cannot be found or served after reasonable attempts, the California Secretary of State will be appointed the agent for service of process for your LLC.

**LLC Addresses**

④ a. 405 Howard Street, Ste. 550 San Francisco CA 94105  
*Street Address of Principal Executive Office City (no abbreviations) State Zip*

b. 405 Howard Street, Ste. 550 San Francisco CA 94105  
*Street Address of Principal Office in California, if any City (no abbreviations) State Zip*

c. 405 Howard Street, Ste. 550 San Francisco CA 94105  
*Mailing Address of Principal Executive Office, if different from 4a or 4b City (no abbreviations) State Zip*

**Read and sign below:**

I am authorized to sign this document under the laws of the state or country where this LLC was formed.

Travis Kalanick  
*Sign here*

Travis Kalanick, CEO of  
Uber Technologies, Inc., Member CEO  
*Print your name here Your business title*

Make check/money order payable to: **Secretary of State**

Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

**By Mail**

Secretary of State  
Business Entities, P.O. Box 944228  
Sacramento, CA 94244-2280

**Drop-Off**

Secretary of State  
1500 11th Street., 3rd Floor  
Sacramento, CA 95814

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "RASIER, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-THIRD DAY OF AUGUST, A.D. 2013.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "RASIER, LLC" WAS FORMED ON THE EIGHTEENTH DAY OF SEPTEMBER, A.D. 2012.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.

5214471 8300

131022313



You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0689082

DATE: 08-23-13

201323810228





I hereby certify that the foregoing  
transcript of 2 page(s)  
is a full, true and correct copy of the  
original record in the custody of the  
California Secretary of State's office.

AUG 26 2013

SB

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

*Debra Bowen*

DEBRA BOWEN, Secretary of State



State of California  
Secretary of State

L

8/5

STATEMENT OF INFORMATION  
(Limited Liability Company)

Filing Fee \$20.00. If this is an amendment, see instructions.

IMPORTANT — READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

FILED  
Secretary of State  
State of California  
SEP 16 2013

This Space For Filing Use Only

File Number and State or Place of Organization

2. SECRETARY OF STATE FILE NUMBER 201323810228 3. STATE OR PLACE OF ORGANIZATION (if formed outside of California) DELAWARE

No Change Statement

4. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.
- ☐ If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to Item 15.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 5 and 7 cannot be P.O. Boxes.)

	CITY	STATE	ZIP CODE
5. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE 405 Howard Street, Suite 550	San Francisco, CA		94105
6. MAILING ADDRESS OF LLC, IF DIFFERENT THAN ITEM 5 182 Howard Street #8	San Francisco, CA		94105
7. STREET ADDRESS OF CALIFORNIA OFFICE 405 Howard Street, Suite 550	San Francisco	CA	94105

Name and Complete Address of the Chief Executive Officer, If Any

8. NAME	ADDRESS	CITY	STATE	ZIP CODE
Travis Kalanick	182 Howard Street #8	San Francisco, CA		94105

Name and Complete Address of Any Manager or Managers, or if None Have Been Appointed or Elected, Provide the Name and Address of Each Member (Attach additional pages, if necessary.)

9. NAME	ADDRESS	CITY	STATE	ZIP CODE
Travis Kalanick	182 Howard Street #8	San Francisco, CA		94105
10. NAME	ADDRESS	CITY	STATE	ZIP CODE
11. NAME	ADDRESS	CITY	STATE	ZIP CODE

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 13 must be completed with a California address, a P.O. Box is not acceptable. If the agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 13 must be left blank.

12. NAME OF AGENT FOR SERVICE OF PROCESS  
National Registered Agents, Inc. (C1941323)

13. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE
		CA	

Type of Business

14. DESCRIBE THE TYPE OF BUSINESS OF THE LIMITED LIABILITY COMPANY  
Technology company that makes a software application

15. THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

9/12/2013  
DATE

Selene Hakobyan  
TYPE OR PRINT NAME OF PERSON COMPLETING THE FORM

Paralegal  
TITLE

*Selene Hakobyan*  
SIGNATURE

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "RASIER-CA, LLC", FILED IN THIS OFFICE ON THE SIXTH DAY OF SEPTEMBER, A.D. 2013, AT 5:10 O'CLOCK P.M.



5395016 8100

131063585

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0719756

DATE: 09-09-13

**STATE of DELAWARE**  
**LIMITED LIABILITY COMPANY**  
**CERTIFICATE of FORMATION**

The undersigned, being duly authorized to execute and file this Certificate of Formation for the purposes of forming a limited liability company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq., does hereby certify as follows:

**First:** The name of the limited liability company is **Rasier-CA, LLC**.

**Second:** The address of its registered office in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, 19904.

The name of its registered agent at that address is National Registered Agents, Inc.

**IN WITNESS WHEREOF**, the undersigned authorized person has executed this Certificate of Formation this 6<sup>th</sup> day of September, 2013.

/s/Connie Duong Vincent

Connie Duong Vincent  
Authorized Person

**State of California**  
**Secretary of State**

**CERTIFICATE OF REGISTRATION**

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That on the **19TH** day of **SEPTEMBER, 2013**, **RASIER-CA, LLC**, complied with the requirements of California law in effect on that date for the purpose of registering to transact intrastate business in the State of California; and further purports to be a limited liability company organized and existing under the laws of **DELAWARE** as **RASIER-CA, LLC** and that as of said date said limited liability company became and now is duly registered and authorized to transact intrastate business in the State of California, subject, however, to any licensing requirements otherwise imposed by the laws of this State.

**IN WITNESS WHEREOF**, I execute  
this certificate and affix the Great Seal  
of the State of California this day of  
September 20, 2013.



*Debra Bowen*

**DEBRA BOWEN**  
Secretary of State

KLG

LLC-5

# Application to Register a Foreign Limited Liability Company (LLC)

201326310085

To register an LLC from another state or country in California, fill out this form, and submit for filing along with:

- A \$70 filing fee, and
- A certificate of good standing, issued within the last six (6) months by the agency where the LLC was formed.
- A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form.

**Important!** LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs cannot provide professional services in California.

FILED

Secretary of State  
State of California

SEP 19 2013

This Space For Office Use Only

For questions about this form, go to [www.sos.ca.gov/business/be/filing-tips.htm](http://www.sos.ca.gov/business/be/filing-tips.htm)

## Name to be used for this LLC in California

① Rasier-CA, LLC

Proposed LLC Name

The name must end with: "LLC," "L.L.C.," "Limited Liability Company," "Limited Liability Co.," "Ltd. Liability Co." or "Ltd. Liability Company;" and may not include: "bank," "trust," "trustee," "incorporated," "inc.," "corporation," or "corp.," "insurer," or "insurance company."

## LLC History

- ② a. If the proposed LLC name you listed above is different than the LLC name you use now (as listed on your certificate of good standing), list the complete LLC name used now:
- b. Date your LLC was formed (MM, DD, YYYY): 09/06/2013
- c. State or country where your LLC was formed: Delaware
- d. Your LLC currently has powers and privileges to conduct business in the state or country listed above.

**Service of Process** (List a California resident or an active 1505 corporation in California that agrees to be your agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may not list an LLC as the agent. Do not list an address if the agent is a 1505 corporation.)

③ a. National Registered Agents, Inc.

Agent's Name

b. CA  
Agent's Street Address (if agent is not a corporation) City (no abbreviations) State Zip

If the agent listed above has resigned or cannot be found or served after reasonable attempts, the California Secretary of State will be appointed the agent for service of process for your LLC.

## LLC Addresses

- ④ a. 405 Howard Street, Ste. 550 San Francisco CA 94105  
Street Address of Principal Executive Office City (no abbreviations) State Zip
- b. 405 Howard Street, Ste. 550 San Francisco CA 94105  
Street Address of Principal Office in California, if any City (no abbreviations) State Zip
- c. 182 Howard Street, #8 San Francisco CA 94105  
Mailing Address of Principal Executive Office, if different from 4a or 4b City (no abbreviations) State Zip

## Read and sign below:

I am authorized to sign this document under the laws of the state or country where this LLC was formed.

Travis Kalanick,

Manager of Rasier, LLC, Manager

Manager

Sign here

Print your name here

Your business title

Make check/money order payable to: **Secretary of State**

Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

### By Mail

Secretary of State  
Business Entities, P.O. Box 944228  
Sacramento, CA 94244-2280

### Drop-Off

Secretary of State  
1500 11th Street, 3rd Floor  
Sacramento, CA 95814



# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "RASIER-CA, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE NINETEENTH DAY OF SEPTEMBER, A.D. 2013.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "RASIER-CA, LLC" WAS FORMED ON THE SIXTH DAY OF SEPTEMBER, A.D. 2013.


AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

5395016 8300

131107164

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0749511

DATE: 09-19-13

201326310085

Rasier, LLC.  
182 Howard Street #8  
San Francisco, CA 94105

September 17, 2013

Office of the Secretary of State  
1500 11th Street, 3rd Floor  
Sacramento, CA 95814

Re: Consent to Use of Corporate Name

Dear Sir/Madam:

I, Travis Kalanick, manager of Rasier, LLC, expressly consent to the use of the name by Travis Kalanick to form the LLC-5 with the name Raiser-CA, LLC in California as submitted for filing by Connic Duong of Fenwick and West LLP.

Very truly yours,

By: 

Travis Kalanick, Manager of Rasier, LLC,  
Manager



I hereby certify that the foregoing transcript of 2 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

SEP 20 2013

Date: 1/4

*Debra Bowen*

DEBRA BOWEN, Secretary of State



State of California  
Secretary of State

L

STATEMENT OF INFORMATION  
(Limited Liability Company)

44  
/ 78

Filing Fee \$20.00. If this is an amendment, see instructions.  
IMPORTANT — READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

FILED  
Secretary of State  
State of California  
DEC 20 2013

1. LIMITED LIABILITY COMPANY NAME

RASIER-CA, LLC

PC This Space For Filing Use Only

File Number and State or Place of Organization

2. SECRETARY OF STATE FILE NUMBER  
201326310085

3. STATE OR PLACE OF ORGANIZATION (If formed outside of California)  
Delaware

No Change Statement

4. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.  
☐ If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to Item 15.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 5 and 7 cannot be P.O. Boxes.)

5. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
405 Howard Street, Ste. 550	San Francisco	CA	94105
6. MAILING ADDRESS OF LLC, IF DIFFERENT THAN ITEM 5	CITY	STATE	ZIP CODE
182 Howard Street, #8	San Francisco	CA	94105
7. STREET ADDRESS OF CALIFORNIA OFFICE	CITY	STATE	ZIP CODE
405 Howard Street, Ste. 550	San Francisco	CA	94105

Name and Complete Address of the Chief Executive Officer, If Any

8. NAME	ADDRESS	CITY	STATE	ZIP CODE
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Name and Complete Address of Any Manager or Managers, or if None Have Been Appointed or Elected, Provide the Name and Address of Each Member (Attach additional pages, if necessary.)

9. NAME	ADDRESS	CITY	STATE	ZIP CODE
Travis Kalanick	182 Howard Street, #8	San Francisco	CA	94105

10. NAME	ADDRESS	CITY	STATE	ZIP CODE
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11. NAME	ADDRESS	CITY	STATE	ZIP CODE
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Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 13 must be completed with a California address, a P.O. Box is not acceptable. If the agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 13 must be left blank.

12. NAME OF AGENT FOR SERVICE OF PROCESS  
National Registered Agents, Inc.

C1941323

13. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE
		CA	

Type of Business

14. DESCRIBE THE TYPE OF BUSINESS OF THE LIMITED LIABILITY COMPANY

Provide technology platform for requesting transportation service from third parties.

15. THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

9/17/13  
DATE

Travis Kalanick, Manager of Rasier, LLC, Manager  
TYPE OR PRINT NAME OF PERSON COMPLETING THE FORM

Manager  
TITLE

SIGNATURE

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "UBER USA, LLC", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF MAY, A.D. 2014, AT 5:30 O'CLOCK P.M.

5532963 8100

140622460



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 1368822

DATE: 05-13-14

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**STATE of DELAWARE**  
**LIMITED LIABILITY COMPANY**  
**CERTIFICATE of FORMATION**

The undersigned, being duly authorized to execute and file this Certificate of Formation for the purposes of forming a limited liability company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq., does hereby certify as follows:

- First:** The name of the limited liability company is **Uber USA, LLC**.
- Second:** The address of its registered office in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, 19904.

The name of its registered agent at that address is National Registered Agents, Inc.

**IN WITNESS WHEREOF**, the undersigned authorized person has executed this Certificate of Formation this 13<sup>th</sup> day of May, 2014.

/s/Andrew Ancheta  
Andrew Ancheta  
Authorized Person



**CONFIDENTIAL APPENDIX C**

**UBER USA SOFTWARE LICENSE AND ONLINE SERVICES AGREEMENT**

RAISER, LLC / RASIER-CA, LLC / RASIER-PA, LLC

**SOFTWARE LICENSE AND ONLINE SERVICES AGREEMENT**

Last update: November 10, 2014

This Software License and Online 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, 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 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 to this Agreement setting forth additional Territory-specific terms, as updated by Uber 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 provide 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, which services include 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](http://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. You acknowledge and agree that you are required to fulfill a request for Transportation Services using the Driver App at least once a month to maintain an active Driver profile, and 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. 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 for any reason except 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.
- 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 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) 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 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, at any time at Company's sole discretion, deactivate or otherwise restrict you from accessing or using the Driver App or the Uber Services in the event of a 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, or for any other reason at the reasonable discretion of Company.

**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*"). 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 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 If you elect to use any Company Devices, Company will supply you with such Company Devices and provide the necessary wireless data plan for such Devices, provided that Company may, at its discretion, 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 will be monitored and tracked by the Uber Services when you are logged into the Driver App and available to receive requests for Transportation Services or when you are providing Transportation Services; 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 your geo-location information obtained by the Driver App and Device for their technical, marketing and commercial purposes, including to provide and improve their products and services.

### 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.

### 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 mileage and/or time amounts, as detailed for the applicable Territory ("*Fare Calculation*"). You are also entitled to charge User for any Tolls, taxes or fees incurred during the provision of Transportation Services, and, 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 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 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 and Uber have separately agreed, Company may deduct other amounts from the Fare prior to remittance to you (e.g., vehicle financing payments, lease payments, mobile device usage charges, etc.).

- 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 such change 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 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 fail 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 (regardless of any Negotiated Fare), as provided or otherwise made available by Company from time to time for the applicable Territory (*"Service Fee"*). In the event regulations applicable to your Territory require taxes to be imputed in 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.
- 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 online portal. 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 responsible for collecting and remitting all applicable gross receipts, sales and use, excise or any other transaction tax on the provision of Transportation Services.

## 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: (a) in or related to the Uber Services, Driver App or Company Data, except for the limited license granted above; or (b) to use or reference in any manner Company's, its Affiliates', or their respective licensors' company names, logos, product and service names, trademarks, services marks or other indicia of ownership.

## 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 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 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 and regulation, 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); or (d) it is necessary, in Company's or any Affiliate's sole discretion, to protect the safety, rights, property or security of Company or its Affiliates, the Uber Services or any third party; to protect the safety of the public for any reason; to detect, prevent or otherwise address fraud, security or technical issues; and/or to prevent or stop activity Company 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).
- 7.2 Information provided by you and collected about you may be transferred or accessed by Company and its Affiliates around the world, including in jurisdictions that may have less protective privacy laws than your country. Company and its Affiliates located in the U.S. abide by the Safe Harbor frameworks set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information collected by organizations in the European Economic Area and Switzerland. You expressly consent to Company's and its Affiliates' use of



location-based services and you expressly waive and release Company and its Affiliates from any and all liability, claims, causes of action or damages arising from your use of the Uber Services, or in any way relating to the use of the geo-location and other location-based services.

- 7.3 Company and its Affiliates may collect your personal data during the course of your application for, and use of, the Uber Services, which information may be stored, processed, and accessed by Company and its Affiliates 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 Company's, 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, 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 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.
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 contractors. 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.** Company reserves the right to modify the terms and conditions of this Agreement at any time, effective upon publishing an updated version of this Agreement on the portal available to you on the Uber Services. 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 this Agreement, 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."
- 14.6 **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement. 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 interpretation of this Agreement shall be governed by California law, without regard to the choice or conflicts of law provisions of any jurisdiction, and 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 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 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 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, any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Uber Services may be subject to arbitration pursuant to Section 15.3.

### **15.3 Arbitration Provision**

#### **Important Note Regarding this Arbitration provision:**

- 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 pursuant to the terms of the Agreement unless you choose to opt out of the arbitration provision. This provision will preclude you from bringing any class, collective, or representative action against the Company or Uber. It also precludes you from participating in or recovering relief under any current or future class, collective, or representative action brought against the Company or Uber by someone else.
  - **Cases have been filed against 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 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, LAVITMAN V.**

*UBER TECHNOLOGIES, INC., ET AL., CASE NO. 1:13-cv-10172-DJC (DISTRICT OF MASSACHUSETTS) ; YUCESoy ET AL. V. UBER TECHNOLOGIES, INC., ET AL., CASE NO. 14-0576-C (MASSACHUSETTS SUPERIOR COURT); AND O'CONNOR V. UBER TECHNOLOGIES, INC., ET AL., CASE NO. CV 13-03826-EMC (NORTHERN DISTRICT OF CALIFORNIA).*

- 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 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 lawsuit.
- However, as discussed above, 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 ABRITRATION. 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 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 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 a forum other than arbitration. 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.**

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.

Except as it otherwise provides, this Arbitration Provision also applies, without limitation, to 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 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.

The parties expressly agree that Uber is an intended third-party beneficiary of this Arbitration Provision.

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:

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

Regardless of any other terms of this Arbitration Provision, claims may be brought before and remedies awarded by an administrative agency if applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate. Such administrative claims include without limitation claims or charges brought before the Equal Employment Opportunity Commission ([www.eeoc.gov](http://www.eeoc.gov)), the U.S. Department of Labor ([www.dol.gov](http://www.dol.gov)), the National Labor Relations Board ([www.nlr.gov](http://www.nlr.gov)), or the Office of Federal Contract Compliance Programs ([www.dol.gov/esa/ofccp](http://www.dol.gov/esa/ofccp)). 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 predispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) 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. 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 in arbitration on an individual basis only, and not on a class, collective, or private attorney general representative action basis. The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on any basis other than an individual basis.** If at any point this provision is determined to be unenforceable, the parties agree that this provision shall not be severable, unless it is determined that the Arbitration may still proceed on an individual basis only.

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.

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. Any disputes in that regard will be resolved by the Arbitrator.

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. Except as may be permitted or required by law, as determined by the Arbitrator, neither a party nor an Arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all Parties. 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](mailto: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. 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.

**UBER USA, LLC**

**SOFTWARE LICENSE AND ONLINE SERVICES AGREEMENT**

Last update: April 3, 2015

This Software License and Online 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 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 setting forth additional Territory-specific terms, 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](http://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 provide 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, which services include 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. Customer acknowledges and agrees that each Driver is required to fulfill a request for Transportation Services using the Driver App at least once a month to maintain an active Driver profile, and 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. 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 for any reason except 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.

- 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 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) 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 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, at any time in Uber's sole discretion, 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 of this Agreement, a 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, or for any other reason at the reasonable discretion of Uber.



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*"). 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. If Customer elects to use any Uber Devices, Uber will supply such Uber Devices to each authorized Driver and provide the necessary wireless data plan for such Devices, provided that Uber may, at its discretion, 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 will be monitored and tracked by the Uber Services when the Driver is logged into the Driver App and available to receive requests for Transportation Services, or when the Driver is providing Transportation Services; 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, Uber may monitor, track and share a Driver's geo-location information obtained by the Driver App and Device for Uber's technical, marketing and commercial purposes, including to provide and improve Uber's products and services.

### 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.

### 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 mileage and/or time amounts, as detailed for the applicable Territory ("*Fare Calculation*"). 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 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 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 and Uber have separately agreed, Uber may deduct other amounts from the Fare prior to remittance to Customer (e.g., vehicle financing payments, lease payments, mobile device usage charges, etc.). 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 such change 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 fails 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 (regardless of any Negotiated Fare), as provided or otherwise made available 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 imputed in 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.

- 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 online portal to the Customer. 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 responsible for collecting and remitting all applicable gross receipts, sales and use, excise or any other transaction tax on the provision of Transportation Services.

## 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: (a) in or related to the Uber Services, Driver App or Uber Data, except for the limited license granted above; or (b) to use or reference in any manner Uber's, its Affiliates', or their respective licensors' company names, logos, product and service names, trademarks, services marks or other indicia of ownership.

## 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 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 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) or (d) it is necessary, in Uber's or any Affiliate's sole discretion, to protect the safety, rights, property or security of Uber or its Affiliates, the Uber Services or any third party; to protect the safety of the public for any reason; to detect, prevent or otherwise address fraud, security or technical issues; and/or to 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).

- 7.2. Information provided by Customer or a Driver and collected about Customer or a Driver may be transferred or accessed by Uber and its Affiliates around the world, including in jurisdictions that may have less protective privacy laws than Customer's country. Uber and its Affiliates located in the U.S. abide by the Safe Harbor frameworks set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information collected by organizations in the European Economic Area and Switzerland. Customer expressly consents to Uber's use of location-based services and Customer expressly waives and releases Uber and its Affiliates from any and all liability, claims, causes of action or damages arising from Customer's or a Driver's use of the Uber Services, or in any way relating to the use of the geo-location and other location-based services.
- 7.3. 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, which information may be stored, processed, and accessed by Uber and its Affiliates 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.
- 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 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.
- 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 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.



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 contractors. 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.** Uber reserves the right to modify the terms and conditions of this Agreement or the Driver Addendum at any time, effective upon publishing an updated version of this Agreement or the Driver Addendum, as applicable, on the portal available to Customer on the Uber Services. 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 this Agreement, 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."

- 14.6. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement. 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 interpretation of this Agreement shall be governed by California law, without regard to the choice or conflicts of law provisions of any jurisdiction, and 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 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 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 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, any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Uber Services may be subject to arbitration pursuant to Section 15.3.

### 15.3 Arbitration.

#### Important Note Regarding this Section 15.3:

- 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 pursuant to the terms of the Agreement unless you choose to opt out of the arbitration provision. This provision will preclude you from bringing any class, collective, or representative action against Uber. It also precludes you from participating in or recovering relief under any current or future class, collective, or representative 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 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, LAVITMAN V. UBER TECHNOLOGIES, INC., ET AL., CASE NO. 1:13-cv-10172-DJC (DISTRICT OF MASSACHUSETTS) ; YUCESOY ET AL. V. UBER TECHNOLOGIES, INC., ET AL., CASE NO. 14-0576-C (MASSACHUSETTS SUPERIOR COURT); 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 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 lawsuit.
  - However, as discussed above, 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 ABRITRATION. 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 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 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 a forum other than arbitration. 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.**

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.

Except as it otherwise provides, this Arbitration Provision also applies, without limitation, to 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 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.

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:

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

Regardless of any other terms of this Arbitration Provision, claims may be brought before and remedies awarded by an administrative agency if applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate. Such administrative claims include without limitation claims or charges brought before the Equal Employment Opportunity Commission ([www.eeoc.gov](http://www.eeoc.gov)), the U.S. Department of Labor ([www.dol.gov](http://www.dol.gov)), the National Labor Relations Board ([www.nlr.gov](http://www.nlr.gov)), or the Office of Federal Contract Compliance Programs ([www.dol.gov/esa/ofccp](http://www.dol.gov/esa/ofccp)). 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 predispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) 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. 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 in arbitration on an individual basis only, and not on a class, collective, or private attorney general representative action basis. 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.** If at any point this provision is determined to be unenforceable, the parties agree that this provision shall not be severable, unless it is determined that the Arbitration may still proceed on an individual basis only.

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.

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. Any disputes in that regard will be resolved by the Arbitrator.

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. Except as may be permitted or required by law, as determined by the Arbitrator, neither a party nor an Arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all Parties. 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](mailto: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. 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.