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APPENDIX A

COURT OF APPEAL,
FIRST APPELLATE DISTRICT, DIVISION FOUR—
No. A160701, A160706

S282614

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

UBER TECHNOLOGIES, INC. et al.,
Defendants and Appellants.

The petitions for review are denied.

Evans, J., was recused and did not participate.

Jan. 17, 2024

GUERRERO
Chief Justice

APPENDIX B

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re UBER TECHNOLOGIES WAGE AND HOUR CASES.	A166355 (San Francisco County Super. Ct. No. CJC-21-005179; J.C.C.P. No. 5179) Sept. 28, 2023

In these coordinated proceedings, defendants Uber and Lyft[1] appeal after the trial court denied their motions to compel arbitration of claims brought against them in civil enforcement actions by the People of the State of California (the People)[2] and by the Labor Commissioner through the Division of Labor Standards Enforcement (DLSE).[3] We conclude the court correctly denied the motions because the People

[1] The defendants are (1) Uber Technologies, Inc., and certain of its affiliated entities (collectively, Uber), and (2) Lyft, Inc. (Lyft).

[2] The Attorney General of California, joined by city attorneys of the cities of Los Angeles, San Diego, and San Francisco, brought the action on behalf of the People.

[3] The DLSE is a division within the Department of Industrial Relations. (Lab. Code, §§ 21, 79.) We will use the terms DLSE and Labor Commissioner interchangeably.

and the Labor Commissioner are not parties to the arbitration agreements invoked by Uber and Lyft. We therefore affirm.

I. BACKGROUND

A. *The People's and the Labor Commissioner's Actions Against Uber and Lyft*

In May 2020, the People filed this action. In their operative complaint, the People allege Uber and Lyft violated the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (UCL) by misclassifying their California ride- share and delivery drivers as independent contractors rather than employees, thus depriving them of wages and benefits associated with employee status.[4] The People allege the misclassification harms workers, competitors, and the public. The People seek injunctive relief, civil penalties, and restitution under the UCL. (Bus. & Prof. Code, §§ 17203, 17204, 17206.) The People also seek injunctive relief under the statutory scheme established by Assembly Bill No. 5 (2019-2020 Reg. Sess.) (Assembly Bill 5), specifically Labor Code section 2786,[5] which authorizes such relief to prevent misclassification of employees as independent contractors.

The People sought, and the trial court entered, a preliminary injunction prohibiting Uber and Lyft

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[4] We discussed the People's claims and other relevant background more fully in *People v. Uber Technologies*, *Inc.* (2020) 56 Cal.App.5th 266, 273, 274-282.

[5] The injunctive relief provision of Assembly Bill 5 was originally codified as Labor Code section 2750.3, subdivision (j) (Stats. 2019, ch. 296, § 2) and was later transferred to section 2786 (Stats. 2020, ch. 38, §§ 1-2). (See *People v. Uber Technologies*, *Inc.*, supra, 56 Cal.App.5th at p. 274, fn. 3.)

from misclassifying their drivers as independent contractors in violation of Assembly Bill 5. (*People v. Uber Technologies*, *Inc.*, *supra*, 56 Cal.App.5th at pp. 281-282.) We affirmed in an October 2020 opinion. (*Id.* at p. 316.) Following the passage of Proposition 22, which altered the standards for determining whether app-based drivers are independent contractors (Bus. & Prof. Code, § 7451), the People and Uber and Lyft stipulated to dissolve the preliminary injunction, which had been stayed since it was entered. The People's operative first amended and supplemental complaint clarifies that the People seek injunctive relief to the extent Proposition 22 is unconstitutional or otherwise invalid.[6]

In August 2020, the Labor Commissioner filed separate actions against Uber and Lyft, pursuant to her enforcement authority under the Labor Code. (E.g., Lab. Code, §§ 61, 90.5, 95, 98.3, subd. (b).) The Labor Commissioner alleges Uber and Lyft have misclassified drivers as independent contractors and have thus violated certain Labor Code provisions and wage orders. The Labor Commissioner seeks injunctive relief, civil penalties payable to the state, and unpaid wages and other amounts alleged to be due to Uber's and Lyft's drivers, such as unreimbursed business expenses.[7]

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[6] The validity of Proposition 22 under the state constitution is a question now pending before the California Supreme Court. (*Castellanos v. State of California* (2023) 89 Cal.App.5th 131, review granted June 28, 2023, S279622.)

[7] As noted, the People and the Labor Commissioner filed their actions pursuant to statutory authority as public enforcement officials. (Bus. & Prof. Code, §§ 17203, 17204, 17206; Lab. Code,

The People's action and the Labor Commissioner's actions were coordinated (along with other cases not involved in this appeal)[8] as part of *Uber Technologies Wage and Hour Cases.*

B. *Uber's and Lyft's Motions To Compel Arbitration Based on Their Arbitration Agreements With Drivers*

As we noted in *People v. Uber Technologies*, *Inc.*, *supra*, 56 Cal.App.5th at p. 312, fn. 24, foreshadowing this appeal, Uber and Lyft filed motions to compel arbitration in the People's action; they also filed similar motions in the Labor Commissioner's actions. Uber and Lyft sought to require arbitration of those actions to the extent they seek remedies that Uber and Lyft characterize as "driver-specific" or "'individualized'" relief, such as restitution under the UCL and unpaid wages under the Labor Code.

Uber's and Lyft's motions did not seek to compel arbitration of the People's and the Labor Commissioner's requests for civil penalties and injunctive relief, but they nonetheless asked the court to stay those portions of the actions pending completion of any driver arbitrations. Finally, as an alternative to their

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§§ 2786, 61, 90.5, 95, 98.3, subd. (b).) Their actions are not private attorney general actions, i.e., they are not actions "brought by an aggrieved employee on behalf of himself or herself and other current or former employees" as authorized by the Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.) (PAGA). (Lab. Code, § 2699, subd. (a).) They are direct enforcement actions by public prosecutors acting under specific statutory grants of prosecutorial authority.

[8] According to the parties' briefs in this appeal, those other cases (which also allege misclassification of employees as independent contractors) were brought by private parties under PAGA.

requests to compel arbitration, Uber and Lyft asked the court to strike the People's and the Labor Commissioner's requests for restitution and certain other relief.

In their motions, Uber and Lyft relied on arbitration agreements they entered into with drivers. The agreements require drivers to arbitrate on an individual basis most disputes arising from their relationship with Uber or Lyft. The People and the Labor Commissioner are not parties to the agreements.

Following coordination, the parties filed additional briefing pertaining to the motions, and the trial court heard argument on August 26, 2022. On September 1, 2022, the court entered an order denying Uber's and Lyft's motions.

Uber and Lyft appealed.

II. DISCUSSION

Uber and Lyft contend the arbitration agreements they entered into with their drivers require that portions of the civil enforcement actions brought by the People and the Labor Commissioner be compelled to arbitration. If this court orders arbitration, they argue, the remaining portions of the People's and the Labor Commissioner's actions should be stayed. We conclude, as the trial court did, that there is no basis to compel arbitration.

A. *Standard of Review*

"Whether an arbitration agreement binds a third party is a legal question we review de novo." (*Department of Fair Employment and Housing v. Cisco Systems, Inc.* (2022) 82 Cal.App.5th 93, 99 (*Cisco*).)

B. *The People and the Labor Commissioner Are Not Bound by Uber's and Lyft's Arbitration Agreements with Their Drivers*

Both the federal government and California have strong public policies "'in favor of arbitration as an expeditious and cost-effective way of resolving disputes.'" (*People v. Maplebear Inc.* (2022) 81 Cal.App.5th 923, 930 (*Maplebear*).) But "[e]ven though the '"'law favors contracts for arbitration of disputes between parties' [citation], '"there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate … ."'"'" (*Id.* at p. 931.)

The trial court correctly concluded there is no basis to compel arbitration here because the People and the Labor Commissioner are not parties to the arbitration agreements Uber and Lyft entered into with their drivers. Uber and Lyft contend arbitration nevertheless should be compelled on the basis of either (1) federal preemption or (2) equitable estoppel. We disagree.[9]

1. Preemption

Uber and Lyft argue the Federal Arbitration Act (9 U.S.C. § 1 et seq.) (FAA) precludes the People and

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[9] Because we hold the People and the Labor Commissioner are not bound by the arbitration agreements between Uber and Lyft and their drivers, we need not address (1) the Labor Commissioner's argument that Uber and Lyft have not provided sufficient evidence of such agreements because they produced no signed agreements, or (2) defendants' contentions that the agreements are valid and binding as between the parties who entered them. We will assume for purposes of this opinion that the arbitration agreements bind drivers who entered them.

the Labor Commissioner from pursuing in court some of the types of relief they seek in their enforcement actions, including restitution under the UCL and unpaid wages and business expenses of drivers under the Labor Code. Characterizing these forms of relief as "individualized" or "driver-specific," they argue that, because such relief may benefit individual drivers, any claim seeking it "belong[s]" to the drivers (and the People and the Labor Commissioner only "stand[ ] in the [drivers'] shoes," while the drivers are the "real parties in interest"). Thus, they conclude, those portions of the People's and the Labor Commissioner's actions must be compelled to arbitration. We disagree.

The United States Supreme Court has emphasized that, while the FAA embodies a strong federal policy in favor of enforcing parties' agreements to arbitrate, that policy is founded on the parties' consent, and there is no policy in favor of requiring arbitration of disputes the parties have not agreed to arbitrate. (*Viking River Cruises, Inc. v. Mariana* (2022) 596 U.S. __, __ [142 S.Ct. 1906, 1918] (*Viking River*) ["the 'first principle' of our FAA jurisprudence" is "that '[a]rbitration is strictly "a matter of consent" ' "]; *id.* at p. __ [142 S.Ct. at p. 1917]; *E.E.O.C. v. Waffle House, Inc.* (2002) 534 U.S. 279, 294 (*Waffle House*) ["Because the FAA is 'at bottom a policy guaranteeing the enforcement of private contractual arrangements,' [citation], we look first to whether the parties agreed to arbitrate a dispute, not to general policy goals, to determine the scope of the agreement."].)

"'"Whether an agreement to arbitrate exists is a threshold issue of contract formation and state contract law." [Citations.] "The party seeking to compel arbitration bears the burden of proving the existence

of a valid arbitration agreement."' [Citation.] 'Because arbitration is a matter of contract, generally "'one must be a party to an arbitration agreement to be bound by it or invoke it.'"' [Citation.] 'However, both California and federal courts have recognized limited exceptions to this rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement.' [Citation.] '"'As one authority has stated, there are six theories by which a nonsignatory may be bound to arbitrate: "(a) incorporation by reference; (b) assumption; (c) agency; (d) veil-piercing or alter ego; (e) estoppel; and (f) third party beneficiary."'"'" (*Maplebear*, *supra*, 81 Cal.App.5th at pp. 931-932.)

Here, as noted, the People and the Labor Commissioner are not parties to the arbitration agreements at issue. And none of the above theories supports compelling their claims to arbitration. We reject Uber's and Lyft's suggestion that the People and the Labor Commissioner should be bound because they allegedly are mere proxies for Uber's and Lyft's drivers. (See *Cisco*, *supra*, 82 Cal.App.5th at p. 99 [addressing a similar claim; noting the "proxy" theory was "along [the] lines" of the assumption, agency, and alter ego theories].)

The relevant statutory schemes expressly authorize the People and the Labor Commissioner to bring the claims (and seek the relief) at issue here. (Bus. & Prof. Code, §§ 17203, 17204, 17206 [authority for Attorney General and other public prosecutors to sue in the name of the People under the UCL]; Lab. Code, § 2786 [authority under Assembly Bill 5]; *id.*, §§ 61, 90.5, 95, 98.3, subd. (b) [Labor Commissioner's au-

thority].) The public officials who brought these actions do not derive their authority from individual drivers but from their independent statutory authority to bring civil enforcement actions, and, as we discuss further below, there is no basis for binding them to arbitration agreements Uber and Lyft entered with drivers.

a. Waffle House *Establishes the Drivers' Arbitration Agreements Do Not Bar the People and the Labor Commissioner from Seeking Judicial Relief*

In *Waffle House*, the United States Supreme Court held that the federal Equal Employment Opportunity Commission (EEOC) is not bound by employee arbitration agreements because it has the ability to determine whether to file suit and what relief to pursue. (*Waffle House*, *supra*, 534 U.S. at pp. 291, 282, 285, 297-298.) An employee's agreement to arbitrate certain claims does not bar the EEOC from pursuing "victim-specific judicial relief' (as well as injunctive relief) in its own action. (*Id.* at pp. 282, 285, 297-298.) The high court rejected arguments that the EEOC's claims in this setting are "derivative" and that the EEOC is a "proxy for the employee." (*Id.* at pp. 297-298.)

Recent decisions by California appellate courts have followed *Waffle House*, holding that public agencies bringing enforcement actions as authorized by statute are not bound by arbitration agreements between private parties. In *Maplebear*, a case very similar to this one, the San Diego City Attorney brought an enforcement action under the UCL on behalf of the People, alleging Instacart misclassified its shoppers as independent contractors. (*Maplebear*, *supra*, 81

Cal.App.5th at p. 926.) The trial court denied Instacart's motion to compel arbitration, and the appellate court affirmed, holding that, under *Waffle House*, arbitration agreements between Instacart and its shoppers were not binding on the People. (*Maplebear*, at pp. 926-927, 935.)

The *Maplebear* court rejected Instacart's contention that the FAA supported a contrary result because the People allegedly were "deputized" by the shoppers. (*Maplebear*, *supra*, 81 Cal.App.5th at pp. 934-935.) Instead, the court held, the City of San Diego was acting in its own law enforcement capacity to seek relief under the UCL. (*Maplebear*, at p. 934.) The court explained that "the FAA is not concerned with the ability of the State of California to prosecute violations of the Labor Code and to seek civil penalties and related relief for those violations under the UCL. Contrary to Instacart's assertion, the Shoppers are not the real party in interest in this case, the People are." (*Id.* at p. 935.)

Similarly, in *Cisco*, *supra*, 82 Cal.App.5th at p. 97, the appellate court addressed whether the Department of Fair Employment and Housing (now named the Civil Rights Department) could be "compelled to arbitrate an employment discrimination lawsuit when the affected employee agreed to resolve disputes with the employer through arbitration." Affirming the trial court's denial of a motion to compel arbitration, the appellate court held the Department could not be required to arbitrate because it did not agree to do so. (*Ibid.*) The *Cisco* court rejected the employer's claim that the Department should be bound because it was a "proxy" for the employee and was "not acting independently." (*Id.* at p. 99.)

Instead, the *Cisco* court explained, the Department acts independently and pursuant to express statutory authority when it sues for violations of the Fair Employment and Housing Act. (*Cisco*, *supra*, 82 Cal.App.5th at pp. 99-100, 103-104, citing *Waffle House*, *supra*, 534 U.S. at p. 291.) "As an independent party, the Department cannot be compelled to arbitrate under an agreement it has not entered." (*Cisco*, at p. 104; see *Crestwood Behavioral Health*, *Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 581-585 [recognizing, following *Waffle House*, that the Labor Commissioner has independent statutory authority to investigate and obtain victim-specific relief under the Labor Code and to protect the public interest, regardless of whether an individual employee's claim has been compelled to arbitration].)

We agree with the analysis in *Maplebear* and *Cisco.* We hold that, under *Waffle House*, the People and the Labor Commissioner are not bound by arbitration agreements they did not enter. The FAA does not preclude them from exercising their statutory authority to enforce the law and to seek appropriate remedies, including injunctive relief and civil penalties, as well as restitution and other "victim-specific judicial relief." (*Waffle House*, *supra*, 534 U.S. at p. 282; *id.* at pp. 285, 297-298.) The trial court correctly so held. As we discuss below, Uber's and Lyft's arguments to the contrary are not persuasive.

b. Viking River *Provides No Basis for Reversal*

Uber and Lyft contend the high court's decision in *Viking River* requires that the People and the Labor Commissioner be bound to Uber's and Lyft's arbitration agreements with their drivers. We disagree. *Vi-*

king River involved a different issue-whether California's rule invalidating waivers of representative claims under PAGA is preempted by federal law. (*Viking River*, *supra*, 596 U.S. at p. __ [142 S.Ct. at p 1913]; see *Adolph v. Uber Technologies*, *Inc.* (2023) 14 Cal.5th 1104, 1113-1114 [discussing *Viking River].*) In this case, the actions brought by the People and the Labor Commissioner are not private attorney general actions under PAGA. The PAGA plaintiff in *Viking River*, a former employee of the defendant, had signed an agreement to arbitrate any dispute arising out of her employment (*Viking River*, at p. __ [142 S.Ct. at pp. 1915-1916]), and the high court did not address any claim that a plaintiff who was a nonsignatory to the agreement should be bound.

Uber and Lyft dwell on language in a footnote in *Viking River* (footnote 4), in which the high court stated that, "[a]lthough the terms of [9 U.S.C.] § 2 limit the FAA's enforcement mandate to agreements to arbitrate controversies that 'arise out of' the parties' contractual relationship,[10] disputes resolved in PAGA actions satisfy this requirement. The contractual relationship between the parties is a but-for cause of any justiciable legal controversy between the parties under PAGA, and 'arising out of' language normally refers to a causal relationship. [Citation.] And regardless of whether a PAGA action is in some sense also a dispute between an employer and the State, nothing in the FAA categorically exempts

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[10] Section 2 of the FAA (9 U.S.C. § 2) states in relevant part: "A written provision in … a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract … ."

claims belonging to sovereigns from the scope of [9 U.S.C.] § 2." (*Viking River*, *supra*, 596 U.S. at p. __, fn. 4 [142 S.Ct. at p. 1919, fn. 4].) This passage, Uber and Lyft tell us, supports their effort to bind the People and the Labor Commissioner to arbitration agreements with their drivers.

We disagree. In our view, the cited passage establishes that, when an employee who has agreed to arbitrate claims against an employer brings a PAGA action, then (even if that action could be said to be a dispute between an employer and the state) the FAA requires that the employee submit to arbitration any claim covered by the agreement, because the claim arises out of the contractual relationship between the parties. (*Viking River*, *supra*, 596 U.S. at p. __, fn. 4 [142 S.Ct. at p. 1919, fn. 4]; *id.* at p. __ [142 S.Ct. at pp. 1915-1916].) As we read it, the passage addresses *which claims* (brought by a plaintiff who was a signatory to an arbitration agreement) are to be submitted to arbitration pursuant to the FAA's mandate. (*Viking River*, at p. __, fn. 4 [142 S.Ct. at p. 1919, fn. 4].) The *Viking River* court did not cite *Waffle House* and did not state it was altering or limiting the holding in that case. And nowhere in footnote 4 or elsewhere in the *Viking River* opinion did the high court state it was addressing or expanding the category of *litigants* who are covered by the FAA's mandate to include public enforcement agencies who did not agree to arbitrate any claims against the employer.

Indeed, as noted above, far from suggesting parties should be bound to arbitrate where they have not agreed to do so, the *Viking River* court emphasized that "the 'first principle' of our FAA jurisprudence" is "that '[a]rbitration is strictly "a matter of consent."'" (*Id.* at p. __ [142 S.Ct. at p. 1918]; accord, *Cisco*, *supra*,

82 Cal.App.5th at p. 103 [noting that *Viking River* "reaffirmed … that arbitration is a matter of consent and a party cannot be compelled to arbitrate absent a contractual basis for concluding the party agreed to do so"].) We reject Uber's and Lyft's argument that *Viking River* supports reversal here.

The other cases cited by Uber and Lyft in support of their preemption argument similarly do not require arbitration by a public enforcement agency that is not a party to an arbitration agreement. Instead, the cited cases involve plaintiffs who agreed to arbitrate certain types of disputes, and the issue raised on appeal was which claims or relief pursued by those plaintiffs were subject to arbitration in light of their agreements and the FAA. (E.g., *Epic Systems Corp. v. Lewis* (2018) 584 U.S. __, __ [138 S.Ct. 1612, 1619-1621] [employee agreed to arbitrate employment-related disputes on an individual basis; FAA required enforcing this agreement and precluding employee's effort to pursue claims in court as representative of a class]; *Cruz v. PacifiCare Health Systems*, *Inc.* (2003) 30 Cal.4th 303, 309-310, 317-318 [consumer-plaintiff was alleged to be bound by arbitration agreement; his request for restitution under the UCL was arbitrable]; *Esparza v. KS Industries*, *L.P.* (2017) 13 Cal.App.5th 1228, 1235, 1239, 1246 [employee-plaintiff agreed to arbitrate employment-related claims and later brought PAGA action; appellate court held that, under then-applicable *Iskanian*[11] framework, the employee's claims for unpaid wages for himself and other employees "retain their private nature and continue

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[11] *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*), overruled in part by *Viking River*, *supra*, 596 U.S. at p. __ [142 S.Ct. at p. 1924].

to be covered by the" FAA].) Uber and Lyft cite no case holding a state government body or official that did not agree to arbitration can be barred from enforcing the law in court based on an arbitration agreement entered by others.

Defendants' reliance on *Preston v. Ferrer* (2008) 552 U.S. 346 is also misplaced. *Preston* held that, "when parties agree to arbitrate all questions arising under a contract, state laws lodging primary jurisdiction in another forum, whether judicial or administrative, are superseded by the FAA." (*Id.* at pp. 349-350.) The *Preston* court distinguished *Waffle House*, noting that in that case, "the Court addressed the role of an agency, not as adjudicator but as prosecutor, pursuing an enforcement action in its own name … ." (*Preston*, at p. 359.) Here, of course, the People and the Labor Commissioner are acting as prosecutors, not adjudicators. *Waffle House*, not *Preston*, controls.

Similarly unpersuasive is Uber's and Lyft's reliance on the statement in *Department of Industrial Relations v. Continental Casualty Co.* (1996) 52 Cal.App.4th Supp. 1, 3, that the Legislature, through Labor Code provisions authorizing the DLSE to collect wages or benefits on behalf of a worker without assignment, "intended to put the DLSE right into the shoes of the worker for the purpose of such wage litigation." Based on this conclusion, the appellate division in *Department of Industrial Relations* held that the DLSE (like a wage earner) was exempt from a statutory notice requirement. (*Ibid.*) The court addressed no question of arbitrability and did not suggest the DLSE or other public agency is bound to an arbitration agreement it did not enter. We decline to read the court's brief, general statement as authority for a proposition it did not consider.

Nor do *Howitson v. Evans Hotels, LLC* (2022) 81 Cal.App.5th 475 and *Department of Fair Employment and Housing v. Lucent Technologies, Inc.* (9th Cir. 2011) 642 F.3d 728, two other cases cited by defendants, persuade us reversal is warranted. Those decisions held, in contexts unrelated to arbitration, that the legislative conferral of standing to sue does not necessarily establish the named plaintiff is the real party in interest. (*Howitson*, at pp. 488-489, 491-492 [in PAGA action, the state is the real party in interest, although an aggrieved employee has standing to sue; therefore, for purposes of claim preclusion, an employee's individual lawsuit and her later PAGA action were not brought by the same party][12]; *Lucent Technologies*, at p. 738 & fn. 4 [while state statute "support[ed] a finding that California is a real party in interest for the purposes of standing," the statutory language "fail[ed] to render it a real party in the controversy for the purposes of [federal] diversity jurisdiction"].) Neither case addresses any issue relating to arbitrability or holds that a public enforcement agency must arbitrate its claims because the relief it obtains may benefit individuals.

c. *Defendants' Efforts To Distinguish* Waffle House *Are Not Persuasive*

In a separate line of attack, Uber and Lyft contend that *Waffle House* is distinguishable, in part because it involved claims for victim-specific relief brought by

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[12] Code of Civil Procedure section 367 ("Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.").

a federal agency,[13] and that *Maplebear* and *Cisco* (which applied the *Waffle House* holding to suits by state government actors) are distinguishable or were incorrectly decided. We reject these arguments and hold *Waffle House* applies here.

It is, of course, true that *Waffle House* involved a federal agency (the EEOC) suing under a federal antidiscrimination statute, the Americans with Disabilities Act (ADA). (*Waffle House*, *supra*, 534 U.S. at pp. 282-283.) But in our view, the court's analysis and holding apply here and establish that a government body exercising express statutory authority to seek judicial relief (including "victim-specific" relief) cannot be barred from doing so on the ground the agency is supposedly a mere "proxy" of an individual employee who entered an arbitration agreement. (*Id.* at pp. 282, 285, 297-298; accord, *Maplebear*, *supra*, 81 Cal.App.5th at pp. 926-927, 934-935; *Cisco*, *supra*, 82 Cal.App.5th at pp. 99-100, 103-104.) As with the agencies in *Waffle House*, *Maplebear*, and *Cisco*, the People and the Labor Commissioner are not parties to the arbitration agreements invoked in this case, and they may pursue their claims in court.

Uber and Lyft argue the statutory schemes at issue here differ in certain respects from the one in *Waffle House*, including as to whether the government agency has an exclusive right to pursue claims and whether it is bound by the same statute of limitations as a private individual. (*Waffle House*, *supra*, 534 U.S. at pp. 291, 287, 297.) But in our view, the *Waffle*

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[13] Uber also states *Waffle House* "predates" the high court's "modern arbitration decisions." *Waffle House* has not been overruled, and we will follow it.

House court's statements on these points do not provide a basis to depart from its holding. Like the EEOC (*id.* at pp. 291-292), the People and the Labor Commissioner decide whether to bring claims within their statutory authority, and their ability to do so does not depend on the consent or approval of individual employees. Despite variations in the statutory schemes at issue, we conclude *Waffle House* applies here. The People and the Labor Commissioner are not acting as proxies for drivers but bringing independent civil enforcement actions, and they are not barred from seeking judicial relief by arbitration agreements they did not enter. (See *id.* at pp. 297-298.)

As to *Maplebear* and *Cisco*, Uber and Lyft contend those cases are distinguishable, in part because the defendants there sought to compel larger portions of the civil enforcement actions to arbitration. But in both cases the relief sought by the public enforcement agencies included restitution or other victim-specific relief (*Maplebear*, *supra*, 81 Cal.App.5th at p. 928; *Cisco*, *supra*, 82 Cal.App.5th at p. 98), and the appellate courts held that no portion of those actions should be compelled to arbitration, because the public prosecutors had not agreed to arbitrate. (*Maplebear*, at pp. 926-927, 935; *Cisco*, at pp. 97, 104.) For the reasons we have discussed, we agree.

d. *The People's and the Labor Commissioner's Exercise of Their Statutory Law Enforcement Authority Does Not Pose an Obstacle to the FAA*

Uber and Lyft argue that, where state agencies are involved, their pursuit of restitution and other statutory remedies that may benefit individual employees should be held to be preempted because such

agency action stands as an "obstacle to the accomplishment of the FAA's objectives." (Citing *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 343, 352.) We do not agree. As discussed, the FAA does not embody a policy in favor of compelling arbitration of disputes in the absence of consent. (*Viking River*, *supra*, 596 at p. __ [142 S.Ct. at p. 1918]; *Waffle House*, *supra*, 534 U.S. at p. 294.)

Uber contends the People's and the Labor Commissioner's pursuit of restitution and similar relief in court will interfere with drivers' arbitration agreements because a judgment in the present action could be preclusive of certain issues in future arbitrations, thus causing drivers to "forever lose the ability to bring their claims in the arbitral forum they agreed to." The People dispute Uber's claim that the present action will have preclusive effect in drivers' individual arbitrations. We need not resolve this point. Even if there could be some future preclusive effect on ongoing or future arbitrations, Uber presents no authority requiring that litigation in court by nonparties to an arbitration agreement must be barred whenever it is possible such litigation could affect an arbitration between signatories to an agreement requiring that form of dispute resolution in their private relations.

Uber also argues that individual drivers cannot avoid arbitration by assigning or transferring their claims to another individual, and Uber asserts "that is exactly what is happening here." Lyft similarly contends that, if a "third party" such as "a successor in interest, assignee, bankruptcy trustee, or class action representative," sought to pursue "a driver's claim for monetary relief," the driver's arbitration agreement "would control." But as discussed, the People and the Labor Commissioner are pursuing their own statutory

claims. They are not assignees or other similarly situated third parties seeking to present claims held by drivers. (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1353 [The "exceptions to the general rule that one must be a party to an arbitration agreement to invoke it or be bound by it 'generally are based on the existence of a relationship between the nonsignatory and the signatory, such as principal and agent or employer and employee, where a sufficient "identity of interest" exists between them.'"].) The People and the Labor Commissioner also are not acting as class representatives as would an employee representing other similarly situated employees. Finally, for the same reason, Uber is incorrect in describing the People and the Labor Commissioner as "nominal part[ies] controlling the litigation of drivers' claims" and as the drivers' "litigation counsel."

Uber suggests in its reply brief that a nonsignatory plaintiff such as the People should be compelled to arbitration without regard to whether the nonsignatory has any relationship with a party to the arbitration agreement, so long as the nonsignatory's claims can be said to arise out of the contract that contains the agreement. In support, Uber cites *Viking River*, *Epic Systems*, and *Concepcion*, but those cases do not support Uber's argument. In each case, the individual plaintiff or plaintiffs bringing a PAGA claim (*Viking River*) or seeking to represent a plaintiff class (*Epic Systems*, *Concepcion*) had entered an arbitration agreement. (*Viking River*, *supra*, 596 U.S. at p. __ [142 S.Ct. at pp. 1915-1916]; *Epic Systems Corp. v. Lewis*, *supra*, 584 U.S. at p. __ [138 S.Ct. at pp. 1619-1621]; *AT&T Mobility LLC v. Concepcion*, *supra*, 563 U.S. at p. 336.) As we have discussed, none of these cases holds that public law enforcement officials must arbitrate their statutory claims when they have not

agreed to do so and have no preexisting relationship with the parties to the arbitration agreement.

Finally, Lyft asserts that state law should not permit public enforcement agencies to bring claims "on behalf of" individual drivers who entered arbitration agreements, because if that is permissible, then state law could similarly "deputize" a private citizen to bring suit on behalf of a person who has agreed to arbitration, a result that Lyft contends would run afoul of the California Supreme Court's decision in *Iskanian*, *supra*, 59 Cal.4th 348. That argument is not well taken.

In the relevant passage from *Iskanian* (which Lyft quotes only in part), the court explained that its holding on the PAGA issues raised there "would not permit a state to circumvent the FAA by, for example, deputizing employee A to bring a suit for the individual damages claims of employees B, C, and D. This pursuit of victim-specific relief *by a party to an arbitration agreement* on behalf of *other parties to an arbitration agreement* would be tantamount to a private class action, whatever the designation given by the Legislature." (*Iskanian*, *supra*, 59 Cal.4th at pp. 387-388, italics added.) "Under [the high court's decision in] *Concepcion*, such an action could not be maintained in the face of a class waiver." (*Id.* at p. 388.)

The *Iskanian* court's statement that the state could not designate a party to an arbitration agreement to pursue the individual damages claims of other parties to the agreement has no bearing on the issues presented here. As discussed, the People and the Labor Commissioner are not parties to the arbitration agreements who have been improperly "deputize[d]" to bring suit for other such parties. They are nonpar-

ties to the agreements who are suing in their law enforcement capacities and pursuing statutorily authorized remedies. That Lyft can imagine a different scenario that might violate the FAA provides no basis for reversal here.

Underlying Uber's and Lyft's preemption arguments is their assertion that the People's and the Labor Commissioner's claims in these actions (to the extent they seek restitution or other relief that may benefit individual drivers) are really the "drivers' claims" or claims that "belong to drivers." We have rejected this argument. As discussed, the People and the Labor Commissioner are authorized by statute to bring the claims at issue here and to seek the relief they request. The fact some of that relief might benefit individual drivers (or could be sought by individual drivers on their own behalf) does not transform the claims brought here into derivative claims brought by a proxy for the drivers.

2. Equitable Estoppel

Uber and Lyft argue that, apart from federal preemption, the People and the Labor Commissioner are bound by the drivers' arbitration agreements based on equitable estoppel. Here, too, we disagree. The trial court correctly held there is no basis for equitable estoppel on this record.

a. *Equitable Estoppel Does Not Apply*

As we have discussed, the general rule is that "'[t]he right to arbitration depends on a contract, and a party can be compelled to submit a dispute to arbitration only if the party has agreed in writing to do so.' [Citation.] 'Even the strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement or who have not

authorized anyone to act for them in executing such an agreement.'" (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 300 (*Jensen*).) But as also noted above, "there are circumstances under which persons who have not signed an agreement to arbitrate are bound to do so," including "'"estoppel."'" (*Ibid*.)

Specifically, "[a] nonsignatory plaintiff may be estopped from refusing to arbitrate when he or she asserts claims that are 'dependent upon, or inextricably intertwined with,' the underlying contractual obligations of the agreement containing the arbitration clause. [Citation.] 'The focus is on the nature of the claims asserted … . [Citations.] That the claims are cast in tort rather than contract does not avoid the arbitration clause.' [Citation.] Rather, '"[*t*]*he plaintiff's actual dependence on the underlying contract in making out the claim against the nonsignatory … is … always the* sine qua non *of an appropriate situation for applying equitable estoppel*."' [Citation.] '[E]ven if a plaintiff's claims "touch matters" relating to the arbitration agreement, "the claims are not arbitrable unless the plaintiff relies on the agreement to establish its cause of action."' [Citation.] 'The fundamental point' is that a party is 'not entitled to make use of [a contract containing an arbitration clause] as long as it worked to [his or] her advantage, then attempt to avoid its application in defining the forum in which [his or] her dispute … should be resolved.'" (*Jensen*, *supra*, 18 Cal.App.5th at p. 306; accord, *DMS Services, LLC v. Superior Court*, *supra*, 205 Cal.App.4th at p. 1354 ["The reason for this equitable rule is plain: One should not be permitted to rely on an agreement containing an arbitration clause for its claims, while at the same time repudiating the arbitration provision contained in the same contract."].)

The trial court correctly concluded equitable estoppel does not apply here because the People's and the Labor Commissioner's claims are not founded on Uber's and Lyft's contracts with their drivers. Instead, as the court recognized, the People and the Labor Commissioner are seeking to enforce the UCL and the Labor Code and are not seeking to enforce or take advantage of any portion of Uber's and Lyft's contracts with their drivers. Indeed, as the court noted, the People and the Labor Commissioner "take the position that those contracts violate California law requiring Defendants to classify their drivers as employees."

As defendants note, the People's and the Labor Commissioner's complaints refer to certain provisions of the contracts between defendants and their drivers in outlining the nature of their relationship. But referring to the contract is not sufficient; for equitable estoppel to apply, the plaintiff must rely on the contract in asserting its claims. (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 218.) Plaintiffs here seek no relief under the contracts, and their claims do not rely on them.

The cases cited by defendants do not persuade us that equitable estoppel applies. For example, the present case is different from *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1239-1240, on which both defendants rely for the principle that a nonsignatory plaintiff may in some instances be bound to arbitrate under principles of equitable estoppel. *JSM Tuscany* involved a group of closely related plaintiffs under common ownership, some of whom were signatories to the contracts that contained the arbitration agreements, and all of whom brought claims that were based on obligations imposed by

those contracts. (*Id.* at pp. 1239-1242, 1226 & fn. 2.) Here, there is no preexisting relationship between the People and the Labor Commissioner on the one hand, and the drivers who agreed to arbitrate on the other.[14] And in any event, as discussed, neither plaintiff presents claims that depend on, or are inextricably intertwined with, the obligations imposed by defendants' contracts with their drivers. We decline to hold the doctrine of equitable estoppel bars government law enforcement actions in these circumstances.

Nor does *Garcia v. Pexco, LLC* (2017) 11 Cal.App.5th 782, also cited by defendants, persuade us it would be inequitable for the People's and the Labor Commissioner's actions to proceed in court. In *Garcia*, an employee bound by an arbitration agreement with his employer, a staffing company (Real Time), brought statutory wage claims against the staffing agency and the company where the employee had been assigned to work (Pexco), making "no distinction" between them. (*Id.* at pp. 784-785.) Because

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[14] See *Jensen*, *supra*, 18 Cal.App.5th at p. 301 ("'The California cases binding nonsignatories to arbitrate their claims fall into two categories. In some cases, a nonsignatory was required to arbitrate a claim because a benefit was conferred on the nonsignatory as a result of the contract, making the nonsignatory a third party beneficiary of the arbitration agreement. In other cases, the nonsignatory was bound to arbitrate the dispute because a preexisting relationship existed between the nonsignatory and one of the parties to the arbitration agreement, making it equitable to compel the nonsignatory to also be bound to arbitrate his or her claim.'"); see also *JSM Tuscany, LLC v. Superior Court*, supra, 193 Cal.App.4th at p. 1240, fn. 20 ("[I]t is difficult to conceive of a situation in which a nonsignatory party can state a valid claim based on the contract, without having some legal relationship with a signatory of the contract or being a third party beneficiary of the contract.").

the claims arose out of the plaintiffs employment relationship with Real Time, and the arbitration agreement clearly covered statutory claims against Real Time (*id.* at pp. 786-788), the appellate court held that, "[o]n these facts, it is inequitable for the arbitration about Garcia's assignment with Pexco to proceed with Real Time, while preventing Pexco from participating" (*id.* at p. 787). We find no similar inequity here, where the plaintiffs have not agreed to arbitrate with anyone and do not seek an "'advantage'" (*Jensen*, *supra*, 18 Cal.App.5th at p. 306) under an employment contract while ignoring its arbitration clause, but instead seek statutory remedies for defendants' allegedly wrongful refusal to treat their drivers as employees.

Finally, in *Machado v. System4 LLC* (2015) 471 Mass. 204, 210, 212-216, 205 [28 N.E.3d 401], cited by defendants, the court held equitable estoppel applied where plaintiff franchisees brought misclassification and other claims against two defendants, one of whom was not a party to the arbitration agreement signed by the plaintiffs. The court concluded that the franchise agreement was significant to the plaintiffs' claims, and that the plaintiffs had alleged "concerted misconduct" by the defendants. (*Id.* at pp. 212-216.) We are not persuaded a similar result is appropriate here. In addition to the differing factual settings (including that the plaintiffs here are not signatories to any arbitration agreement), we conclude, as discussed, that the misclassification claims asserted in this case are not "dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of" Uber's and Lyft's contracts with their drivers. (*Goldman v. KPMG*, *LLP*, *supra*, 173 Cal.App.4th at p. 218.)

b. *Application of Equitable Estoppel Is Unwarranted*

We also agree with the trial court that equitable estoppel does not apply here because, under California law, as our Supreme Court has stated, "it is clear 'that neither the doctrine of estoppel nor any other equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public.'" (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 316, citing *County of San Diego v. Cal. Water etc. Co.* (1947) 30 Cal.2d 817, 826.) The trial court may have overstated the point a bit in suggesting that, if the People and the Labor Commissioner were forced into arbitration, it "would *nullify* the important public policies underlying the UCL and the Labor Code." (Italics added.) But we do think the result sought by Uber and Lyft here would fundamentally undermine those policies. Semantics aside, we agree with the trial court that the outcome Uber and Lyft urge would "effectively negate" *Waffle House* and the other case law we have discussed above establishing that an arbitration agreement between private parties does not bar a public enforcement agency from seeking judicial relief, including victim-specific relief. Thus, even if the elements of equitable estoppel were otherwise established, we would decline to apply it here.

Uber asserts that only the remedies of injunctive relief and civil penalties serve "a public function," while restitution "is mainly about restoring property to those owed." This argument does not persuade us equitable estoppel should apply here. We note initially that, under the orders sought by defendants,

even the People's and the Labor Commissioner's requests for injunctive relief and civil penalties would be stayed pending completion of any ordered arbitrations. But in any event, we do not agree that an effort by public enforcement officials to obtain restitution of money allegedly taken illegally from citizens can be fairly characterized as not serving a public purpose in the context of the equitable estoppel issue raised here. The Legislature decided to include restitution as a remedy obtainable by public prosecutors under the UCL (along with injunctive relief and civil penalties) (Bus. & Prof. Code, §§ 17203, 17204, 17206), and we decline to hold that they actually act as surrogates for private parties when they seek it.

The defendants' reliance on *State of California v. Altus Finance* (2005) 36 Cal.4th 1284 (*Altus Finance*) is similarly unpersuasive. In *Altus Finance*, the Supreme Court held that, under applicable Insurance Code provisions, when the Insurance Commissioner is acting as conservator of an insolvent insurance company, the Commissioner has the exclusive right to protect the interests of individual policyholders and creditors. (*Id.* at pp. 1303-1305.) In that context, the Attorney General may not seek restitution for the benefit of creditors under the UCL "without trespassing on the Commissioner's role." (*Altus Finance*, at p. 1306; see *id.* at pp. 1303-1304, 1307.) In contrast, the Insurance Code does not preclude the Attorney General in a UCL action from pursuing public injunctive relief or civil penalties payable to the state. (*Altus Finance*, at pp. 1307-1308.)

The *Altus Finance* court explained: "It is true that the Attorney General is the state's chief law enforcement officer, and that restitution may have a collateral law enforcement effect, punishing the wrongdoer

against whom restitution is sought. But the primary purpose of the Attorney General's attempt at restitution is to recover lost property on behalf of an insolvent insurer's creditors and policyholders. As such, he seeks to perform an action that is quintessentially within the scope of the Commissioner's power as conservator and trustee of the insolvent company." (*Altus Finance*, *supra*, 36 Cal.4th at p. 1305.) In this case, by contrast, there is no conflict between spheres of authority conferred on different public officers. Nor is there anything in the governing statutory text that we might compare to the limit on law enforcement power involved in *Altus Finance*. While that case involved an Insurance Code provision that established an "express limit" on the authority of the Attorney General to seek restitution (*Altus Finance*, *supra*, 36 Cal.4th at p. 1303), there is no comparable provision here that limits the relief obtainable by the People under the UCL, and there is nothing that persuades us the available types of relief should be treated differently for purposes of the equitable estoppel analysis.

C. Other Issues: Defendants' Requests for Orders Staying or Striking Portions of These Actions

1. The Stay Requests

Since we conclude there is no basis to compel arbitration of any of the People's or the Labor Commissioner's claims or requests for relief, we need not address Uber's and Lyft's arguments that, if some claims were compelled to arbitration, the other portions of these actions (the portions that are not arbitrable) should be stayed pending completion of the individual arbitrations.

2. Lyft's Motion to Strike

As noted, Uber's and Lyft's motions to compel arbitration included alternative requests that the trial court strike plaintiffs' complaints to the extent they sought restitution and certain other relief. In its order denying the motions to compel, the trial court denied the alternative motions to strike.

Lyft renews its request on appeal,[15] arguing briefly that, if this court does not compel arbitration, it should "strike the driver-specific remedies that are subject to arbitration," to "avoid creating a conflict with the FAA," because such remedies are arbitrable as between Lyft and its drivers. Even assuming the denial of Lyft's motion to strike is reviewable in this appeal under Code of Civil Procedure section 1294.2[16] (which the People dispute), we find no basis to strike the assertedly "preempted" remedies. For the reasons we discussed in part II.B.1, *ante*, the People's and the Labor Commissioner's requests for judicial relief, including victim-specific relief, are not preempted.

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[15] Uber does not challenge the denial of its motion to strike.

[16] Code of Civil Procedure section 1294.2 provides in part that, "[u]pon an appeal from" an order denying a motion to compel arbitration, "the court may review the decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the order or judgment appealed from, or which substantially affects the rights of a party."

III. DISPOSITION

The order denying Uber's and Lyft's motions to compel arbitration of, and to stay, the People's and the Labor Commissioner's actions is affirmed. The People and the Labor Commissioner shall recover their costs on appeal.

STREETER, J.

WE CONCUR:

BROWN, P.J.
FINEMAN, J.*

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* Judge of the Superior Court of California, County of San Mateo, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX C

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 304

COORDINATION PROCEEDING SPECIAL TITLE [RULE 3.550]	
UBER TECHNOLOGIES WAGE AND HOUR CASES	Case No. CJC-21-005179
THIS ORDER RELATES TO:	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 5179
People of the State of California v. Uber Technologies, Inc., et al., No. CGC-20-584402 (San Francisco Super. Ct.)	ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION OF THE PEOPLE'S AND LABOR COMMISSIONER'S CASES
Garcia-Brower v. Uber Technologies, Inc., et al., No. RG20070281 (Alameda County Super. Ct.)	Sept. 1, 2022
Garcia-Brower v. Lyft, Inc., et al., No.RG20070283 (Alameda County Super. Ct.)	

Defendants' motions to compel arbitration of the People's and the Labor Commissioner's cases and to stay, and Defendants' alternative motions to strike, came on for hearing before the Court on August 26, 2022. All parties appeared through their counsel of record. The matter was reported. For the following reasons, the Court denies Defendants' motions in their entirety.

PROCEDURAL BACKGROUND

In these coordinated actions, Plaintiffs allege that Uber and Lyft misclassified passenger drivers and/or food delivery drivers as independent contractors under the "ABC" worker-classification test established by Assembly Bill No. 5 (A.B. 5), which took effect on January 1, 2020. This order concerns three of the actions brought by governmental plaintiffs: one brought by the People of the State of California (the People), represented by the Attorney General and the City Attorneys of San Francisco, Los Angeles, and San Diego; and two separate enforcement actions brought by the Labor Commissioner through the Division of Labor Standards and Enforcement (DLSE).[1] Those actions seek injunctive relief, restitution, and penalties under the Private Attorneys General Act of 2004, Lab. Code § 2698 *et seq.* (PAGA), the Labor Code, and the Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.* (UCL).

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[1] The DLSE is a division within the California Department of Industrial Relations, which in tum is a department within the California Labor and Workforce Development Agency ("LWDA"). This Order uses the terms "DLSE" and the "Labor Commissioner" interchangeably.

Defendants Uber and Lyft filed motions to compel arbitration in each of the cases before they were included in this coordinated proceeding. Lyft also filed an alternative motion seeking to strike Plaintiffs' requests for restitution, arguing that even if Plaintiffs may not be compelled to arbitrate under agreements to which they are not parties, it nevertheless would be improper for the government to seek such "driver-specific relief' because it is arbitrable as between Defendants and their drivers, as well as an alternative motion to stay. In their motions, Defendants generally argue that although the People and the Commissioner are not parties to Defendants' arbitration agreements with their drivers, Plaintiffs' claims arise out of those agreements, and the restitutionary relief they seek will be paid directly to the drivers. Thus, both Defendants' motions to compel arbitration in the People's case are limited to the People's claim for restitution under the UCL, which Defendants characterize as "individualized" relief. Defendants moved to compel arbitration of the Labor Commissioner's separate enforcement actions or, in the alternative, to strike on the same grounds.

Defendants have now renewed those motions here. The People and the Labor Commissioner oppose the motions.

By stipulation and order filed July 6, 2022, the Court permitted extensive supplemental briefing on the motions to address the U.S. Supreme Court's decision in *Viking River Cruises v. Moriana* (2022) 142 S.Ct. 1906, as well as other recent authority.

DISCUSSION

I. Controlling Precedent Mandates Denial Of Defendants' Motions To Compel The People And The Commissioner To Arbitrate Their Claims Under Private Arbitration Agreements To Which They Are Not Parties.

Although the parties have spilled a great deal of ink addressing the issues presented by these motions, they are readily resolved. It is undisputed that neither the People nor the Commissioner is a party to any of the arbitration agreements with Defendants' drivers that serve as the basis for Defendants' motions. Further, the People and the Commissioner act as public prosecutors when they pursue litigation to enforce the UCL and the Labor Code, and each is independently empowered to seek civil penalties, injunctive relief, and other remedies to vindicate the public interest. As such, they are independent of Defendants' drivers, and cannot be bound by Defendants' private arbitration agreements with those persons. Under controlling authority, Defendants' motions must be denied. (*E.E.O.C. v. Waffle House*, *Inc.* (2002) 534 U.S. 279; *Department of Fair Employment and Housing v. Cisco Systems*, *Inc.* (Aug. 5, 2022) 2022 WL 3136003; *People v. Maplebear Inc.* (July 28, 2022) 81 Cal.App.5th 923, 2022 WL 2981169.)

Maplebear is indistinguishable. There, the San Diego City Attorney brought an enforcement action on behalf of the People against Maplebear dba Instacart. The People alleged that Instacart unlawfully misclassified its employees (referred to as "Shoppers") as independent contractors, and asserted one cause of action under the UCL alleging Instacart's misclassification of workers was unlawful under the Labor Code

and an unfair business practice. In the complaint's prayer for relief, the People sought civil penalties authorized by the UCL, injunctive relief requiring Instacart to properly classify its employees, and restitution to the misclassified employees for unpaid wages, overtime, and rest breaks, missed meals, and reimbursement for expenses necessary to perform the work. (2022 WL 2981169 at *2.)[2] In response, "Instacart filed a motion to compel a portion of the People's case—the prayers for injunctive relief and restitution—to arbitration based on its agreements with Shoppers." (*Id.* (footnote omitted).) The trial court denied the motion, concluding Instacart had not met its burden to show the existence of a valid agreement to arbitrate between it and the People. (*Id.* at *3.) On appeal, Instacart asserted that "its agreements with Shoppers required the court to compel arbitration of the claims here because the City of San Diego's lawsuit is brought primarily to effectuate the rights of the Shoppers, whom Instacart characterizes as the real parties in interest." (*Id.*)

The Court of Appeal disagreed and affirmed the trial court's order denying the motion to compel arbitration. As the court noted, Instacart conceded that the City was not a signatory to its arbitration agreements with Shoppers. (*Id.* at *4.) Instacart argued, however, that "the City is bound by the agreements

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[2] Defendants attempt to distinguish *Maplebear* on the ground that it focused "primarily" on the injunctive relief claim. However, nothing in the holding of that case turned on the "primary" relief sought by the People, nor would such a test be workable in practice. Significantly, the court there specifically rejected Instacart's request to compel only "a portion of the People's case" to arbitration-precisely the relief Defendants seek here.

because it is, in effect, representing, or seeking to validate the individual employment law rights of, the Shoppers," who it asserted were the real parties in interest in the case. (*Id.*) As a result, Instacart argued that "the City's injunctive relief and restitution claims here are private claims of the Shoppers that must be compelled to arbitration." (*Id.*) The court disagreed. As it explained, "[t]he People are not deputized by the UCL to vindicate the individual rights of Instacart's Shoppers. Rather, the City of San Diego is acting in its own law enforcement capacity 'to seek civil penalties for Labor Code violations traditionally prosecuted by the state.'" (*Id.* at *6, quoting *Iskanian v. CLS Transportation Los Angeles*, *LLC* (2014) 59 Cal.4th 348, 388.) In light of that independent authority, the court squarely rejected Instacart's contention that the Shoppers were the "real parties in interest" in the case: "Contrary to Instacart's assertion, the Shoppers are not the real party in interest in this case, the People are." (*Id.* (footnote omitted).)

The court followed *E.E.O.C. v. Waffle House*, *Inc.* (2002) 534 U.S. 279, which it found to be "the relevant binding authority." (*Id.*)[3] In *Waffle House*, the High Court held that an agreement between an employer and an employee to arbitrate employment-related disputes does not bar the EEOC from pursuing victim-specific judicial relief, such as backpay, reinstatement and damages, in an enforcement action alleging that the employer violated federal law, the Americans with Disabilities Act. The Court of Appeals had attempted to draw the same distinction that Defendants urge

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[3] In view of that language, Defendants' insistence that *Waffle House* is "irrelevant" is unavailing.

here between injunctive and victim-specific relief, ruling that the EEOC is barred from obtaining the latter. (*Id.* at 290.) The Supreme Court reversed, holding "whenever the EEOC chooses from among the many charges filed each year to bring an enforcement action in a particular case, the agency may be seeking to vindicate a public interest, not simply provide make-whole relief for the employee, *even when it pursues entirely victim-specific relief*." (*Id.* at 295 (emphasis added.)) That an employee has signed a mandatory arbitration agreement does not limit the remedies available to the EEOC or "authorize the courts to balance the competing policies of the ADA and the FAA or to second-guess the agency's judgment concerning which of the remedies authorized by law that it shall seek in any given case." (*Id.* at 297.)

The *Maplebear* court found *Waffle House* to be squarely on point. (81 Cal.App.5th at *6.) As it explained,

> Like the EEOC in *Waffle House*, the City is indisputably not a party to any arbitration agreement with Instacart. No individual shopper has control over this litigation and the City did not need any individual Shopper's consent to bring the action. Like the EEOC, the City is in command of the process and controls both the litigation strategy and disposition of any recovery obtained for the employees. Just like the statutory authorization that gives the EEOC authority to pursue discrimination cases against employers, even where parallel private statutory claims may also lie, the UCL provides the City of San Diego with the same type of independent authority to assert UCL claims, including claims to enjoin

> unlawful and unfair business practices and obtain restitution for those who have been harmed by those practices.
>
> Further, as the trial court found, the City's claims for civil penalties and injunctive relief seek to vindicate public harms. That the complaint also includes victim-specific restitution does not make the case private in nature. Rather, as *Waffle House* held, a government enforcement action that includes monetary relief for the victims of the unlawful activity advances a public purpose because while punitive damages benefit the individual employee, they also serve an obvious public function in deterring future violations.
>
> In addition, California courts have consistently held that the primary interest of law enforcement actions under the UCL is protecting the public, not private interests.

(*Id.* at *7-*8 (cleaned up).)

Maplebear also rejected Instacart's reliance on the *Broughton-Cruz* rule, which Lyft raised at the hearing. In *Maplebear*, Instacart argued that "the People's UCL claims for restitution, employee reclassification, and an injunction requiring Instacart to comply with the Labor Code are private in nature, and any benefits to the public from that relief are merely incidental, and therefore the claims are arbitrable." (*Id.* at *9 (cleaned up).) The court found that "the premise of this argument is flawed because it is based on rules that apply where the plaintiff entered an arbitration agreement with the defendant and the relief sought is private. The *Broughton-Cruz* rule—which precludes arbitration of injunctive relief claims that benefit the

public and requires arbitration of claims seeking restitution and injunctive relief which primarily benefits the individual plaintiff—do[es] not apply here, where there is no agreement between the parties to arbitrate and the case is a law enforcement action brought for public benefit." (*Id.* (footnote omitted).)

Finally, for the same fundamental reason, the court rejected Instacart's claim that the trial court's order must be reversed "because it creates a new exception to the FAA for law enforcement actions," characterizing its framing of the issue as erroneous. "As discussed, the FAA requires courts to enforce arbitration agreements. … The FAA does not require courts to expand the contours of the agreement to compel non-parties, here the government, to arbitration." (*Id.* at *9.)

Even more recently, in *Department of Fair Employment and Housing v. Cisco Systems*, *Inc.* (Aug. 5, 2022) 2022 WL 3136003, the Sixth District Court of Appeal reached precisely the same result, holding that the Department of Fair Employment and Housing cannot be compelled to arbitrate an employment discrimination lawsuit when the affected employee agreed to resolve disputes with the employer through arbitration because the Department did not agree to do so. Just as in *Maplebear*, the court emphasized that "[a]s the public arm of the enforcement procedure, the Department acts independently when it sues for FERA violations." (*Id.* at *3 (footnote omitted).) "The ability to decide whether to file an action and the ability to pursue relief separate from what can be obtained by an employee confirm that the Department operates as an independent party in an enforcement lawsuit," not merely as the employee's "proxy." (*Id.*,

citing *Waffle House*, 534 U.S. at 291.) Even if the employee is a "real party in interest" because the Department seeks at least some remedies for the employee, "it does not undermine or conflict with the Department having an independent interest in FERA enforcement." (*Id.*) In short,

> The Department acts independently when it exercises the power to sue for FERA violations. As an independent party, the Department cannot be compelled to arbitrate under an agreement it has not entered.

(*Id.* at *5.) The court also noted that its reasoning was consistent with decisions by the Ninth Circuit Court of Appeals and other states declining to require administrative enforcement agencies to arbitrate without their consent. (*Id.*; see also *Crestwood Behavioral Health*, *Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 581-585 [recognizing, following *Waffle House*, that Labor Commissioner has independent statutory authority to investigate and obtain victim-specific relief under the Labor Code and to protect the public interest, regardless of whether the individual employee's claim has been compelled to arbitration].)

These cases constitute binding precedent and are dispositive of Defendants' motions.[4] Here, precisely as

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[4] Uber's reliance on a decision by another department of this Court in *People v. Doordash*, *Inc.*, No. CGC-20-584789, is improper. Trial court orders have no precedential value. (*Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 761.) In any event, that ruling addressed a different issue: whether the People were barred by res judicata from seeking restitution under the UCL on behalf of drivers who had entered into a class action settlement releasing the same claims. It did not involve a motion to compel arbitration, nor did it hold that the People may be bound by private arbitration agreements to which they are not parties.

in these cases, it is undisputed that the People and the Commissioner are not parties to Defendants' private arbitration agreements with their drivers. Further, both the People and the Commissioner have independent statutory authority to file suit to enforce the UCL and the Labor Code, which furthers the public interests in those statutory schemes. It follows that they may not be compelled to arbitrate their claims under agreements they did not enter, regardless of whether they are seeking relief that will redound to the drivers' benefit.

Defendants criticize these cases as incorrectly decided, although they correctly recognize they are binding on this Court. Their efforts to distinguish or avoid them are unpersuasive. Only one warrants brief discussion here.

Defendants argue that arbitration is compelled by the FAA and *Viking River*. But both *Maplebear* and *DFEH* squarely rejected that argument. After the Court of Appeal issued its original opinion in *Maplebear*, it granted rehearing and vacated that opinion to consider *Viking River*. After doing so, however, it reissued its original opinion essentially unchanged, adding a footnote explaining that "[b]ecause this case does not concern PAGA claims and because the City of San Diego is not a party to Instacart's arbitration agreement with its Shoppers, *Viking River* has no impact on this appeal." (81 Cal.App.5th *6 at fn. 4.) Similarly, the DFEH court made clear that *Viking River* "reaffirmed, consistent with what we say here, that arbitration is a matter of consent and a party cannot be compelled to arbitrate absent a contractual basis for concluding the party agreed to do so." (2022 WL 3136003, at *4; see *Viking River*, 142

S.Ct. at 1923 ["The most basic corollary of the principle that arbitration is a matter of consent is that a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration. This means that parties cannot be coerced into arbitrating a claim, issue, or dispute absent an affirmative contractual basis for concluding that the party *agreed* to do so." (cleaned up; emphasis original)].) The same conclusion follows inescapably here.

Finally, Defendants make the alternative argument that the People and the Labor Commissioner may be required to arbitrate their restitution claims under the equitable estoppel doctrine. "Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it. The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration." (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763 (cleaned up).) "However, both California and federal courts have recognized limited exceptions to this rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement." (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1352-1353.)

Under the equitable estoppel doctrine, as summarized in Defendants' authorities, "a nonsignatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate its claims when the cause of action against the nonsignatory are intimately founded in and intertwined with the underlying contract obligations." (*Alliance Title Co., Inc. v.*

Boucher (2005) 127 Cal.App.4th 262,271 (cleaned up); see also, e.g., *JSM Tuscany*, *LLC v. Superior Court* 193 Cal.App.4th 1222, 1237 [same].) The instant motions present the obverse situation: Defendants, who are signatories of the arbitration agreements with their drivers, are seeking to compel the People and the Labor Commissioner, *nonsignatory* strangers to those agreements, to arbitrate their claims. (See, e.g., *Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 307 [criticizing moving defendant for conflating "two separate and distinct issues" of whether a signatory plaintiff's claims sufficiently relate to or arise from a contract as to fall within the scope of the arbitration clause and "whether a *nonsignatory* plaintiff's claims are so dependent on and inextricably intertwined with the underlying contractual obligations of the agreement containing the arbitration clause that equity requires those claims to be arbitrated"].) For at least two reasons, even if the doctrine could properly be applied against a nonsignatory under certain narrow circumstances, this is not such a case.

First, as the People and the Labor Commissioner correctly observe, their claims under the UCL and the Labor Code are hot founded in Defendants' contracts with their drivers. "The reason for this equitable rule is plain: One should not be permitted to rely on an agreement containing an arbitration clause for its claims, while at the same time repudiating the arbitration provision contained in the same contract." (*DMS Services*, *LLC*, 205 Cal.App.4th at 1354.) Merely "making reference to" an agreement with an arbitration clause is not enough. (*Goldman v. KPMG*, *LLP* (2009) 173 Cal.App.4th 209, 218.) Here, the People and the Labor Commissioner are "only seeking to enforce the UCL" and the Labor Code, and are "clearly not seeking to enforce or otherwise take advantage of

any portion" of Defendants' contracts with their drivers"; indeed, they take the position that those contracts violate California law requiring Defendants to classify their drivers as employees. (*UFCW & Employers Benefit Trust v. Sutter Health* (2015) 241 Cal.App.4th 909, 929.) "The doctrine of equitable estoppel has no application." (*Id.*; see also *Stafford v. Rite Aid Corporation* (9th Cir. 2020) 998 F.3d 862, 866-867 [equitable estoppel did not require pharmacy customer who filed putative class action under UCL and CLRA alleging that pharmacy fraudulently inflated reported prices of prescription drugs to insurance companies to submit claims to arbitration under pharmacy's contracts with pharmacy benefits managers, where plaintiff was not seeking damages for breach of those contracts]; *Namisnak v. Uber Technologies*, *Inc.* (9th Cir. 2020) 971 F.3d 1088, 1095 [plaintiffs' claims under the ADA were fully viable without reference to Uber's Terms and Conditions, which contained arbitration clause, so equitable estoppel did not apply]; *Jensen*, 18 Cal.App.5th at 295 [affirming denial of motion to compel arbitration where "plaintiffs do not rely or depend on the terms of the rental agreement … in asserting their claims," which are "fully viable" without reference to the terms of that agreement].)

Second, it is long been the law in California that "neither the doctrine of estoppel nor any other equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public." (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority* (2000) 23 Cal.4th 305, 316, quoting *San Diego County v. California Water & Tel. Co.* (1947) 30 Cal.2d 817, 826.) Here, applying the doctrine of equitable estoppel to preclude the People

and the Labor Commissioner from litigating their unfair business practice and Labor Code claims would nullify the important public policies underlying the UCL and the Labor Code, and would effectively negate the controlling body of authority discussed above.

CONCLUSION

For the foregoing reasons, Defendants' motions to compel arbitration and to stay as to the People's and the Labor Commissioner's cases, and their alternative motions to strike, are denied.

IT IS SO ORDERED.

/s/ Ethan P. Schulman
Ethan P. Schulman
Judge of the Superior Court

Dated:
September 1, 2022

APPENDIX D

Platform Access Agreement

Updated as of January 6, 2020

This Platform Access Agreement (this "*PAA*") is by and among you and your company/business ("*you*") and the following entity as applicable, based on the region specified: Uber Technologies, Inc. in California; Rasier-PA, LLC in Pennsylvania; Rasier-DC, LLC in Florida; Rasier-MT, LLC in Montana; Rasier-NY, LLC in New York; and Rasier, LLC in all other U.S. states, territories and possessions (collectively, "*Uber*"). This PAA governs your access to our Platform (defined below) which facilitates your provision of rideshare or peer-to-peer transportation service (collectively, "P2P Service") to account holders seeking to access certain types of P2P Service ("*Riders*") for themselves and/or their guests. For the sake of clarity and depending on the context, references to "Uber," "*we*," "*our*" and "*us*" may also refer to the appropriate Uber-affiliated contracting entity accordingly or Uber collectively.

Access to our technology platform includes access to our technology application (the "*Driver App*") that, amongst other things, facilitates P2P Service between you and Riders; as well as websites and all other associated services, including payment and support services, provided by Uber, its affiliates or third parties (collectively, our "*Platform*").

Your access to our Platform is also governed by the applicable terms found on our website, including without limitation, the Community Guidelines, Referral Policies, other applicable Uber standards and policies

(including, without limitation, Uber's safety standards, the accessibility policies and U.S. Service Animal Policy) and, except as provided in Section 12.9 below, any other agreements you have with us (including those related to how you choose to interact with our Platform, the services you choose to provide and where you chose to provide them) (collectively with this PAA, this "*Agreement*"), which are incorporated by reference into this Agreement. By accepting this Agreement, you confirm that you have read, understand and accept the provisions of this Agreement and intend to be bound by this Agreement. This Agreement is effective as of the date and time you accept it.

1. Relationship with Uber

1.1. Contracting Parties. The relationship between the parties is solely as independent business enterprises, each of whom operates a separate and distinct business enterprise that provides a service outside the usual course of business of the other. This is not an employment agreement and you are not an employee. You confirm the existence and nature of that contractual relationship each time you access our Platform. We are not hiring or engaging you to provide any service; you are engaging us to provide you access to our Platform. Nothing in this Agreement creates, will create, or is intended to create, any employment, partnership, joint venture, franchise or sales representative relationship between you and us. You have no authority to make or accept any offers or representations on our behalf.

1.2. Your Choice to Provide P2P Service to Riders. We do not, and have no right to, direct or control you. Subject to Platform availability, you decide when, where and whether (a) you want to offer P2P Service facilitated by our Platform and (b) you

want to accept, decline, ignore or cancel a Ride (defined below) request; provided, in each case, that you agree not to discriminate against any potential Rider in violation of the Requirements (defined below). Subject to your compliance with this Agreement, you are not required to accept any minimum number of Rides in order to access our Platform and it is entirely your choice whether to provide P2P Service to Riders directly, using our Platform, or using any other method to connect with Riders, including, but not limited to other platforms and applications in addition to, or instead of, ours. You understand, however, that your Riders' experiences with your Rides, as determined by Rider input, may affect your ability to access our Platform or provide Rides.

2. Our Platform

2.1. General. While using our Driver App, you may receive lead generation and other technology-based services that enable those operating independent business enterprises like you to provide P2P Service requested by Riders ("*Rides*"). Subject to the terms and conditions of this Agreement, Uber hereby grants you a non-exclusive, non-transferable, non-sublicensable, non-assignable license, during the term of this Agreement, to use our Platform (including the Driver App) solely for the purpose of providing Rides and accessing services associated with providing Rides.

2.2. Compliance.

(a) You are responsible for identifying, understanding, and complying with (i) all laws (including, but not limited to, the Americans with Disabilities Act and applicable laws governing your collection, use, disclosure, security, processing and transfer of

data), rules and regulations that apply to your provision of Rides (including whether you are permitted to provide P2P Service at all) in the jurisdiction(s) in which you operate (your "*Region*") and (ii) this Agreement (collectively, the "*Requirements*"). Subject to applicable law, you are responsible for identifying and obtaining any required license (including driver's license), permit, or registration required to provide any P2P Service that you provide using our Platform. Notwithstanding anything to the contrary in this Agreement, for the avoidance of doubt, your ability to access and use our Platform is at all times subject to your compliance with the Requirements. You agree not to access or attempt to access our Platform if you are not in compliance with the Requirements.

(b) The Americans with Disabilities Act imposes obligations including the obligation to transport Riders with service animals and does not contain exceptions for allergies or religious objections. We have the right to and you consent to the permanent deactivation of your Driver App account and the permanent termination of your contractual relationship with us if, based on the evidence, we conclude that you knowingly refused a Ride request from a Rider with a service animal, or if we receive plausible reports from Riders of more than one cancellation or refusal by you alleged to be on the basis of the presence of a Rider's service animal.

2.3. Your Provision of Transportation Services to Riders. You represent, warrant and covenant that (a) you have all the necessary expertise and experience to provide Rides in compliance with the Requirements and standards applicable to the P2P Service, (b) your access and use of our Platform,

and provision of P2P Service, in your Region is permitted by the Requirements (including any age requirements), and (c) all such access and use of our Platform will be in compliance with the Requirements. You are responsible for, and bear all costs of, providing all equipment, tools and other materials that you deem necessary or advisable and are solely responsible for any obligations or liabilities arising from the Rides you provide.

2.4. Accessing our Platform.

(a) To provide Rides you must create and register an account. All information you provide to us must be accurate, current and complete and you will maintain the accuracy and completeness of such information during the term of this Agreement. Unless otherwise permitted by us in writing, you agree to only possess one account for providing Rides. You are responsible for all activity conducted on your account. For account security and Rider safety purposes, you agree not to share or allow anyone to use your login credentials or other personal information used in connection with your account, including but not limited to photos of yourself, to access our Platform. If you think anyone has obtained improper access to your account, login credentials or personal information, you are required to notify us and to change your password immediately so that we may take appropriate steps to secure your account. You agree that Uber is not responsible for any losses arising from your sharing of account credentials with a third party, including without limitation phishing. You can visit help.uber.com for more information about securing your account.

(b) You represent, warrant, and covenant that you have all required authority to accept and be bound by this Agreement. If you are accepting this

Agreement on behalf of your company, entity, or organization, you represent and warrant that you are an authorized representative of that company, entity, or organization with the authority to bind such party to this Agreement.

2.5. Background Checks and Licensing, Vehicle Standards.

(a) During your account creation and registration, we will collect, and may verify, certain information about you and the vehicle(s) you use to provide Rides ("*your vehicle*").

(b) You will also be required to pass various background, driving record and other checks both prior to the first time you access our Platform and from time to time thereafter during the term of this Agreement; these checks may be facilitated by third parties. You hereby authorize and instruct us to provide copies of such checks to insurance companies, relevant regulators and/or other governmental authorities as needed for safety or other reasons, as described in our Privacy Notice.

(c) You agree that your vehicle will be properly registered, licensed and suitable to provide Rides in your Region. You represent that at all times during the provision of any Rides your vehicle will be in your lawful possession with valid authority to use your vehicle to provide Rides in your Region. You agree that your vehicle will be in safe operating condition, consistent with safety and maintenance standards for a vehicle of its type in the P2P Service industry. You agree to monitor for and repair any parts that are recalled by your vehicle's manufacturer (as well as anything else the Requirements applicable to your particular Region may require).

2.6. Accepting Ride Requests.

(a) Ride requests may appear in the Driver App and you may attempt to accept, decline or ignore them. Accepting a Ride request creates a direct business relationship between you and your Rider in accordance with the terms of the transportation service the Rider has requested through our Platform. The mechanism for accepting or declining Rides may vary depending on your location and the type of Ride-request you accept. You acknowledge upon acceptance of a Ride request, you may incur Uber fees as described in an applicable fare addendum to this PAA.

(b) You will choose the most effective, efficient, and safe manner to reach the destinations associated with a Ride. Any navigational directions offered in the Driver App are offered for your convenience only; you have no obligation to follow such navigational directions. You agree to transport Riders, or their guests, directly to their specified destination, as directed by the applicable person, without unauthorized interruption or unauthorized stops.

(c) You may receive Rider information, including approximate pickup location, and you agree that your Rider may also be given identifying information about you, including your first name, photo, location, vehicle information, and certain other information you have voluntarily provided through the Driver App (collectively, "*User Information*"). Without a Rider's consent, you agree to not contact any Rider or otherwise use any of the Rider's User Information except solely in connection with the provision of Rides to that Rider. You agree to treat all Rider User Information as Confidential Information (defined below) received by you under this Agreement.

You acknowledge that your violation of your confidentiality obligations may also violate certain laws and could result in civil or criminal penalties.

2.7. Use of Uber Branded Materials.

(a) Except to the extent necessary to comply with applicable law, you are not required to use, wear or display Uber's name or logo on your vehicle or clothing, or to use signaling lights, stickers, decals, or other such materials displaying Uber's name or logo (collectively "*Uber Branded Materials*").

(b) Your authorized display of Uber Branded Materials may signify to Riders that your P2P Service is facilitated by our Platform. Uber grants you a limited license to use, wear, or display Uber Branded Materials provided directly to you by Uber ("*Authorized Uber Branded Materials*") when providing Rides solely for the purpose of identifying yourself and your vehicle to Riders as someone selling P2P Service facilitated by our Platform. You agree not to (i) use, wear, or display Uber-Branded Materials that are not Authorized Uber Branded Materials (ii) purchase, accept, offer to sell, sell or otherwise transfer Uber Branded Materials that are not Authorized Uber Branded Materials or (iii) offer to sell or sell, or otherwise transfer Authorized Uber Branded Materials, without Uber's prior written permission.

(c) The parties expressly agree that your access to, or use of, Uber Branded Materials, whether or not authorized, does not indicate an employment or other similar relationship between you and us. You further agree not to represent yourself as our employee, representative or agent for any purpose or otherwise misrepresent your relationship with us.

2.8. Crashes, Criminal Offenses, and Other Compliance Obligations. For the purpose of assisting us with our compliance and insurance obligations, you agree to notify us within 24 hours and provide us with all reasonable information relating to any incident (including any crash involving your vehicle) that occurs during your provision of a Ride and you agree to cooperate with any investigation and attempted resolution of such incident. Additionally, you agree to notify us within 24 hours if you are arrested for, charged with, or convicted of a criminal offense, for Platform eligibility consideration.

2.9. Ratings. Your Rider may be asked to comment on your services, and you may be asked to comment on your Rider. These comments can include star or other ratings and other feedback (collectively, "*Ratings*"), which we ask all parties to provide in good faith. Ratings are not confidential and you hereby authorize our use, distribution and display of your Ratings (and Ratings about you) as provided in our Privacy Notice, without attribution or further approval. We have no obligation to verify Ratings or their accuracy, and may remove them from our Platform in accordance with the standards in our Community Guidelines. You can find out more about Ratings and how they may affect your ability to access our Platform by visiting our website.

2.10. Location Based Technology Services; Communication Consents.

(a) Your device geo-location information is required for the proper functioning of our Platform, and you agree to not take any action to manipulate or falsify your device geo-location. You grant us the irrevocable right to obtain your geo-location information and to share your location with third parties,

including your Riders, who will see the approximate location of your vehicle in the Rider app before and during their Ride. We may not and will not use this information to attempt to supervise, direct, or control you or your provision of Rides.

(b) You agree that we may contact you by email, telephone or text message (including by an automatic telephone dialing system) at any of the phone numbers provided by you, or on your behalf, in connection with your account. You also understand that you may opt out of receiving text messages from us at any time, either by replying "STOP" or texting the word "STOP" to 89203 using the mobile device that is receiving the messages, or by contacting us at help.uber.com. Notwithstanding the foregoing, we may also contact you by any of the above means, including by SMS, in case of suspected fraud or unlawful activity by your or on your account.

3. Insurance

3.1. Your Auto Liability Insurance for P2P Service. You will maintain automobile liability insurance on your vehicle that provides protection against bodily injury and property damage to third parties at coverage levels that satisfy the minimum requirements to operate a vehicle on public roads wherever you use your vehicle. You must be listed as an insured or a driver on your automobile liability insurance. You will provide us with a copy of the insurance policy, policy declarations, proof of insurance identification card and proof of premium payment for your policy, as well as copies of the same upon renewal. You will notify us in writing immediately if the policy you have is cancelled.

3.2. Limitations on Your Personal Insurance. You understand that while you are providing P2P Service your personal automobile insurance policy may not afford liability, comprehensive, collision, medical payments, personal injury protection, uninsured motorist, underinsured motorist, or other coverage for you. If you have any questions or concerns about the scope or applicability of your own insurance coverage, it is your responsibility to resolve them with your insurer.

3.3. Your Other Insurance for P2P Service. You will maintain workers' compensation insurance if it is required by applicable law. If allowed by applicable law, you can insure yourself against industrial injuries by maintaining occupational accident insurance in place of workers' compensation insurance (and it is at your own risk if you decide not to).

3.4. Uber Maintained Insurance. We may, in our sole discretion, choose to maintain auto insurance related to your Rides, but we are not required to provide you with any specific coverage for loss to you or your vehicle, unless we specifically describe it in an addendum to this PAA. We can change, reduce or cancel insurance that is maintained by us, if any, at any time without notice to you or authorization from you.

4. Payments

4.1. Instant Pay.

(a) **Eligibility for Instant Pay.** You must have a valid and active debit card issued in your name to use Instant Pay. Your ability to use Instant Pay is dependent upon your debit card's acceptance of fast funds; not all debit cards are eligible to accept fast funds, and the card's issuing bank may choose at any

time to disable the acceptance of fast funds or enable restrictions. Certain users may not be eligible for Instant Pay, including users that access our vehicle solutions programs, users who are members of a fleet, and those who are subject to garnishments. Your use of Instant Pay may be subject to additional restrictions and fees; more information may be found on our Instant Pay website.

(b) **Availability of Instant Pay.** We are not able to ensure that all payments are deposited instantly. The speed at which you receive payments will depend on your bank and other factors. If your bank rejects a payment, or it fails in our system, the entire amount available for cashout in your account will be routed to your regular bank account at vault.uber.com, and you will receive the payment typically 1-3 business days later. Any Instant Pay funds not cashed out by 4AM (Local time) on Mondays, or the time we identify, which may be subject to change, will be routed to your regular bank account at vault.uber.com. If you do not have access to Instant Pay, you will continue to receive payments as described in this addendum via direct deposit, provided we have your correct banking information. We are not responsible for any fees from your bank in association with your use of Instant Pay. We reserve the right to block access to Instant Pay at any time for any reason, including for improper use of our Platform, account investigation, deactivation, or further review of Rides completed.

(c) **Third-Party Provider.** The Instant Pay functionality is facilitated by a third-party provider of payments services. By using Instant Pay, you are subject to any additional terms and conditions for

payment imposed by the third-party provider, which we recommend you review.

4.2. Payment terms, fare calculations and payment methods are described in a separate fare addendum, which shall form part of this Agreement.

5. Term and Termination; Effect; Survival

5.1. Term. This Agreement is effective as of the date and time you accept it and will continue until terminated by you or us.

5.2. Termination by You. You may terminate this Agreement (a) without cause at any time upon seven (7) days' prior written notice to Uber; and (b) immediately, without notice for Uber's violation or alleged violation of a material provision of this Agreement. You can find out more about how to delete your account by navigating to help.uber.com.

5.3. Deactivation. You consent to and we may temporarily deactivate your account without notice to investigate whether you have engaged in, or your account has been used in, activity that is deceptive, fraudulent, unsafe, illegal, harmful to our brand, business or reputation, or that violates this Agreement (including the policies incorporated herein by reference) (any of the foregoing, a "*Material Breach or Violation*"). You also consent to and we may terminate this Agreement or permanently deactivate your account without notice if we determine in our discretion that a Material Breach or Violation has occurred.

5.4. Effect of Termination and Survival. Upon termination, each party will remain responsible for its respective liabilities or obligations that accrued before or as a result of such termination. Once the Agreement is terminated you will no longer access our

Platform to provide Rides. You agree to use commercially reasonable efforts to return any Uber Branded Materials, but excluding promotional materials, to an Uber Greenlight Hub or destroy them. Sections 1, 2.7, 2.10(b), 4, 5.5, 6-9, 12 and 13 shall survive any termination or expiration of this Agreement.

6. DISCLAIMERS

6.1. WE PROVIDE OUR PLATFORM AND ANY ADDITIONAL PRODUCTS OR SERVICES "AS IS" AND "AS AVAILABLE," WITHOUT GUARANTEE OR WARRANTY OF ANY KIND, AND YOUR ACCESS TO OUR PLATFORM IS NOT GUARANTEED TO RESULT IN ANY RIDE REQUESTS. WE DO NOT WARRANT THAT OUR PLATFORM WILL BE ACCURATE, COMPLETE, RELIABLE, CURRENT, SECURE, UNINTERRUPTED, ALWAYS AVAILABLE, OR ERROR-FREE, OR WILL MEET YOUR REQUIREMENTS, THAT ANY DEFECTS WILL BE CORRECTED, THAT OUR TECHNOLOGY IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE WILL NOT BE LIABLE FOR ANY SERVICE INTERRUPTIONS OR LOSSES RESULTING FROM SERVICE INTERRUPTIONS, INCLUDING BUT NOT LIMITED TO SYSTEM FAILURES OR OTHER INTERRUPTIONS THAT MAY AFFECT YOUR ACCESS TO OUR PLATFORM.

6.2. WE PROVIDE LEAD GENERATION AND RELATED SERVICES ONLY, AND MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AS TO THE ACTIONS OR INACTIONS OF THE RIDERS WHO MAY REQUEST OR ACTUALLY RECEIVE RIDES FROM YOU. WE DO NOT SCREEN OR EVALUATE THESE RIDERS. SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, SUCH AS THE IMPLIED WARRANTIES

OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AVAILABILITY, SAFETY, SECURITY, AND NON-INFRINGEMENT. WE EXCLUDE ALL WARRANTIES TO THE EXTENT THOSE REGULATIONS ALLOW.

6.3. IF A DISPUTE ARISES BETWEEN YOU AND YOUR RIDERS OR ANY OTHER THIRD PARTY, YOU RELEASE US FROM LOSSES OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

6.4. WE MAY USE ALGORITHMS IN AN ATTEMPT TO FACILITATE RIDES AND IMPROVE THE: EXPERIENCE OF USERS AND THE SECURITY AND SAFETY OF OUR PLATFORM; ANY SUCH USE DOES NOT CONSTITUTE A GUARANTEE OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED.

7. Information

We may collect and disclose information from or about you when you create an account, interact with our Platform or provide Rides and as otherwise described in our Privacy Notice. Notwithstanding anything herein to the contrary (a) the collection, use, and disclosure of such information will be made in accordance with our Privacy Notice and (b) if you elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to us in connection with, or related to, us or our Platform, we will be free to use, disclose, reproduce, mod-

ify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in any manner.

8. Confidentiality

8.1. Confidential Information. 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 or third parties ("*Confidential Information*"). Confidential Information includes Rider User Information and the transportation volume, marketing and business plans, business, financial, technical, operational and such other, non-public information of each party (whether disclosed in writing or verbally) that such party designates as being proprietary or confidential or of which the other party should reasonably know that it should be treated as confidential. Confidential Information does not include any information that: (a) was in the receiving party's lawful possession prior to the disclosure, as clearly and convincingly corroborated by written records, and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (b) is lawfully disclosed to the receiving party by a third party without actual, implied or intended restriction on disclosure through the chain of possession, or (c) is independently developed by the receiving party without the use of or access to the Confidential Information, as clearly and convincingly corroborated by written records.

8.2. Obligations. 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 their obligations under this Agreement, provided Permitted Persons are bound in writing to obligations of confidentiality and non-use of Confidential Information no less protective than the terms hereof; and (d) it shall return or destroy all Confidential Information of the disclosing party, upon the termination of this Agreement or at the request of the other party; subject to applicable law and our internal record-keeping requirements.

8.3. Remedies. The unauthorized use or disclosure of any Confidential Information would cause irreparable harm and significant damages, the degree of which may be difficult to ascertain. Accordingly, the parties have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Confidential Information disclosed by the other party, in addition to any other rights or remedies described in Section 13, applicable law or otherwise.

9. Intellectual Property

We reserve all rights not expressly granted in this Agreement. The Driver App, our Platform, and all data gathered through our Platform, including all intellectual property rights therein (the "*Platform IP*"), are and remain our property and/or that of our licensors, as applicable. Neither this Agreement nor your use of Uber's or our licensors' company names, logos, products or service names, trademarks, service marks, trade dress, other indicia of ownership, or copyrights ("*Uber Names*, *Marks*, *or Works*") or the Plat-

form IP conveys or grants to you any rights in or related to the Platform IP, or related intellectual property rights, including Uber's Names, Marks, or Works, except for the limited license granted above. You shall not, and shall not allow any other party to: (a) license, sublicense, copy, modify, distribute, create, sell, resell, transfer, or lease any part of the Platform IP or Authorized Uber-Branded Materials; (b) reverse engineer or attempt to extract the source code of our software, except as allowed under law; (c) use, display, or manipulate any of Uber Names, Marks, or Works for any purpose other than to provide Rides; (d) create or register any (i) businesses, (ii) URLs, (iii) domain names, (iv) software application names or titles, or (v) social media handles or profiles that include Uber Names, Marks, or Works or any confusingly or substantially similar mark, name, title, or work; (e) use Uber Names, Marks, or Works as your social media profile picture or wallpaper; (f) purchase keywords (including, but not limited to Google AdWords) that contain any Uber Names, Marks, or Works; (g) apply to register, reference, use, copy, and/or claim ownership in Uber's Names, Marks, or Works, or in any confusingly or substantially similar name, mark, title, or work, in any manner for any purposes, alone or in combination with other letters, punctuation, words, symbols, designs, and/or any creative works, except as may be permitted in the limited license granted above; (h) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any part of our Platform or data; or (i) aggregate Uber's data with competitors'.

10. Third-Party Services

From time to time we may permit third parties to offer their services to users of our Platform. Third-

party services may be subject to additional terms (including pricing) that apply between you and the party(ies) providing such services. If you choose to access the third-party services you understand that the providers of the third-party services are solely responsible for liabilities arising in connection with the access and use of such third-party services. While we may allow users to access such services through our Platform and we may collect information about our users' use of such services, we may not investigate, monitor or check such third-party services for accuracy or completeness.

11. Termination of Prior Agreements

11.1. Prior TSA. This Section 11 only applies if you were a party to an effective technology services agreement (a "*Prior Agreement*") with Uber immediately prior to your acceptance of this Agreement. Except as provided in Sections 11.2 and 13 below, you and Uber hereby terminate your Prior Agreement (except as provided in the survival provision of such agreement) and the Deprecated Documents (defined below) (collectively, "*Prior Documents*"), effective as of your acceptance of this Agreement. The parties, respectively, hereby waive any applicable notice requirements with respect to their termination of the Prior Documents.

11.2. Other Agreements. Notwithstanding the termination of your Prior Documents, you hereby (a) ratify, assume and confirm your obligations under any supplements or addenda, except those that are no longer required by the Requirements or applicable to your provision of P2P Service ("*Deprecated Documents*"), accepted in connection with your Prior Agreement that are not expressly superseded by this PAA

or documents accepted in connection with the acceptance of this PAA, with such changes as may be required to effectuate the foregoing ("*Continuing Documents*") and (b) acknowledge and agree that as of your acceptance of this Agreement such Continuing Documents are incorporated by reference and form a part of this Agreement. We hereby ratify, assume and confirm our obligations under such Continuing Documents.

12. Miscellaneous

12.1. Modification. You will only be bound by modifications or supplements to this PAA on your acceptance, but if you do not agree to them, you may not be allowed to access our Platform. Such modifications or supplements may be provided to you only via electronic means. From time to time we may modify information hyperlinked in this PAA (or the addresses where such information may be found) and such modifications shall be effective when posted.

12.2. Severability. Invalidity of any provision of this Agreement does not affect the rest of this Agreement. The parties shall replace the invalid or non-binding provision with provision(s) 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.

12.3. Assignment. We may freely assign or transfer this Agreement or any of our rights or obligations in them, in whole or in part, without your prior consent. You agree not to assign this Agreement, in whole or in part, without our prior written consent, and any attempted assignment without such consent is void.

12.4. Conflicts. Except with respect to the Arbitration Provision, if there is a conflict between this PAA and any supplemental terms between you and us, those supplemental terms will prevail with respect to the specific conflict if explicitly provided therein, and is in addition to, and a part of, this Agreement.

12.5. Interpretation. In this Agreement, "including" and "include" mean "including, but not limited to."

12.6. Notice. Except as explicitly stated otherwise, any notices to us shall be given by certified mail, postage prepaid and return receipt requested to Uber Technologies, Inc., 1455 Market Street, Fourth Floor San Francisco, CA 94103, Attn: Legal Department. All notices to you may be provided electronically including through our Platform or by other means.

12.7. Governing Law. Except as specifically provided in this PAA, this PAA is governed by the applicable law of the state where you reside (or where your entity is domiciled) when you accepted this PAA (the "*Governing Law*"). The Governing Law shall apply without reference to the choice-of-law principles that would result in the application of the laws of a different jurisdiction.

12.8. Entire Agreement. Except as specifically set forth in Section 12.4 or the Arbitration Provision, this Agreement, constitutes the entire agreement and understanding with respect to the subject matter expressly contemplated herein and therein, and supersedes all prior or contemporaneous agreements or undertakings on this subject matter.

12.9. No Incorporation. Notwithstanding anything herein to the contrary, no agreement, term or other provision relating to your indemnification obligations to us will be considered incorporated by reference, or otherwise a part of, this Agreement.

12.10. Existing Documents. Defined terms in documents accepted in connection with your acceptance of this Agreement that reference a technology services agreement shall be deemed amended to reference analogous terms defined in this Agreement, including by replacing the term "Technology Services Agreement" with "Platform Access Agreement".

12.11. Questions. If you have questions about our Platform, you may contact us by logging on to drivers.uber.com and navigating to the "Contact Us" section.

13. Arbitration Provision

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

THEREFORE, WILL NOT SEEK OR BE ELIGIBLE TO RECOVER MONETARY OR OTHER RELIEF IN CONNECTION WITH, ANY SUCH CLASS, COLLECTIVE OR REPRESENTATIVE LAWSUIT. THIS ARBITRATION PROVISION, HOWEVER, WILL ALLOW YOU TO BRING INDIVIDUAL CLAIMS IN ARBITRATION ON YOUR OWN BEHALF.

13.1. How This Arbitration Provision Applies.

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

(b) This Arbitration Provision applies to all claims whether brought by you or us, except as provided below. This Arbitration Provision requires all such claims to be resolved only by an arbitrator

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

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

similar subject matters, and all other federal, state, or local statutory, common law and legal claims (including without limitation, torts) arising out of or relating to your relationship with us or the termination of that relationship.

13.2. Limitations On How This Arbitration Provision Applies.

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

(b) Where you allege claims of sexual assault or sexual harassment, you may elect to bring those claims in a court of competent jurisdiction instead of arbitration. We agree to honor your election of forum with respect to your individual sexual harassment or sexual assault claim but in so doing does not waive the enforceability of this Arbitration Provision as to any other provision (including but not limited to Section 13.4—Class Action Waiver, which will continue to apply in court and arbitration), controversy, claim or dispute.

(c) To the extent an Act of Congress or applicable federal law not preempted by the Federal Arbitration Act provides that a particular claim or dispute may not be subject to pre-dispute arbitration,

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

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

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

driver authorized to use our Platform and Driver App, then this Arbitration Provision will apply to covered claims and any pending litigation unless you opt out of this Arbitration Provision as provided below.

13.3. Governing Rules, Starting The Arbitration, And Selecting The Arbitrator.

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

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

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

(d) To commence arbitration, the party bringing the claim must: (1) submit the arbitration demand to JAMS, and (2) pay its, his or her portion of any initial arbitration filing fee (see Section 13.6, below).

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

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

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

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

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

the class or collective action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

13.5. Representative Action Waiver.

(a) **This Arbitration Provision affects your ability to participate in representative actions.** To the maximum extent provided by law, both Uber and you agree to bring any dispute in arbitration on an individual basis only, and not on a representative basis—including but not limited to as a private attorney general representative under the California Labor Code—on behalf of others. There will be no right or authority for any dispute to be brought, heard or arbitrated as a representative action, or for you to participate as a member in any such representative proceeding ("*Representative Action Waiver*"). Notwithstanding any other provision of this Arbitration Provision or the JAMS Rules, disputes in court or arbitration regarding the validity, enforceability, conscionability or breach of the Representative Action Waiver, or whether the Representative Action Waiver is void or voidable, may be resolved only by the court and not by an arbitrator. If any portion of this Representative Action Waiver is found to be unenforceable or unlawful for any reason (1) any representative claims subject to the unenforceable or unlawful portion(s) shall proceed in a civil court of competent jurisdiction; (2) the portion of the Representative Action Waiver that is enforceable shall be enforced in arbitration; (3) the unenforceable or unlawful provision shall be severed from this Agreement; and (4) severance of the unenforceable or unlawful provision shall

have no impact whatsoever on the Arbitration Provision or the arbitrability of any remaining claims asserted by you or us.

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

13.6. Paying For The Arbitration.

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

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

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

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

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

13.8. Your Right To Opt Out Of This Arbitration Provision

(a) Agreeing to this Arbitration Provision is not a mandatory condition of your contractual relationship with us. If you do not want to be subject to this Arbitration Provision, you may opt out of this Arbitration Provision (subject to the pending litigation

provision in Section 13.2, and the limitations set forth in this Section 13.8). To do so, within 30 days of the date that this Agreement is electronically accepted by you, you must send an electronic email from the email address associated with your driver account to optout@uber.com, stating your intent to opt out of this Arbitration Provision, as well as your name, the phone number associated with your driver account, and the city in which you reside.

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

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

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

any obligation you have to arbitrate claims pursuant to this Arbitration Provision.

13.9. Enforcement Of This Arbitration Provision. You have the right to consult with counsel of your choice concerning this Arbitration Provision and to be represented by counsel at any stage during the arbitration process. Except as provided in Sections 13.2 and 13.8 of this Arbitration Provision, this Arbitration Provision replaces prior agreements regarding the arbitration of disputes and is the full and complete agreement relating to the formal resolution of disputes covered by this Arbitration Provision. In the event any portion of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable. This Arbitration Provision will survive the termination of your relationship with us, and it will continue to apply if your relationship with us is ended but later renewed.

By clicking "Yes, I agree," I expressly acknowledge that I have read, understood, and considered the consequences of this Agreement, that I agree to be bound by the terms of this Agreement, and that I am legally competent to enter into this Agreement with Uber.

APPENDIX E

Platform Access Agreement

Updated as of June 25, 2020

This Platform Access Agreement (this "*PAA*") is by and among you and your company/business ("*you*") and Portier, LLC, a subsidiary of Uber Technologies, Inc. ("*Uber*"). This PAA governs your access to our Platform (defined below) which facilitates your provision of delivery services to (1) account holders seeking to access certain types of delivery services ("*Delivery Recipients*") for themselves and/or their guests and (2) merchants providing the goods for delivery services ("*Merchants*"). For the sake of clarity and depending on the context, references to "*we*," "*our*" and "*us*" may also refer to Uber.

Access to our technology platform includes access to our technology application (the "*Driver App*") that, amongst other things, facilitates delivery transactions between you and Delivery Recipients; as well as websites and all other associated services, including payment and support services, provided by Uber, its affiliates or third parties (collectively, our "*Platform*").

Your access to our Platform is also governed by the applicable terms found on our website, including without limitation, the Community Guidelines, Referral Policies, other applicable Uber standards and policies (including, without limitation, Uber's safety standards and accessibility policies) and, except as provided in Section 12.9 below, any other agreements you have with us (including those related to how you choose to interact with our Platform, the services you choose to provide and where you chose to provide them) (collec-

tively with this PAA, this "*Agreement*"), which are incorporated by reference into this Agreement. By accepting this Agreement, you confirm that you have read, understand and accept the provisions of this Agreement and intend to be bound by this Agreement. This Agreement is effective as of the date and time you accept it.

1. Relationship with Uber

1.1. Contracting Parties. The relationship between the parties is solely as independent business enterprises, each of whom operates a separate and distinct business enterprise that provides a service outside the usual course of business of the other. This is not an employment agreement and you are not an employee. You confirm the existence and nature of that contractual relationship each time you access our Platform. We are not hiring or engaging you to provide any service; you are engaging us to provide you access to our Platform. Nothing in this Agreement creates, will create, or is intended to create, any employment, partnership, joint venture, franchise or sales representative relationship between you and us. You have no authority to make or accept any offers or representations on our behalf.

1.2. Your Choice to Provide Delivery Services to Delivery Recipients. We do not, and have no right to, direct or control you. Subject to Platform availability, you decide when, where and whether (a) you want to offer delivery services facilitated by our Platform and (b) you want to accept, decline, ignore or cancel a Delivery (defined below) request; provided, in each case, that you agree not to discriminate against any potential Delivery Recipient or Merchant in violation of the Requirements (defined

below). Subject to your compliance with this Agreement, you are not required to accept any minimum number of Delivery requests in order to access our Platform and it is entirely your choice whether to provide delivery services to Delivery Recipients directly, using our Platform, or using any other method to connect with Delivery Recipients, including, but not limited to other platforms and applications in addition to, or instead of, ours. You understand, however, that the experiences Delivery Recipients and Merchants have with your Deliveries, as determined by Delivery Recipient and Merchant input, may affect your ability to access our Platform or provide Deliveries.

2. Our Platform

2.1. General. While using our Driver App, you may receive lead generation and other technology-based services that enable those operating independent business enterprises like you to provide delivery services to Delivery Recipients ("*Deliveries*"). Subject to the terms and conditions of this Agreement, Uber hereby grants you a non-exclusive, non-transferable, non-sublicensable, non-assignable license, during the term of this Agreement, to use our Platform (including the Driver App) solely for the purpose of providing Deliveries and accessing services associated with providing Deliveries.

2.2. Compliance. You are responsible for identifying, understanding, and complying with (i) all laws (including, but not limited to, the Americans with Disabilities Act and applicable laws governing your collection, use, disclosure, security, processing and transfer of data), rules and regulations that apply to your provision of Deliveries (including whether you are permitted to provide delivery services at all) in the jurisdiction(s) in which you operate (your "*Region*")

and (ii) this Agreement (collectively, the "Requirements"). Subject to applicable law, you are responsible for identifying and obtaining any required license (including driver's license), permit, or registration required to provide Deliveries. Notwithstanding anything to the contrary in this Agreement, for the avoidance of doubt, your ability to access and use our Platform is at all times subject to your compliance with the Requirements. You agree not to access or attempt to access our Platform if you are not in compliance with the Requirements.

2.3. Your Provision of Deliveries. You represent, warrant and covenant that (a) you have all the necessary expertise and experience to provide Deliveries in compliance with the Requirements and standards applicable to the delivery industry, (b) your access and use of our Platform, and provision of delivery service, in your Region is permitted by the Requirements (including any age requirements) and (c) all such access and use of our Platform will be in compliance with the Requirements. You are responsible for, and bear all costs of, providing all equipment, tools and other materials that you deem necessary or advisable and are solely responsible for any obligations or liabilities arising from the Deliveries you provide.

2.4. Accessing our Platform.

(a) To provide Deliveries you must create and register an account. All information you provide to us must be accurate, current and complete and you will maintain the accuracy and completeness of such information during the term of this Agreement. Unless otherwise permitted by us in writing, you agree to only possess one account for providing Deliveries. You are responsible for all activity conducted on your

account. For account security, as well as Delivery Recipient and Merchant safety purposes, you agree not to share or allow anyone to use your login credentials or other personal information used in connection with your account, including but not limited to photos of yourself, to access our Platform. If you think anyone has obtained improper access to your account, login credentials or personal information, you are required to notify us and to change your password immediately so that we may take appropriate steps to secure your account. You agree that we are not responsible for any losses arising from your sharing of account credentials with a third party, including without limitation phishing. You can visit help.uber.com for more information about securing your account.

(b) You represent, warrant and covenant that you have all required authority to accept and be bound by this Agreement. If you are accepting this Agreement on behalf of your company, entity, or organization, you represent and warrant that you are an authorized representative of that company, entity, or organization with the authority to bind such party to this Agreement.

2.5. Background Checks and Licensing, Vehicle Standards.

(a) During your account creation and registration, we will collect, and may verify, certain information about you and the vehicle(s) you use to provide Deliveries ("*your vehicle*").

(b) You will also be required to pass various background, driving record and other checks both prior to the first time you access our Platform and from time to time thereafter during the term of this Agreement; these checks may be facilitated by third

parties. You hereby authorize and instruct us to provide copies of such checks to insurance companies, relevant regulators and/or other governmental authorities as needed for safety or other reasons, as described in our Privacy Notice.

(c) You agree that your vehicle will be properly registered, licensed and suitable to provide Deliveries in your Region. You represent that at all times during the provision of any Deliveries your vehicle will be in your lawful possession with valid authority to use your vehicle to provide Deliveries in your Region. You agree that your vehicle will be in safe operating condition, consistent with safety and maintenance standards for a vehicle of its type in the delivery industry. You agree to monitor for and repair any parts that are recalled by your vehicle's manufacturer (as well as anything else the Requirements applicable to your particular Region may require).

2.6. Accepting Delivery Requests.

(a) Delivery requests may appear in the Driver App and you may attempt to accept, decline or ignore them. Accepting a Delivery request creates a direct business relationship between you and your Delivery Recipient in accordance with the terms of the delivery service the Delivery Recipient and/or Merchant has requested through our Platform. The mechanism for accepting or declining Delivery requests may vary depending on your location and the type of Delivery request you accept. You acknowledge upon acceptance of a Delivery request, you may incur Uber fees as described in an applicable fare addendum to this PAA.

(b) You will choose the most effective, efficient, and safe manner to reach the destinations associated with a Delivery. Any navigational directions offered in the Driver App are offered for your convenience only; you have no obligation to follow such navigational directions.

(c) You may receive Delivery Recipient and Merchant information, including approximate pickup location, and you agree that your Delivery Recipient and Merchant may also be given identifying information about you, including your first name, photo, location, vehicle information, and certain other information you have voluntarily provided through the Driver App (collectively, "*User Information*"). Without a Delivery Recipient's consent, you agree to not contact any Delivery Recipient or otherwise use any of the Delivery Recipient's User Information except solely in connection with the provision of Deliveries to that Delivery Recipient. You agree to treat all User Information as Confidential Information (defined below) received by you under this Agreement. You acknowledge that your violation of your confidentiality obligations may also violate certain laws and could result in civil or criminal penalties.

2.7. Use of Uber Branded Materials.

(a) Except to the extent necessary to comply with applicable law, you are not required to use, wear or display Uber's name or logo on your vehicle or clothing, or to use signaling lights, stickers, decals, or other such materials displaying Uber's name or logo (collectively "*Uber Branded Materials*").

(b) Your authorized display of Uber Branded Materials may signify to Delivery Recipients

and Merchants that your delivery services are facilitated by our Platform. Uber grants you a limited license to use, wear, or display Uber Branded Materials provided directly to you by Uber ("*Authorized Uber Branded Materials*") when providing Deliveries solely for the purpose of identifying yourself and your vehicle to Delivery Recipients and Merchants as someone selling delivery services facilitated by our Platform. You agree not to (i) use, wear, or display Uber-Branded Materials that are not Authorized Uber Branded Materials (ii) purchase, accept, offer to sell, sell or otherwise transfer Uber Branded Materials that are not Authorized Uber Branded Materials or (iii) offer to sell or sell, or otherwise transfer Authorized Uber Branded Materials, without our prior written permission.

(c) The parties expressly agree that your access to, or use of, Uber Branded Materials, whether or not authorized, does not indicate an employment or other similar relationship between you and us. You further agree not to represent yourself as our employee, representative or agent for any purpose or otherwise misrepresent your relationship with us.

2.8. Crashes, Criminal Offenses, and Other Compliance Obligations. For the purpose of assisting us with our compliance and insurance obligations, you agree to notify us within 24 hours and provide us with all reasonable information relating to any incident (including any crash involving your vehicle) that occurs during your provision of a Delivery and you agree to cooperate with any investigation and attempted resolution of such incident. Additionally, you agree to notify us within 24 hours if you are arrested for, charged with, or convicted of a criminal offense for Platform eligibility consideration.

2.9. Ratings. The Delivery Recipient and Merchant may be asked to comment on your services, and you may be asked to comment on the Delivery Recipient and Merchant. These comments can include ratings and other feedback (collectively, "*Ratings*"), which we ask all parties to provide in good faith. Ratings are not confidential and you hereby authorize our use, distribution and display of your Ratings (and Ratings about you) as provided in our Privacy Notice, without attribution or further approval. We have no obligation to verify Ratings or their accuracy, and may remove them from our Platform in accordance with the standards in our Community Guidelines. You can find out more about Ratings and how they may affect your ability to access our Platform by visiting our website.

2.10. Location Based Technology Services; Communication Consents.

(a) Your device geo-location information is required for the proper functioning of our Platform, and you agree to not take any action to manipulate or falsify your device geo-location. You grant us the irrevocable right to obtain your geo-location information and to share your location with third parties, including your Delivery Recipients and Merchants, who will see the approximate location of your vehicle in the applicable Uber app before and during the Delivery. We may not and will not use this information to attempt to supervise, direct, or control you or your provision of Deliveries.

(b) You agree that we may contact you by email, telephone or text message (including by an automatic telephone dialing system) at any of the phone numbers provided by you, or on your behalf, in connection with your account. You also understand that

you may opt out of receiving text messages from us at any time, either by replying "STOP" or texting the word "STOP" to 89203 using the mobile device that is receiving the messages, or by contacting us at help.uber.com. Notwithstanding the foregoing, we may also contact you by any of the above means, including by SMS, in case of suspected fraud or unlawful activity by your or on your account.

3. Insurance

3.1. Deliveries Using Your Vehicle. If you provide Deliveries using a vehicle, the obligations in this Section 3.1 shall apply.

(a) You will maintain automobile liability insurance on your vehicle that provides protection against bodily injury and property damage to third parties at coverage levels that satisfy the minimum requirements to operate a vehicle on public roads wherever you use your vehicle. You must be listed as an insured or a driver on your automobile liability insurance. You will provide us with a copy of the insurance policy, policy declarations, proof of insurance identification card and proof of premium payment for your policy, as well as copies of the same upon renewal. You will notify us in writing immediately if the policy you have is cancelled.

(b) You understand that while you are providing Deliveries your personal automobile insurance policy may not afford liability, comprehensive, collision, medical payments, personal injury protection, uninsured motorist, underinsured motorist, or other coverage for you. If you have any questions or concerns about the scope or applicability of your own insurance coverage, it is your responsibility to resolve them with your insurer.

(c) You will maintain workers' compensation insurance if it is required by applicable law. If allowed by applicable law, you can insure yourself against industrial injuries by maintaining occupational accident insurance in place of workers' compensation insurance (and it is at your own risk if you decide not to).

(d) We may, in our sole discretion, choose to maintain auto insurance related to your Deliveries, but we are not required to provide you with any specific coverage for loss to you or your vehicle, unless we specifically describe it in an addendum to this PAA. We can change, reduce or cancel insurance that is maintained by us, if any, at any time without notice to you or authorization from you.

3.2. Other Deliveries. If you tell us that you will use a bicycle or other non-motor vehicle mode of transport for Deliveries, but then use an automobile or other motorized device that is considered a motor vehicle, we will not provide any form of insurance for you and you will be responsible for reimbursing us for any amounts that we are found liable for in respect to your use of such automobile or other motorized device.

4. Payments

4.1. Instant Pay.

(a) **Eligibility for Instant Pay.** You must have a valid and active debit card issued in your name to use Instant Pay. Your ability to use Instant Pay is dependent upon your debit card's acceptance of fast funds; not all debit cards are eligible to accept fast funds, and the card's issuing bank may choose at any time to disable the acceptance of fast funds or enable restrictions. Certain users may not be eligible for In-

stant Pay, including users that access our vehicle solutions programs and those who are subject to garnishments. Your use of Instant Pay may be subject to additional restrictions and fees; more information may be found on our Instant Pay website.

(b) **Availability of Instant Pay.** We are not able to ensure that all payments are deposited instantly. The speed at which you receive payments will depend on your bank and other factors. If your bank rejects a payment, or it fails in our system, the entire amount available for cashout in your account will be routed to your regular bank account at vault.uber.com, and you will receive the payment typically 1-3 business days later. Any Instant Pay funds not cashed out by 4AM (Local time) on Mondays, or the time we identify, which may be subject to change, will be routed to your regular bank account at vault.uber.com. If you do not have access to Instant Pay, you will continue to receive payments as described in this addendum via direct deposit, provided we have your correct banking information. We are not responsible for any fees from your bank in association with your use of Instant Pay. We reserve the right to block access to Instant Pay at any time for any reason, including for improper use of our Platform, account investigation, deactivation, or further review of Deliveries completed.

(c) **Third-Party Provider.** The Instant Pay functionality is facilitated by a third-party provider of payments services. By using Instant Pay, you are subject to any additional terms and conditions for payment imposed by the third-party provider, which we recommend you review.

4.2. Payment terms, fare calculations and payment methods are described in a separate fare addendum, which shall form part of this Agreement.

5. Term and Termination; Effect; Survival

5.1. Term. This Agreement is effective as of the date and time you accept it and will continue until terminated by you or us.

5.2. Termination by You. You may terminate this Agreement (a) without cause at any time upon seven (7) days' prior written notice to Uber; and (b) immediately, without notice for Uber's violation or alleged violation of a material provision of this Agreement. You can find out more about how to delete your account by navigating to help.uber.com.

5.3. Deactivation. You consent to and we may temporarily deactivate your account without notice to investigate whether you have engaged in, or your account has been used in, activity that is deceptive, fraudulent, unsafe, illegal, harmful to our brand, business or reputation, or that violates this Agreement (including the policies incorporated herein by reference) (any of the foregoing, a "*Material Breach or Violation*"). You also consent to and we may terminate this Agreement or permanently deactivate your account without notice if we determine in our discretion that a Material Breach or Violation has occurred.

5.4. Effect of Termination and Survival. Upon termination, each party will remain responsible for its respective liabilities or obligations that accrued before or as a result of such termination. Once the Agreement is terminated you will no longer access our Platform to provide Deliveries. You agree to use commercially reasonable efforts to return any Uber

Branded Materials, but excluding promotional materials or purchased items, to an Uber Greenlight Hub or destroy them. Sections 1, 2.7, 2.10(b), 4, 5.5, 6-9, 12 and 13 shall survive any termination or expiration of this Agreement.

6. DISCLAIMERS

6.1. WE PROVIDE OUR PLATFORM AND ANY ADDITIONAL PRODUCTS OR SERVICES "AS IS" AND "AS AVAILABLE," WITHOUT GUARANTEE OR WARRANTY OF ANY KIND, AND YOUR ACCESS TO OUR PLATFORM IS NOT GUARANTEED TO RESULT IN ANY DELIVERY REQUESTS. WE DO NOT WARRANT THAT OUR PLATFORM WILL BE ACCURATE, COMPLETE, RELIABLE, CURRENT, SECURE, UNINTERRUPTED, ALWAYS AVAILABLE, OR ERROR-FREE, OR WILL MEET YOUR REQUIREMENTS, THAT ANY DEFECTS WILL BE CORRECTED, THAT OUR TECHNOLOGY IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE WILL NOT BE LIABLE FOR ANY SERVICE INTERRUPTIONS OR LOSSES RESULTING FROM SERVICE INTERRUPTIONS, INCLUDING BUT NOT LIMITED TO SYSTEM FAILURES OR OTHER INTERRUPTIONS THAT MAY AFFECT YOUR ACCESS TO OUR PLATFORM.

6.2. WE PROVIDE LEAD GENERATION AND RELATED SERVICES ONLY, AND MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AS TO THE ACTIONS OR INACTIONS OF THE DELIVERY RECIPIENTS WHO MAY REQUEST OR ACTUALLY RECEIVE DELIVERIES FROM YOU. WE DO NOT SCREEN OR EVALUATE THESE DELIVERY RECIPIENTS. SOME JURIS-

DICTIONS PROVIDE FOR CERTAIN WARRANTIES, SUCH AS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AVAILABILITY, SAFETY, SECURITY, AND NON-INFRINGEMENT. WE EXCLUDE ALL WARRANTIES TO THE EXTENT THOSE REGULATIONS ALLOW.

6.3. IF A DISPUTE ARISES BETWEEN YOU AND YOUR DELIVERY RECIPIENTS OR ANY OTHER THIRD-PARTY, YOU RELEASE US FROM LOSSES OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

6.4. WE MAY USE ALGORITHMS IN AN ATTEMPT TO FACILITATE RIDES AND IMPROVE THE: EXPERIENCE OF USERS AND THE SECURITY AND SAFETY OF OUR PLATFORM; ANY SUCH USE DOES NOT CONSTITUTE A GUARANTEE OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED.

7. Information. We may collect and disclose information from or about you when you create an account, interact with our Platform or provide Rides and as otherwise described in our Privacy Notice. Notwithstanding anything herein to the contrary (a) the collection, use, and disclosure of such information will be made in accordance with our Privacy Notice and (b) if you elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to us in connection with, or related to, us or our Platform, we will be free to use, disclose,

reproduce, modify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in any manner.

8. Confidentiality

8.1. Confidential Information. 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 or third parties ("*Confidential Information*"). Confidential Information includes User Information and the volume of delivery services, marketing and business plans, business, financial, technical, operational and such other, non-public information of each party (whether disclosed in writing or verbally) that such party designates as being proprietary or confidential or of which the other party should reasonably know that it should be treated as confidential. Confidential Information does not include any information that: (a) was in the receiving party's lawful possession prior to the disclosure, as clearly and convincingly corroborated by written records, and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (b) is lawfully disclosed to the receiving party by a third party without actual, implied or intended restriction on disclosure through the chain of possession, or (c) is independently developed by the receiving party without the use of or access to the Confidential Information, as clearly and convincingly corroborated by written records.

8.2. Obligations. 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 their obligations under this Agreement, provided Permitted Persons are bound in writing to obligations of confidentiality and non-use of Confidential Information no less protective than the terms hereof; and (d) it shall return or destroy all Confidential Information of the disclosing party, upon the termination of this Agreement or at the request of the other party; subject to applicable law and our internal record-keeping requirements.

8.3. Remedies. The unauthorized use or disclosure of any Confidential Information would cause irreparable harm and significant damages, the degree of which may be difficult to ascertain. Accordingly, the parties have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Confidential Information disclosed by the other party, in addition to any other rights or remedies described in Section 13, applicable law or otherwise.

9. Intellectual Property. We reserve all rights not expressly granted in this Agreement. The Driver App, our Platform, and all data gathered through our Platform, including all intellectual property rights therein (the "*Platform IP*"), are and remain our property and/or that of our licensors, as applicable. Neither this Agreement nor your use of Uber's or our licensors' company names, logos, products or service names, trademarks, service marks, trade dress, other indicia of ownership, or copyrights ("*Uber Names, Marks, or Works*") or the Platform IP conveys or grants to you any rights in or related to the Platform

IP, or related intellectual property rights, including Uber's Names, Marks, or Works, except for the limited license granted above. You shall not, and shall not allow any other party to: (a) license, sublicense, copy, modify, distribute, create, sell, resell, transfer, or lease any part of the Platform IP or Authorized Uber-Branded Materials; (b) reverse engineer or attempt to extract the source code of our software, except as allowed under law; (c) use, display, or manipulate any of Uber Names, Marks, or Works for any purpose other than to provide Deliveries; (d) create or register any (i) businesses, (ii) URLs, (iii) domain names, (iv) software application names or titles, or (v) social media handles or profiles that include Uber Names, Marks, or Works or any confusingly or substantially similar mark, name, title, or work; (e) use Uber Names, Marks, or Works as your social media profile picture or wallpaper; (f) purchase keywords (including, but not limited to Google AdWords) that contain any Uber Names, Marks, or Works; (g) apply to register, reference, use, copy, and/or claim ownership in Uber's Names, Marks, or Works, or in any confusingly or substantially similar name, mark, title, or work, in any manner for any purposes, alone or in combination with other letters, punctuation, words, symbols, designs, and/or any creative works, except as may be permitted in the limited license granted above; (h) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any part of our Platform or data; or (i) aggregate our data with competitors'.

10. Third-Party Services. From time to time we may permit third parties to offer their services to users of our Platform. Third-party services may be subject to additional terms (including pricing) that ap-

ply between you and the party(ies) providing such services. If you choose to access the third-party services you understand that the providers of the third-party services are solely responsible for liabilities arising in connection with the access and use of such third-party services. While we may allow users to access such services through our Platform and we may collect information about our users' use of such services, we may not investigate, monitor or check such third-party services for accuracy or completeness.

11. Termination of Prior Agreements

11.1. Prior TSA. This Section 11 only applies if you were a party to an effective technology services agreement (a "*Prior Agreement*") with Uber immediately prior to your acceptance of this Agreement. Except as provided in Sections 11.2 and 13 below, you and Uber hereby terminate your Prior Agreement (except as provided in the survival provision of such agreement) and the Deprecated Documents (defined below) (collectively, "*Prior Documents*"), effective as of your acceptance of this Agreement. The parties, respectively, hereby waive any applicable notice requirements with respect to their termination of the Prior Documents.

11.2. Other Agreements. Notwithstanding the termination of your Prior Documents, you hereby (a) ratify, assume and confirm your obligations under any supplements or addenda, except those that are no longer required by the Requirements or applicable to your provision of Delivery Services ("Depreciated Documents"), accepted in connection with your Prior Agreement that are not expressly superseded by this PAA or documents accepted in connection with the acceptance of this PAA, with such changes as may be

required to effectuate the foregoing ("Continuing Documents") and (b) acknowledge and agree that as of your acceptance of this Agreement such Continuing Documents are incorporated by reference and form a part of this Agreement. We hereby ratify, assume and confirm our obligations under such Continuing Documents. For the avoidance of doubt, as applicable, the definition of Continuing Documents this shall include any addenda related to the provision of combined services.

12. Miscellaneous

12.1. Modification. You will only be bound by modifications or supplements to this PAA on your acceptance, but if you do not agree to them, you may not be allowed to access our Platform. Such modifications or supplements may be provided to you only via electronic means. From time to time we may modify information hyperlinked in this PAA (or the addresses where such information may be found) and such modifications shall be effective when posted.

12.2. Severability. Invalidity of any provision of this Agreement does not affect the rest of this Agreement. The parties shall replace the invalid or non-binding provision with provision(s) 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.

12.3. Assignment. We may freely assign or transfer this Agreement or any of our rights or obligations in them, in whole or in part, without your prior consent. You agree not to assign this Agreement, in whole or in part, without our prior written consent,

and any attempted assignment without such consent is void.

12.4. Conflicts. Except with respect to the Arbitration Provision, if there is a conflict between this PAA and any supplemental terms between you and us, those supplemental terms will prevail with respect to the specific conflict if explicitly provided therein, and is in addition to, and a part of, this Agreement.

12.5. Interpretation. In this Agreement, "*including*" and "*include*" mean "*including*, *but not limited to*."

12.6. Notice. Except as explicitly stated otherwise, any notices to us shall be given by certified mail, postage prepaid and return receipt requested to Uber Technologies Inc., 1455 Market Street, Fourth Floor San Francisco, CA 94103, Attn: Legal Department. All notices to you may be provided electronically including through our Platform or by other means.

12.7. Governing Law. Except as specifically provided in this PAA, this PAA is governed by the applicable law of the state where you reside (or where your entity is domiciled) when you accepted this PAA (the "Governing Law"). The Governing Law shall apply without reference to the choice-of-law principles that would result in the application of the laws of a different jurisdiction.

12.8. Entire Agreement. Except as specifically set forth in Section 12.4 or the Arbitration Provision, this Agreement, constitutes the entire agreement and understanding with respect to the subject matter expressly contemplated herein and therein,

and supersedes all prior or contemporaneous agreements or undertakings on this subject matter.

12.9. No Incorporation. Notwithstanding anything herein to the contrary, no agreement, term or other provision relating to your indemnification obligations to us will be considered incorporated by reference, or otherwise a part of, this Agreement.

12.10. Existing Documents. Defined terms in documents accepted in connection with your acceptance of this Agreement that reference a Technology Services Agreement shall be deemed amended to reference analogous terms defined in this Agreement, including by replacing the term "Technology Services Agreement" with "Platform Access Agreement".

12.11. Questions. If you have questions about our Platform, you may contact us by logging on to drivers.uber.com and navigating to the "Contact Us" section.

13. Arbitration Provision. IMPORTANT: PLEASE REVIEW THIS ARBITRATION PROVISION CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH US ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION, EXCEPT AS PROVIDED BELOW. YOU MAY CHOOSE TO OPT OUT OF THIS ARBITRATION PROVISION BY FOLLOWING THE BELOW INSTRUCTIONS. THERE ARE AND/OR MAY BE LAWSUITS ALLEGING CLASS, COLLECTIVE OR REPRESENTATIVE CLAIMS ON YOUR BEHALF AGAINST US. IF YOU DO NOT OPT OUT OF THIS ARBITRATION PROVISION AND THEREFORE AGREE TO ARBITRATION WITH US, YOU ARE AGREEING IN ADVANCE, EXCEPT

AS OTHERWISE PROVIDED BELOW, THAT YOU WILL NOT PARTICIPATE IN AND, THEREFORE, WILL NOT SEEK OR BE ELIGIBLE TO RECOVER MONETARY OR OTHER RELIEF IN CONNECTION WITH, ANY SUCH CLASS, COLLECTIVE OR REPRESENTATIVE LAWSUIT. THIS ARBITRATION PROVISION, HOWEVER, WILL ALLOW YOU TO BRING INDIVIDUAL CLAIMS IN ARBITRATION ON YOUR OWN BEHALF.

13.1. How This Arbitration Provision Applies.

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

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

(c) Except as it otherwise provides, this Arbitration Provision also applies, without limitation, to disputes between you and us, or between you and any other entity or individual, arising out of or related to your application for and use of an account to use our Platform and Driver App as a driver, background checks, your privacy, your contractual relationship with us or the termination of that relationship (including post-relationship defamation or retaliation claims), the nature of your relationship with us (including, but not limited to, any claim that you are our employee), trade secrets, workplace safety and health, unfair competition, compensation, minimum wage, expense reimbursement, overtime, breaks and rest periods, retaliation, discrimination, or harassment and claims arising under the Telephone Consumer Protection Act, Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, 8 U.S.C. § 1324b (unfair immigration related practices), Americans With Disabilities Act, Age Discrimination in Employment Act, Fair Labor Standards Act, Worker Adjustment and Retraining Notification Act, Older

Workers Benefits Protection Act of 1990, Occupational Safety and Health Act, Consolidated Omnibus Budget Reconciliation Act of 1985, federal, state or local statutes or regulations addressing the same or similar subject matters, and all other federal, state, or local statutory, common law and legal claims (including without limitation, torts) arising out of or relating to your relationship with us or the termination of that relationship.

13.2. Limitations On How This Arbitration Provision Applies.

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

(b) Where you allege claims of sexual assault or sexual harassment, you may elect to bring those claims in a court of competent jurisdiction instead of arbitration. We agree to honor your election of forum with respect to your individual sexual harassment or sexual assault claim but in so doing does not waive the enforceability of this Arbitration Provision as to any other provision (including but not limited to Section 13.4—Class Action Waiver, which will continue to apply in court and arbitration), controversy, claim or dispute.

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

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

- If you are or previously were a driver authorized to use our Platform and Driver App, and at the time of your receipt of this Agreement you were not bound by an existing arbitration agreement with us, you shall remain eligible to participate in any pending litigation to which you were a party or putative class, collective or representative action member regardless of whether you opt out of this Arbitration Provision.
- If, at the time of your receipt of this Agreement, you were bound by an existing arbitration agreement with us, that arbitration agreement will continue to apply to any pending litigation,

even if you opt out of this Arbitration Provision.

- If, at the time of your receipt of this Agreement, you were not previously a driver authorized to use our Platform and Driver App, then this Arbitration Provision will apply to covered claims and any pending litigation unless you opt out of this Arbitration Provision as provided below.

13.3. Governing Rules, Starting The Arbitration, And Selecting The Arbitrator.

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

(b) Prior to commencing arbitration with JAMS, the party bringing the claim in arbitration must first demand arbitration in writing within the applicable statute of limitations period. The demand for arbitration shall include identification of the parties, a statement of the legal and factual basis of the claim(s), and a specification of the remedy sought and the amount in controversy. Any demand for arbitration made to us shall be served upon Uber's registered agent for service of process (CT Corporation, 818 West Seventh Street, Suite 930, Los Angeles, California

90017). Any demand for arbitration made to you shall be sent via electronic email to the email address associated with your driver account.

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

(d) To commence arbitration, the party bringing the claim must: (1) submit the arbitration demand to JAMS, and (2) pay its, his or her portion of any initial arbitration filing fee (see Section 13.6, below).

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

(f) Delivering a written arbitration demand to the other party will not relieve the party bringing the claim of the obligation to commence arbi-

tration as described above. It shall always be the obligation of the party bringing the claim to commence arbitration.

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

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

13.4. Class Action Waiver. This Arbitration Provision affects your ability to participate in class or collective actions. Both Uber and you agree to bring any dispute in arbitration on an individual basis only, and not on a class or collective basis on behalf of others. There will be no right or authority for any dispute to be brought, heard or arbitrated as a class or collective action, or for you to participate as a member in any such class or collective proceeding ("*Class Action Waiver*"). Notwithstanding any other provision of this Arbitration Provision or the JAMS Rules, disputes in court or arbitration regarding the validity, enforceability, conscionability or breach of the Class Action Waiver, or whether the Class Action Waiver is void or voidable, may be resolved only by the court and not by an arbitrator. In any case in which (1) the dispute is filed as a class or collective action

and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class or collective action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

13.5. Representative Action Waiver.

(a) **This Arbitration Provision affects your ability to participate in representative actions.** To the maximum extent provided by law, both Uber and you agree to bring any dispute in arbitration on an individual basis only, and not on a representative basis—including but not limited to as a private attorney general representative under the California Labor Code—on behalf of others. There will be no right or authority for any dispute to be brought, heard or arbitrated as a representative action, or for you to participate as a member in any such representative proceeding ("*Representative Action Waiver*"). Notwithstanding any other provision of this Arbitration Provision or the JAMS Rules, disputes in court or arbitration regarding the validity, enforceability, conscionability or breach of the Representative Action Waiver, or whether the Representative Action Waiver is void or voidable, may be resolved only by the court and not by an arbitrator. If any portion of this Representative Action Waiver is found to be unenforceable or unlawful for any reason (1) any representative claims subject to the unenforceable or unlawful portion(s) shall proceed in a civil court of competent jurisdiction; (2) the portion of the Representative Action Waiver that is enforceable shall be enforced in arbitration; (3) the unenforceable or unlawful provision shall be severed from this Agreement; and (4) severance of the unenforceable or unlawful provision shall

have no impact whatsoever on the Arbitration Provision or the arbitrability of any remaining claims asserted by you or us.

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

13.6. Paying For The Arbitration.

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

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

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

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

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

13.8. Your Right To Opt Out Of This Arbitration Provision.

(a) Agreeing to this Arbitration Provision is not a mandatory condition of your contractual relationship with us. If you do not want to be subject to this Arbitration Provision, you may opt out of this Arbitration Provision (subject to the pending litigation

provision in Section 13.2, and the limitations set forth in this Section 13.8). To do so, within 30 days of the date that this Agreement is electronically accepted by you, you must send an electronic email from the email address associated with your driver account to optout-portier@uber.com, stating your intent to opt out of this Arbitration Provision, as well as your name, the phone number associated with your driver account, and the city in which you reside.

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

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

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

any obligation you have to arbitrate claims pursuant to this Arbitration Provision.

13.9. Enforcement Of This Arbitration Provision. You have the right to consult with counsel of your choice concerning this Arbitration Provision and to be represented by counsel at any stage during the arbitration process. Except as provided in Sections 13.2 and 13.8 of this Arbitration Provision, this Arbitration Provision replaces prior agreements regarding the arbitration of disputes and is the full and complete agreement relating to the formal resolution of disputes covered by this Arbitration Provision. In the event any portion of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable. This Arbitration Provision will survive the termination of your relationship with us, and it will continue to apply if your relationship with us is ended but later renewed.

By clicking "Yes, I agree," I expressly acknowledge that I have read, understood, and considered the consequences of this Agreement, that I agree to be bound by the terms of this Agreement, and that I am legally competent to enter into this Agreement with Uber.