Uber Eats

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UBER EATS API LICENSING AGREEMENT

This Uber Eats API Licensing Agreement ("**API Licensing Agreement**") is effective as of the Effective Date provided in the table on the following page, by and between the company identified in the table on the following page ("**Provider**" or "**you**") and Uber.

"**Uber**" means:

1. If Provider is using the Uber Eats APIs in the United States, **Uber Technologies, Inc.**, a Delaware corporation ("**UTI")**; and

2. If Provider is using the Uber Eats APIs in Africa, Australia, Europe, New Zealand, the Middle East, and Taiwan, **Uber Portier B.V.**, a Netherlands limited liability company ("**UPBV**").

3. If Provider is using the Uber Eats APIs in any other country, **Uber B.V.**, a Netherlands limited liability company ("**UBV**").

As between Provider and:

A. UTI for use of Uber Eats APIs in United States and its territories and possessions, this API Licensing Agreement is made pursuant to the terms and conditions of Exhibit A attached to this API Licensing Agreement (the "**ROW API Addendum**") and the Uber Eats API Terms of Use available at https://www.uber.com/legal/en/document/?name=uber-eats-api-terms-of-use (the "**U.S. API TOU**"); and

B. UPBV for use of the Uber Eats APIs in Australia and New Zealand, this API Licensing Agreement is made pursuant to the terms and conditions of Exhibit B attached to this API Licensing Agreement (the "**ANZ Addendum**") and the Uber Eats API Terms of Use available at https://www.uber.com/legal/en/document/?name=uber-eats-api-terms-of-use&country=australia&lang=en-au (the "**ANZ API TOU**");

C. UPBV for use of the Uber Eats APIs in Africa, Europe, the Middle East, and Taiwan, this API Licensing Agreement is made pursuant to the ROW API Addendum and the Uber Eats API Terms of Use available at https://developer.uber.com/docs/businesses/terms-of-use-eu (the "**ROW API TOU**"); and

D. UBV for use of the Uber Eats APIs anywhere else, this API Licensing Agreement is made pursuant to the ROW API Addendum and the ROW API TOU;

provided that all references to "you" or "your" in each of the U.S. API TOU, ANZ API TOU, and the ROW API TOU (in each case, the "**API TOU**") will be deemed to refer to Provider for the purposes of this API Licensing Agreement (each API TOU collectively with this API Licensing Agreement, the "**Agreement**").

[Information table and signature page to follow]

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Item	Details		
1	Effective Date	/d1/	
2	Provider	Entity Name:	/n1/
		Entity Address:	/n2/
		Business ID No. (If Available):	/n3/
		Primary Contact Details	
		Full Name:	/n4/
		Email:	/n5/
		Phone:	/n6/

3	**Uber Eats APIs** (select all that apply)	**License purpose:** Providing API integration services to Merchants related to this API Licensing Agreement (e.g., facilitating the explicit acceptance or denial of orders placed by Customers from Merchants via the Uber Eats App).
	☐ /ch1/	**ORDER API:** Allows for orders for a Merchant's Items via the Uber Applications to be programmatically accepted, declined, monitored, or otherwise managed on behalf of such Merchant via its point of sale ("POS") system. If the Provider requests use of this Order API, the Provider acknowledges and agrees that the Provider is wholly responsible for correctly relaying all information provided in such Order API between Uber and Merchant systems, including but not limited to allergy information and special instructions.
	☐ /ch2/	**STORE & MENU API:** Allows for programmatic updates of a Merchant's storefronts via the Uber Applications. The Provider may provide a Merchant's menu Items and store information to Uber via this Menu API.
	☐ /ch3/	**REPORTING API:** Enables the Provider to request and receive certain data, as determined by Uber, including financial data details that are available to the Provider and Merchants in the pay-details reports available through the Uber tools, for orders placed by Customers from Merchants via the Uber Eats App. Without limiting any other term of this API Licensing Agreement, if this Reporting API is checked, the Provider represents and warrants that each Merchant has expressly authorized the Provider to access such data from Uber.
	☐ /ch4/	**POS PROVISION API:** Enables Merchant to authorize the Provider to: (1) retrieve Merchant store data; and (2) provision or launch Merchant locations on Order and Menu APIs from the Provider's service on an ongoing basis, until Uber, Merchant or the Provider explicitly terminates such access.
	☐ /ch5/	**PROMOTIONS API:** Enables Merchant to set and launch promotional offers to Customers on the Uber Eats App, applicable to orders placed by such Customers from Merchant via the Uber Eats App.

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By signing below, Provider hereby agrees to, accepts, and binds itself to all applicable terms and conditions within this API Licensing Agreement:

/sn1/
_____

Signature

/n7/
_____

Full Name

/d2/
_____

Date

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Exhibit A to the API Licensing Agreement

ROW API Addendum

Recitals

Provider and Uber intend their systems to interface, with Provider (or Uber, if applicable) performing data transformation and necessary integration work as directed by Uber so that such systems can interface (the "**Purpose**"). Provider either (i) provides API integration and/or related services for third-party sellers that have entered into an agreement with Uber to sell Items via the Apps (each, a "**Merchant**," and each such agreement, an "**Uber Eats Agreement**"), or (ii) is itself a Merchant and provides its own API integration and/or related services. Provider seeks API licenses from Uber in furtherance of the Purpose.

Agreement

1. **DEFINITIONS.**
   1.1. "**Apps**" shall mean Uber's proprietary technology that enables Customers to purchase Items from Merchants and request delivery services for said Items from Delivery Persons, who retrieve and deliver such Items from Merchants to Customers, including the mobile applications and websites branded as Uber Eats and Postmates, where available in the Territory.
   1.2. "**Customer**" shall mean an end user who accesses the Apps to view a Merchant's menu and order Items (including for delivery by a Delivery Person or for pickup by such Customer).
   1.3. "**Delivery Person**" shall mean an independent contractor that intends to seek, receive and fulfill on-demand requests for delivery services using Uber's proprietary technology under license from Uber;
   1.4. "**Items**" shall mean items sold by Merchants via its digital storefront on the Apps.
   1.5. "**Personal Data**" shall mean "personal data," "personal information," or equivalents as defined in applicable data protection laws. In the absence of applicable data protection laws, "Personal data" shall mean any information relating, directly or indirectly, to an identified or identifiable natural person.
   1.6. "**Representatives**" means either party, its controlled subsidiaries, and its and their respective officers, directors, employees, consultants and agents.
   1.7. "**Territory**" shall mean, with respect to any interaction between Provider and:
      1.7.1. UTI: the United States of America;
      1.7.2. UPBV: Africa, Australia, Europe, New Zealand, the Middle East, and Taiwan; and
      1.7.3. UBV: Any other country.
   1.8. "**Uber Tools**" shall mean such technology interfaces that Uber may provide Merchants to access and use the Apps, which may include Uber's proprietary technology platform referred to as Restaurant Manager, through which insights and analytics regarding a Merchant's performance and history using the Apps are provided, and Restaurant Dashboard, through which a Merchant may, among other things, receive, accept and fulfill requests for Items from Customers.
2. **APPLICATIONS AND APPLICATION PROGRAMMING INTERFACES.**
   2.1. Uber Ownership. Uber owns all right, title and interest, including without limitation all intellectual property rights and other rights, in and to: (a) its software applications and other proprietary technology, including any underlying data or data structures therein, accompanying documentation, and any updates or revisions to the foregoing (collectively, the "**Uber Applications**") and (b) the APIs and related developer tools (including any webhooks) made available by Uber that permit Provider applications to interface with Uber Applications, including any underlying data or data structures therein, accompanying documentation, and any updates or revisions to the foregoing (collectively, the "**Uber Eats APIs**"). Provider acknowledges that the Uber Eats APIs may be updated from time to time at Uber's sole discretion.
   2.2. Uber Eats APIs. Subject to the terms and conditions of this API Licensing Agreement, Uber shall provide Provider access to the Uber Eats APIs selected in the information table provided in the API Licensing Agreement.
   2.3. Uber License Grant. Subject to the terms and conditions of this API Licensing Agreement, Uber hereby grants to Provider (including its Representatives; provided that (1) such Representatives' use is solely for the benefit of Provider in accordance with the terms of this API Licensing Agreement; and (2) that Provider shall be fully responsible for each such Representative's use), a non-exclusive, non-transferable, non-sublicensable, limited license to use the Uber Eats APIs specified above (and no other Uber APIs) during the Term in the Territory solely for the purpose of providing API integration services to Merchants related to this API Licensing Agreement (e.g., facilitating the explicit acceptance or denial of orders placed by Customers from Merchants via the Apps).

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2.4. For clarity, this API Licensing Agreement applies only to Provider's access to and use of the Uber Eats APIs selected above. Except as expressly set forth herein, neither party will be deemed to grant the other party any license or rights under any intellectual property or other proprietary rights. All rights not granted are expressly reserved. Provider acknowledges and agrees that (1) Uber is not responsible for any display or other rendering of information provided to Uber via the Uber Eats APIs; and (2) all Uber Eats APIs are provided free of charge, as-is, and with no warranty of any kind.

3. **DATA AND USE RESTRICTIONS.**

3.1. <u>License and Use Restrictions</u>. The license and use restrictions detailed in Section III(G) of the API TOU shall apply to Merchant's use of Uber Eats APIs under this API Licensing Agreement.

3.2. <u>Data.</u>

3.2.1. <u>Uber Data</u>. Uber will share with Provider certain limited data only as necessary for Merchants to fulfill Customer orders, which may include but shall not be limited to: (a) Customer's first name and last initial; (b) Customer's phone number; and (c) order information (e.g., Items, special instructions, or allergy requests) (collectively, "**Uber Data**"). Without limiting any other term of the API Licensing Agreement, Provider represents and warrants that each Merchant has expressly (i) authorized Provider to access such Uber Data on its behalf in connection with Provider accessing the Uber Eats APIs and providing its services to such Merchants; and (ii) agreed to be bound by terms at least as restrictive as this API Licensing Agreement with respect to Merchant's respective use of such Uber Data. For the sake of clarity, Provider agrees that it will confirm with each Merchant that it seeks to provide services for as contemplated herein that it has a valid Uber Eats Agreement with Uber on an on-going basis. Provider agrees to process Uber Data in accordance with the terms and conditions of the Data Processing Agreement attached hereto as Appendix 1.

3.2.2. <u>Use of Uber Data</u>. Provider may use Uber Data for the sole purposes of: (a) facilitating the order of Items by Customers from Merchants via the Uber Eats APIs, and (b) providing Uber Data to Merchants via Provider's provided dashboard so Merchants can view their order data either singularly (e.g., only Uber Data) or aggregated with other direct and indirect e-commerce sales data, and for no other purpose. Without limiting any other term of the API Licensing Agreement, Provider represents and warrants that it shall comply with the terms and conditions set forth in the Agreement regarding its collection, receipt, transmission, storage, disposal, use and disclosure of Uber Data and be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of Uber Data under its or its Representatives' control or possession. For clarity, Provider shall be responsible for, and remain liable to, Uber for the actions and omissions of its Representatives concerning the treatment of Uber Data as if they were Provider's own actions and omissions. In its sole discretion, Uber may (not more than once per year) request from Provider a written certificate of its compliance with this Section 3.2.2, including documentation to substantiate such certification. Failure to provide such certification shall be deemed a material breach of this API Licensing Agreement by Provider.

3.2.3. <u>Uber Audits</u>. Notwithstanding Section 3.2.2, upon reasonable advance written notice, Uber may (not more than once per year) during normal business hours and at its own expense, audit Provider's facilities, networks, systems, procedures, processing and maintenance of Uber Data, as well as its compliance with this API Licensing Agreement. Provider shall reasonably cooperate with such audit by providing access to knowledgeable personnel, physical premises as applicable, documentation, infrastructure, and any application software that processes Uber Confidential Information and/or Uber Data or otherwise has access to Uber's networks and systems. Uber shall be responsible for its costs and expenses of such audit (or the fees and costs of the third party performing the audit), unless such audit reveals, or is initiated because of, a material breach of this API Licensing Agreement, in which case Provider will reimburse Uber for such costs and expenses. Provider will promptly address and correct all deficiencies identified in any such audit.

4. **PROVIDER OBLIGATIONS.**

4.1. <u>Implementation</u>. In order to facilitate the submission of orders received from Customers directly into a Merchant's POS systems for processing, Provider agrees to integrate and maintain the API connection to the above-selected Uber Eats APIs pursuant to this API Licensing Agreement and in a manner consistent with https://developer.uber.com/docs/eats/guides/order_integration, unless otherwise agreed to in writing by Uber.

4.2. <u>Merchant Integration</u>. In order to maintain eligibility for the integration(s) contemplated by this API Licensing Agreement, Provider will be required to meet Uber's quality and performance standards available via https://developer.uber.com/docs/eats/quality-and-performance, as may be amended by Uber from time to time. Uber reserves the right to share Provider's performance metrics (on an ongoing basis or upon request) with Merchants interested in or currently utilizing Provider's POS integration services. If applicable, Provider agrees

to use good faith efforts to provide its POS integration services for all Merchants that use Provider's services and that use or may use the Apps.

4.3. <u>Provider for Merchants.</u> In the event Provider provides API integration and/or related services to Merchants:

4.3.1. Provider hereby represents and warrants that: (a) each Merchant has expressly authorized Provider to access its data in connection with the Uber Eats APIs; (b) Provider has not entered into, and during the Term will not enter into, any agreement that would prevent it from complying with this API Licensing Agreement; and (c) Provider has not entered into, and during the Term will not enter into, any agreement that would limit Uber's rights under this API Licensing Agreement;

4.3.2. Provider agrees that it will support acceptance of orders from the Apps through the tablet or other mobile device provided by Uber or its affiliates to each Merchant for use with the Uber Tools ("**Device**"). Provider will support keeping the Device on Merchant's premises at all times, in an easily accessible location where it is available for use by Merchant's front-of-house staff. Provider will not support replacing the Device with an alternative means of accepting orders or otherwise deploy a non-tablet or non-mobile device implementation without Uber's prior approval; and

4.3.3. Provider agrees to use good faith efforts to provide its integration services related to point-of-sale systems for all of Provider's merchant clients who use or will use the Uber Tools. For the sake of clarity, Provider agrees it will work with Uber and its affiliates to identify such Restaurants on an on-going basis.

4.4. <u>Provider Marks.</u> Provider hereby grants to Uber and its affiliates a paid-up, royalty-free, non-exclusive, worldwide, transferable, sublicensable, right and license during the Term to use, for Uber's marketing and promotional purposes, Provider's trademarks, service marks, trade names, copyrights, logos, slogans and other identifying symbols and indicia of Provider (collectively, "**Marks**"). All uses of Provider's Marks by Uber and its affiliates will be in the form and format specified or approved by Provider. Except as expressly set forth herein, Provider retains all right, title, and interest in and to the Marks.

5. **UBER OBLIGATIONS.**

5.1. Uber will be responsible for collecting from Merchants any applicable amounts, including but not limited to, gratuity and sales taxes if required under any Uber Eats Agreement with such Merchants. In no event shall Provider receive or be responsible for any payments from or to Merchants that arise from such Uber Eats Agreement.

5.2. Uber, at its election, may provide Merchant access to reasonable Uber customer support via email to assist Provider in resolving technical questions in connection with this API Licensing Agreement. Support requests will be triaged at Uber's discretion based on the impact and urgency of the request. For the sake of clarity, Provider shall be responsible for providing all related support to Merchants with respect to the API integration, including but not limited to implementation and technical support of such API integration on an on-going basis. For specific guidelines surrounding Uber support, refer to any external resources shared by Uber and the Uber developer portal available at https://developer.uber.com/docs/eats/introduction.

6. **TERM AND TERMINATION.**

6.1. This API Licensing Agreement shall begin on the Effective Date and remain in effect for one (1) year (the "**Initial Term**"). At the end of the Initial Term, this API Licensing Agreement shall automatically renew for successive one (1) year periods (each a "**Renewal Term**" and collectively with the Initial Term, the "**Term**"). At any time, (1) Provider may terminate this API Licensing Agreement in its entirety without cause, effective one year following written notice of termination, and (2) Uber may terminate this API Licensing Agreement in its entirety without cause, effective thirty (30) days following written notice of termination. Notwithstanding, this API Licensing Agreement will terminate automatically (1) in the event of termination of the API TOU; or (2) in the event that either party (i) ceases conducting business in its normal course; (ii) becomes insolvent; (iii) makes a general assignment for the benefit of creditors; (iv) suffers or permits the appointment of a receiver for its business or assets; or (v) avails itself of, or becomes subject to, any proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt or receivership law or statute.

6.2. <u>Survival.</u> The parties acknowledge and agree that Sections 1, 2, 3, 6.2 and 7–9 shall survive the expiration and termination of this API Licensing Agreement. Upon termination of this API Agreement by either party, Provider must cease any access to or use of the Uber Eats APIs.

7. **INTELLECTUAL PROPERTY.** As between the parties, Provider retains all right, title and interest in and to Provider's APIs, if applicable, including the technology and software Provider uses to provide them. Similarly, as between the parties, Uber retains all right, title and interest in and to the intellectual property described in Section 2.1 above, and the Apps, including the technology and software Uber uses to provide them.

8. **DISCLAIMER.** Except as expressly set forth in this API Licensing Agreement, neither party makes any representations, and hereby expressly disclaims all warranties, express or implied, regarding the Uber Eats API(s), the Uber Applications, or the Uber Data or any part of such, including any implied warranties of merchantability or fitness for a particular purpose and implied warranties arising from any course of dealing or course of performance. Uber provides the Uber

Eats API(s), the Apps, and the Uber Data "as is" and on an "as-available" basis, without warranty or indemnification of any kind. Uber does not warrant that the Uber Eats API(s), the Uber Applications, or the Uber Data will meet Provider or Merchant's requirements or that use will be error-free, uninterrupted, virus-free, or secure.

9. **LIMITATION OF LIABILITY.** EXCEPT FOR LIABILITY ARISING FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, INDEMNIFICATION OBLIGATIONS, A BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER THE API LICENSING AGREEMENT, OR DAMAGES ARISING FROM PROVIDER'S BREACH OF SECTION 3.2.1 OF THIS API LICENSING AGREEMENT: (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CLAIM FOR ANY INDIRECT, WILLFUL, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, FOR LOSS OF BUSINESS PROFITS, OR DAMAGES FOR LOSS OF BUSINESS OF PROVIDER OR ANY THIRD PARTY ARISING OUT OF THIS API LICENSING AGREEMENT, OR LOSS OR INACCURACY OF DATA OF ANY KIND, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) EACH PARTY'S TOTAL CUMULATIVE LIABILITY OF EACH AND EVERY KIND UNDER THIS API LICENSING AGREEMENT WILL NOT EXCEED US$1,000.00 (OR LOCAL CURRENCY EQUIVALENT). THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES WILL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

10. **MISCELLANEOUS.**

   10.1. Jurisdiction.

      10.1.1. If Provider uses or accesses the Uber Eats APIs in the United States, this API Licensing Agreement will be governed by the laws of the State of New York, without regard to conflicts of law principles, and all claims arising out of or relating to this API Licensing Agreement will be brought exclusively in the federal or state courts of New York County, New York, USA, and you consent to jurisdiction in those courts.

      10.1.2. If Provider uses or accesses the Uber Eats APIs in Japan, this API Licensing Agreement will be governed by the laws of Japan, without regard to its conflicts of law principles, and all claims arising out of or relating to these this API Licensing Agreement will be brought exclusively in the courts of Japan, and you consent to jurisdiction in those courts.

      10.1.3. If Provider uses or accesses the Uber Eats APIs in any other country, this API Licensing Agreement will be governed by the laws of The Netherlands, without regard to its conflicts of law principles, and all claims arising out of or relating to this API Licensing Agreement will be brought exclusively in the courts of The Netherlands, and you consent to jurisdiction in those courts.

   10.2. Language. This API Licensing Agreement was drafted in English. If Uber and Provider execute both an English-language version and a non-English-language version, the English-language version shall control in the event of a conflict with any translated version.

   10.3. The failure of any party to enforce, at any time or for any period of time, the provisions hereof, or the failure of any party to exercise any option herein, will not be construed as a waiver of such provision or option and will in no way affect that party's right to enforce such provisions or exercise such option.

   10.4. In the event any provision of this API Licensing Agreement is determined to be invalid or unenforceable by ruling of a court of competent jurisdiction, the remainder of this API Licensing Agreement (and each of the remaining terms and conditions contained herein) will remain in full force and effect.

   10.5. This API Licensing Agreement (including its exhibits and incorporation of any API TOU) contains the full and complete understanding and agreement between the parties relating to the subject matter hereof and supersedes all prior and contemporary understandings and agreements, whether oral or written, relating to such subject matter hereof.

   10.6. This API Licensing Agreement may be executed in one or more counterparts and/or by exchange of electronically signed counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same original instrument.

   10.7. For clarity, (1) all references to Uber (or "Portier," as the case may be) in the Uber Eats Agreement will be deemed to refer to Uber for purposes of this API Licensing Agreement; (2) in the event of any conflict between this API Licensing Agreement and any other term between the parties, this API Licensing Agreement shall prevail, but only with respect to the specific matter at issue; and (3) any capitalized, undefined terms used herein shall have the meaning set forth elsewhere in the Agreement.

   10.8. Passwords. Provider must maintain the integrity of information related to Provider or Merchant's access and use of the Uber Tools and Apps, including any password, login, access tokens or key information. Without limiting any other term of the Agreement, Provider represents and warrants that Provider will not share or solicit such information with or from any third party, including Merchants, without Uber's express written consent.

   10.9. Amendments. Uber may update each API TOU and the API Licensing Agreement from time to time at its sole discretion.

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APPENDIX 1 TO THE ROW API ADDENDUM

DATA PROCESSING AGREEMENT

This data processing agreement ("**DPA**") forms part of the API Licensing Agreement between Uber and Provider and all further agreements executed under it. This DPA is effective as of the execution date of the API Licensing Agreement. In the event of any conflict between this DPA and any other term of the API Licensing Agreement, this DPA shall prevail, but only with respect to the specific matter at issue.

DEFINITIONS
The following terms shall have the following meanings. Capitalized terms not defined herein shall have the same meaning set forth in the API Licensing Agreement.
   a. "**Controller**" means the party to this DPA that determine(s) the purposes and means of the Processing of Personal Data for the purposes of the API Licensing Agreement.
   b. "**Data Protection Law**" means all laws and regulations applicable to the Processing of Uber Personal Data under the DPA, including, as applicable, the laws and regulations of the United States, the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, including the General Data Protection Regulation (EU) 2016/679 ("GDPR") and the California Consumer Privacy Act of 2018 ("CCPA").
   c. "**Data subject**" means an identified or identifiable natural person.
   d. "**Process**," "**Processes**," "**Processing**," or "**Processed**" means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means.
   e. "**Processor**" means a party to this DPA that Processes personal data on behalf of Uber or Uber Affiliates. The term Processor as used herein is equivalent to the term "Processor" as used in the GDPR, and the term "Service Provider" as used in the CCPA.
   f. "**Services**" means the services provided or received by the parties pursuant to the API Licensing Agreement.
   g. "**Sub-processor**" means a Processor engaged by Provider, or a Processor engaged by a Sub-processor of Provider, to Process Uber Personal Data.
   h. "**Uber Personal Data**" means personal data that is transferred by Uber to Provider and Processed by Provider for the purpose of rendering Services for Uber or any of its affiliates under the API Licensing Agreement.

1. **UBER PERSONAL DATA PROCESSING.**
   1.1. <u>Roles of Parties</u>. The parties acknowledge and agree that Uber is the Controller of the Personal Data Processed in connection with the API Licensing Agreement[1], and that Provider is a Processor of Uber Personal Data, except within Europe, the Middle East, or Africa, where Provider is itself a Merchant and does not provide API integration and/or related services to third-parties, in which case, Provider will be a Controller.
   1.2. <u>Limitations and Prohibitions</u>. Provider shall only Process Uber Personal Data for the purpose of performing the services specified in the API Licensing Agreement, and may not use Uber Personal Data for any other purpose unless otherwise agreed by the parties in writing. Provider will not combine Uber Personal Data with data from any other source, company, organization or entity, unless necessary to provide the Services.
   1.3. <u>Compliance with Uber instructions and applicable laws</u>. In connection with its Processing of Uber Personal Data as a Processor, Provider shall at all times comply with Uber's written instructions pursuant the API Licensing Agreement. Further, Provider shall, at all times, comply with all applicable laws, rules and regulations, including but not limited to, all applicable Data Protection Law.
   1.4. <u>Sub-processors</u>. Provider will not permit any Sub-processor to Process Uber Personal Data, unless Provider and the Sub-processor have entered into an agreement that imposes obligations on the Sub-processor that are no less restrictive and at least equally protective of Uber Personal Data than those imposed on Provider under this DPA. Provider's use of Sub-processors does not affect or limit Provider's liability under this DPA.
   1.5. <u>Data Retention and Deletion</u>. Provider shall retain Uber Personal Data for only so long as necessary to perform its obligations under the API Licensing Agreement, unless otherwise required under applicable laws. Upon termination or expiration of the API Licensing Agreement or earlier as requested by Uber, Provider shall destroy or return to Uber (at Uber's election) all Uber Personal Data in its possession, custody and control.

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[1] Uber B.V. and Uber Technologies Inc. are the data controllers of the personal data that Uber collects in connection with use of its services in the European Economic Area or the United Kingdom and Switzerland, and Uber Technologies, Inc. is the data controller for such data everywhere else (except where the data controller for employees is the local Uber entity in the country in which the employee resides). Where an entity other than these enters into this Agreement on behalf of Uber, it is authorized to do so by the aforementioned data controller(s).

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1.6. <u>Data Subject Rights</u>. If Provider receives a request from an Uber Data Subject relating to their Uber Personal Data, Provider shall immediately forward the request to Uber and provide all reasonable cooperation necessary for Uber to fulfill the Uber Data Subject's request in compliance with applicable laws.

1.7. <u>Requests or Demands from Governmental or Regulatory Bodies</u>. Provider shall inform Uber as soon as possible if it receives a request or demand from a governmental or regulatory body with authority over Provider or Uber relating to Provider's Processing of Uber Personal Data, and shall fully cooperate with Uber in connection with any response to such investigation or audit.

1.8. <u>Indemnification</u>. In addition to the terms set forth in the API Licensing Agreement, Provider agrees to fully indemnify, defend and hold harmless Uber, its directors, officers, employees and agents from and against any and all losses, damages, fees and expenses arising from any claims due to, arising out of, or relating in any way to Provider's loss, alteration, or misuse of Uber Personal Data, or unauthorized access to or destruction or disclosure of Uber Personal Data.

1.9. <u>Cross border transfer</u>. In the event that the Services require cross-border transfer of Uber Personal Data, to the extent required by applicable law, the parties hereby incorporate, and Provider agrees to comply with, the Standard Contractual Clauses approved by the European Commission for data transfers, or other methods of transfer authorized under applicable laws.

2. SECURITY MEASURES

2.1. <u>Security Program</u>. Provider has developed and implemented, and will consistently update and maintain as needed: (i) a written and comprehensive information security program in compliance with applicable data protection and privacy laws; and (ii) reasonable policies and procedures designed to detect, prevent, and mitigate the risk of data security breaches or identify theft ("**Security Program**").

2.2. <u>Access</u>. Provider shall limit access to Uber Personal Data to only those employees or agents that require access to perform their roles and responsibilities in connection with the Services. Provider shall reasonably update all access rights based on personnel or computer system changes, and shall periodically review all access rights to Uber Personal Data.

2.3. <u>Technical Security Measures</u>. Provider shall perform vulnerability scanning and assessments on new and key applications and infrastructure. Provider shall deploy all applicable and necessary system security patches and use up-to-date, industry standard, commercial virus/malware scanning software that identifies malicious code on all of its systems that collect, use, disclose, store, retain or otherwise Process Uber Personal Data.

2.4. <u>Data Security Incident</u>. Provider shall notify Uber within twenty-four (24) hours of discovery of an actual or suspected unauthorized access to, acquisition or disclosure of Uber Personal Data, or other actual or suspected breach of security or confidentiality with respect to Uber Personal Data in Provider's or its representatives' control or possession.

3. MISCELLANEOUS

3.1. <u>Termination and Survival</u>. This DPA and all provisions herein shall survive so long as, and to the extent that, Provider Processes or retains Uber Personal Data, except that the indemnification obligations described herein shall survive for so long as any claims for which Uber is indemnified by Provider under this DPA may be asserted.

3.2. <u>Ineffective clause</u>. If individual provisions of this DPA are or become ineffective, the effectiveness of the remaining provisions shall not be affected. The parties shall replace the ineffective clause with a legally allowed clause, which will accomplish the intended commercial intention as closely as possible.

Exhibit B to the API Licensing Agreement

ANZ Addendum

These terms and conditions varies the agreement between the Provider and Uber as referenced in the API Licensing Agreement above and sets out additional terms under which Uber will permit you to use and access Uber Eats APIs (the **UPBV Addendum**).

Application of this ANZ Addendum

On and with effect from the Effective Date (set out in the API Order Form), the API Licensing Agreement is amended as set out below, as if the changes in this ANZ Addendum were fully set out in the text of the API Licensing Agreement. Section 1 of the API TOU applies to any conflict between this ANZ Addendum and any other document forming part of the API Licensing Agreement. Nothing in this ANZ Addendum terminates, discharges, or rescinds the API Licensing Agreement, or affects the validity or enforceability of the API Licensing Agreement. All other parts of your API Licensing Agreement remain in full force and effect. Capitalised terms in this ANZ Addendum have the meaning given in the API TOU, unless otherwise specified.

Special Terms

The following additional terms apply in respect of Uber Eats APIs:

1. **USE OF APIS.**
    1.1. **Open Source.** To facilitate your Uber API integration, Uber may make certain software development kit(s) (**SDK(s)**) and/or libraries available to you under a separate open source licence. You agree that any Uber Eats API integration facilitated with such open source SDK(s) and/or libraries remains subject to this API Licensing Agreement.
2. **UBER DATA.**
    2.1. **Uber Data.**
        2.1.1. Uber will share with you certain limited data necessary for Merchants to fulfil Customer orders, which may include:
            2.1.1.1. Customer's first name and last initial;
            2.1.1.2. Customer's phone number; and
            2.1.1.3. order information (e.g., Items, special instructions, or allergy requests) (collectively, **Customer Data**).
        2.1.2. Customer Data is considered to be Uber Data for the purposes of this API Licensing Agreement.
        2.1.3. Without limiting any other term of this API Licensing Agreement, you represent and warrant that:
            2.1.3.1. each Merchant has expressly authorised you to access such Uber Data on its behalf in connection with you accessing the APIs and providing its services to such Merchants;
            2.1.3.2. each Merchant has expressly agreed to be bound by terms at least as restrictive as this API Licensing Agreement with respect to Merchant's respective use of such Uber Data;
            2.1.3.3. you will confirm with each Merchant that it seeks to provide services for as contemplated in this API Licensing Agreement that it has a valid Uber Eats Merchant Agreement with Uber on an on-going basis; and
            2.1.3.4. where such data includes Personal Data and/or other non-public content relating to a user, such content must not be exposed to other users or to third parties.
    2.2. **Use of Uber Data.**
        2.2.1. You must only use Uber Data for purpose of:
            2.2.1.1. facilitating the order of Items by Customers from Merchants via the Uber Eats APIs; and
            2.2.1.2. providing Uber Data to Merchants via your provided dashboard so Merchants can view their order data either singularly (e.g., only Uber Data) or aggregated with other direct and indirect e-commerce sales data.
        2.2.2. Without limiting any other term of this API Licensing Agreement, you represent and warrant that you will comply with the terms and conditions set forth in this API Licensing Agreement regarding its collection, receipt, transmission, storage, disposal, use and disclosure of Uber Data and be responsible for the unauthorised collection, receipt, transmission, access, storage, disposal, use and disclosure of Uber Data under its or its Representatives' control or possession. For clarity, you are responsible for, and will remain liable to, Uber for

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the actions and omissions of its Representatives concerning the treatment of Uber Data as if they were your own actions and omissions.

2.2.3. Uber may (not more than once per year) request you to provide a written certificate of your compliance with this section 2, including documentation to substantiate such certification. Failure by you to provide such certification will be deemed a material breach of this API Licensing Agreement.

3. **YOUR OBLIGATIONS.**

3.1. **Implementation.** In order to facilitate the submission of orders received from Customers directly into a Merchant's POS systems for processing, you agree to integrate and maintain the API connection to the above-selected Uber Eats APIs pursuant to this API Licensing Agreement and in a manner consistent with https://developer.uber.com/docs/eats/guides/order_integration, unless otherwise agreed to in writing by Uber.

3.2. **Merchant Integration.**

3.2.1. In order to maintain eligibility for the integration(s) contemplated by this API Licensing Agreement, you will be required to meet Uber's quality and performance standards available via https://developer.uber.com/docs/eats/quality-and-performance, as may be amended by Uber from time to time.

3.2.2. Uber reserves the right to share your performance metrics (on an ongoing basis or upon request) with Merchants interested in or currently utilising your POS integration services.

3.2.3. If applicable, you agree to use good faith efforts to provide your POS integration services for all Merchants that use your services and that use or may use the Uber Eats App.

4. **UBER OBLIGATIONS**

4.1. **Payment Collections.**

4.1.1. Uber will be responsible for collecting from Merchants any applicable amounts, including but not limited to, taxes if required under any Uber Eats Merchant Agreement with such Merchants.

4.1.2. In no event will you receive or be responsible for any payments from or to Merchants that arise from such Uber Eats Merchant Agreement.

4.2. **Provider Support.** Uber may provide documentation, functional and technical design documents, and other documents that may be relevant or useful in using API Services. Except to the extent required by the Australian Consumer Law, Uber has no obligation to provide any maintenance, support, or training for set-up or use of any API Services.

4.3. **Merchant Support.**

4.3.1. Uber, at its election, may provide a Merchant with access to reasonable Uber customer support via email to assist you in resolving technical questions in connection with this API Licensing Agreement.

4.3.2. Support requests will be triaged at Uber's discretion based on the impact and urgency of the request.

4.3.3. For clarity, you are responsible for providing all related support to Merchants with respect to the API integration, including, but not limited to, implementation and technical support of such API integration on an on-going basis. For specific guidelines surrounding Uber support, refer to any external resources shared by Uber and the Uber developer portal available at https://developer.uber.com/docs/eats/introduction.

5. **LIABILITY.** Notwithstanding section 12.1(b) of the API TOU, but subject to section 12.2 of the API TOU, Uber's combined total cumulative liability of each and every kind to you under this API Licensing Agreement will not exceed AU $1,000, and your total cumulative liability of each and every kind to Uber under this API Licensing Agreement will not exceed AU $1,000.

6. **SURVIVAL.** The parties acknowledge and agree that sections 2 and 5 of this ANZ Addendum survives the expiration and termination of this API Licensing Agreement.

7. **DEFINITIONS**

7.1. **Customer** means an end user who accesses the Uber Eats App to view a Merchant's menu and order Items.

7.2. **Item(s)** means any food, drink or other items that the Merchant makes available to Customers via the Uber Eats App.

7.3. **Uber Eats** API means an API identified or listed as an "Uber Eats API" in your API Order Form.

7.4. **Uber Eats App** means a website, application or other technology interface to purchase Items and, if applicable, delivery services, made available to Customers.