

**VOLUNTARY COLLECTION AGREEMENT
FOR
CITY OF SANTA FE'S LODGERS' TAX ORDINANCE**

THIS VOLUNTARY COLLECTION AGREEMENT (the "**Agreement**") is dated July 12, 2016 and is between AIRBNB, INC., a Delaware corporation ("**Airbnb**") and the CITY OF SANTA FE (the "**City**"). Each party may be referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS:

WHEREAS, Airbnb represents that it provides an Internet-based platform through which a third party desiring to offer an accommodation (a "**Host**") and a third party desiring to book an accommodation (a "**Guest**") have the opportunity to communicate, negotiate and consummate a booking transaction for accommodations ("**Booking Transaction**") pursuant to a direct agreement between Host and Guest to which Airbnb is not a party (the "**Platform**");

WHEREAS, Airbnb represents that any agreement regarding a Booking Transaction through use of the Platform is between the Host and Guest only, that Airbnb is not a party to such agreements, that a Host exclusively determines the price to be charged, the dates to book such accommodations, the parties with whom to transact and all other material terms of such agreements, that only the Host and not Airbnb has the right and ability to accept and book an accommodation, and that Airbnb does not own any real property and does not have any possessory interest in any real property or accommodations offered by Hosts (including, but not limited to, as an owner, lessee, sublessee, mortgagee in possession, licensee, agent or in any other capacity), and therefore cannot and does not transfer any possessory interest in any property or accommodations to any person;

WHEREAS, Airbnb represents that it provides, through third-party payment processors, a secure payment processing service to permit Hosts to receive payments electronically. When the Host accepts and confirms a Guest's reservation request, Airbnb, acting through third-party payment processors, electronically processes the Guest's payment, which is typically held and released approximately 24 hours after the Guest checks into the Host's property. Airbnb represents that Guests booking accommodations through the Platform pay the Host for such

accommodations electronically using the Platform, and such payments are briefly held by Airbnb typically until twenty-four hours after check-in and then released directly to Hosts (less the applicable service fee);

WHEREAS, Airbnb represents that it is not an owner, proprietor or otherwise “vendor” of any “hotel”, “room” or accommodation of any kind, under applicable laws of the City, and the City and Airbnb are entering into this Agreement voluntarily. Airbnb represents it does not collect or charge “rent” within the meaning of applicable City laws. Airbnb represents that it does not rent or have the right to rent rooms, does not book accommodations, does not mark up the prices for accommodations set by Hosts, does not sell or resell accommodations, does not reserve, arrange for, convey or furnish or transfer occupancy of accommodations, does not operate any accommodations, and has not, pursuant to any assignment, contract, agency or otherwise been assigned in whole or part the right to exercise, or exercised any right pursuant to any assignment, contract, agency or otherwise, to operate accommodations, and only provides communications, payment processing and other services through the Platform, receiving only fixed service fees which are a percentage of the price set by Hosts, such service fees collected from the Guest and from the Host, respectively;

WHEREAS, the legal rights, remedies and obligations of Airbnb, Hosts and Guests using the Platform are specified in a document titled “Terms of Service” (the “TOS”) and other policies and procedures available at www.airbnb.com, including, but not limited to, certain TOS provisions to which Hosts and Guests have agreed that when or if Airbnb determines to assist with collection and remittance of occupancy taxes in a given jurisdiction, users grant Airbnb authority to register, report, collect and remit the applicable occupancy taxes pursuant to this Agreement and the TOS;

WHEREAS, the City and Airbnb have determined to enter into this Agreement in order to facilitate the reporting, collection and remittance of applicable occupancy taxes from Hosts and Guests, resulting from Booking Transactions completed by Hosts and Guests on the Platform for occupancy of accommodations located in the City, in accordance with this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) With respect to Booking Transactions between Hosts and Guests completed on the Platform for accommodations for which the City's Lodgers' Tax ("**Lodgers' Tax**"), imposed by Chapter 18, Section 11 of the Santa Fe City Code (the "**Code**"), is applicable, and during the period in which this Agreement is effective (as defined below), and solely pursuant to the terms and conditions of this Agreement, Airbnb agrees to assume the duties of a Lodgers' Tax "vendor" as described in Chapter 18, Section 11.3 of the Code.

(B) Airbnb neither agrees to undertake, nor undertakes any obligation to assume the duties of a vendor and does not agree to undertake any obligation contractually or otherwise to collect or remit Lodgers' Tax relating to any user's transaction completed, made or facilitated through any means, or method or other platform, other than the Host or Guest's use of the Platform. Any obligation assumed by Airbnb pursuant to this Agreement (during any period in which it is effective) shall be limited to users completing Booking Transactions directly between the Guest and Host through their use of the Platform.

PROSPECTIVE COLLECTION OF LODGERS' TAX

(C) Starting on August 1, 2016 (the "**Effective Date**"), Airbnb agrees to commence collecting and remitting Lodgers' Tax, pursuant to the terms of this Agreement, at the applicable rate, on completed Booking Transactions for occupancy of accommodations located in the City of Santa Fe between a Guest and Host who use the Platform. For the avoidance of doubt, this agreement to collect, shall not extend to any period or transaction prior to the Effective Date or after the termination of this Agreement or to any user's transaction completed, through any means, method or platform, other than the Platform.

REMITTANCE OF LODGERS' TAX

(D) Airbnb shall reasonably report information on the tax return form prescribed by the City, including all Lodgers' Tax that is subject to the provisions of this Agreement, and it shall remit all Lodgers' Tax collected from Guests in accordance with this Agreement and the TOS

and evidenced on such returns in the time and manner described in the Code or as agreed between the Parties in writing.

AIRBNB LIABILITY

(E) On a prospective basis upon the Effective Date of this Agreement, and during any period in which this Agreement is in effect, in accordance with the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of Lodgers' Tax, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with law. Nothing contained herein nor any action taken pursuant to this Agreement, including but not limited to the collection or remittance of Lodgers' Tax, shall impair, restrict or prevent Airbnb from asserting that any Lodgers' Tax and/or penalties, interest, fines or other amounts assessed against it were not due, are the subject of a claim for refund under applicable law or enforcing any and all rights accorded to it pursuant to law. For the purposes of complying with this section, the Parties hereby agree that, pursuant to the exemptions to Lodgers' Tax under Sections 18-11.8(A) and (B) of the Code, Airbnb shall not be required to collect and/or remit Lodgers' Tax on a Booking Transaction for a period of at least 30 consecutive days or if the consideration paid by the Guest to the Host is less than \$2.00 per night. Any Guest or Host may make a claim for a refund to the City Finance Department under any other applicable exemption pursuant to Section 18-11.13 of the Code.

(F) During any period in which this Agreement is in effect, and Airbnb is not in breach of its obligations under this Agreement, then with respect to Booking Transactions covered by this Agreement, the City shall audit Airbnb on the basis of Lodgers' Tax returns and supporting documentation filed by Airbnb with the City and shall not directly or indirectly audit any individual Guest or Host relating to such Booking Transactions unless and until an audit of Airbnb by the City has been exhausted with the matter unresolved.

(G) With respect to any audit of completed Booking Transactions that are subject to this Agreement during any period in which it is effective, the City shall audit Airbnb on an anonymous numbered account basis. The Parties agree that Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest and/or relating to any Booking Transaction in connection with an audit or otherwise without binding legal process served only after completion of such audit by the City of Airbnb with respect to such Host or Guest.

(H) The City agrees that pursuant to this Agreement and during the period in which it is effective, Airbnb will register as a “vendor” for the reporting, collection and remittance of Lodgers’ Tax, in connection with its obligations assumed under Chapter 18, Section 11 of the Code as set forth in this Agreement. Registration with the City and the issuance of any certificate of authority will be in the name of Airbnb, Inc. at 888 Brannan Street, 4th Floor, San Francisco, CA 94103. Airbnb, Inc. will be the registered taxpayer on behalf of any subsidiary or affiliate of Airbnb, Inc. collecting Lodgers’ Tax from Guests.

GUEST AND HOST LIABILITY

(I) During any period in which this Agreement is effective, and solely with respect to a Host’s activity on the Platform, said Host shall not be required to individually register with the City to collect, remit and report Lodgers’ Tax, under the Code, on the condition that Airbnb is in compliance with its obligations under this Agreement and the Code. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to Lodgers’ Tax, including any obligation to register with the City to collect, remit and report Lodgers’ Tax for a user’s transactions completed through any means, method, device or platform other than the Platform, or restrict the City from investigating or enforcing any provision of applicable law against such users for any occupancy arranged directly or through a means other than the Platform.

(J) Nothing herein shall relieve any Guest or Host of liability for Lodgers’ Tax imposed by the Code, except as noted in paragraphs (E) (F), (G), (H), (I) and (K) herein, nor limit the City’s authority to hold such Guest or Host responsible for any applicable lodgers’ tax, penalties and interest for which they may be liable, including, but not limited to, civil and criminal penalties arising from inaccurate, false or misleading representations made to Airbnb or the City by such Guest or Host, whether or not such representations were, in fact, relied upon by Airbnb or the City in complying with its responsibilities under this Agreement.

WAIVER OF LOOK-BACK

(K) The terms of this Agreement under which Airbnb assumes the obligations of a vendor, including registration and the collection and remittance of Lodgers’ Tax, shall be prospective only as of the Effective Date and the City expressly waives and relinquishes any right to demand payment of and/or collect Lodgers’ Tax or other tax indebtedness, including but

not limited to penalties, fines, interest or other payments relating to Lodgers' Tax, from Hosts, Guests or Airbnb with respect to any Booking Transactions completed on the Platform prior to the Effective Date. Nothing contained in this Agreement shall impair or prevent the City from collecting alleged indebtedness related to Lodgers' Tax for transactions completed through any means, method, device or platform other than the Platform. Nothing contained in this Paragraph (K) of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the City may have or claim to have against any Host or Guest unrelated to Lodgers' Tax or the matters released herein.

NOTIFICATION TO GUESTS AND HOSTS

(L) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify (i) Hosts that Lodgers' Tax will be collected and remitted to the City as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of Lodgers' Tax collected and remitted on each Booking Transaction. Additionally, the Parties agree that Airbnb may, at its discretion, notify Hosts of the specific provisions of paragraphs (I), (J) and (K) of this Agreement.

PROSPECTIVE TAX TREATMENT

(M) Collection and remittance of Lodgers' Tax under this Agreement shall begin on the Effective Date.

LIMITATION OF APPLICATION

(N) This Agreement is solely for the purpose of facilitating the administration and collection of the Lodgers' Tax with respect to Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution and implementation of this Agreement by the Parties, including but not limited to, the collection and/or remittance of Lodgers' Tax, shall not be considered an admission or evidence of any issue of law or fact arising under the Code or any other provisions of the laws of the United States of America, State of New Mexico, or the City. By entering into or acting pursuant to the terms of this Agreement, including but not limited to collecting and/or remitting Lodgers' Tax, Airbnb does not waive, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions to,

without limitation, (i) contest the validity of any construction of the Code that extends beyond the express terms of the ordinance; (ii) contest that Airbnb is a “vendor” as defined in Chapter 18, Section 11.3 of the Code; (iii) contest that Airbnb is an operator or vendor for any other purpose under any other provision of state, local and/or federal law; (iv) contest that Airbnb “charges”, collects, receives or otherwise comes into possession of taxable “rent” as those terms are used in Chapter 18, Section 11 of the Code; or (v) contest that any third party occupies taxable “lodgings” as used in Chapter 18, Section 11 of the Code.

MODIFICATIONS

(O) No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

DURATION/TERMINATION

(P) This Agreement shall apply to Booking Transactions made on or after the Effective Date and shall remain in effect unless terminated in accordance with paragraph (Q) below.

(Q) This Agreement may be terminated by Airbnb or the City for convenience, provided that proper notice is given. Proper notice for the purposes of this paragraph means at least 30 days’ written notification to the other party by certified or registered mail and, in the case where Airbnb is the party seeking to terminate the Agreement, at least 30 days e-mail notification to each Host offering accommodations in the City through Airbnb’s Platform that Airbnb will no longer be collecting and remitting Lodgers’ Tax for Booking Transactions subject to this Agreement. Any termination under this paragraph shall not affect the duty of Airbnb to remit to the City any Lodgers’ Tax collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the City as of the date of termination.

MISCELLANEOUS

(R) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of New Mexico without regard to its conflict of law principles. The Parties agree that any

dispute arising out of or relating to this Agreement shall be heard exclusively in the First Judicial District Court of New Mexico in Santa Fe, New Mexico; or the United States District Court for the District of New Mexico. Each Party consents to the exclusive jurisdiction of such courts and waives any and all objections to jurisdiction or venue in such courts or any assertion of inconvenient forum.

(S) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(T) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this agreement, and further agree that electronic signatures to this agreement shall be legally binding with the same force and effect as manually executed signatures.

(U) CONFIDENTIALITY.

- (i) The City agrees that, to the maximum extent permitted by law, both the terms of this Agreement, and all discussions and negotiations related to it, shall remain strictly confidential. The City agrees not to seek out, initiate or otherwise advise any other person or entity regarding the terms of and negotiations related to this Agreement, including but not limited to in the press, on the Internet or any other form of media, except when describing this Agreement and its terms with the Santa Fe City Council, except with the prior written permission of Airbnb or as is expressly permitted by law. Nothing in this paragraph shall be deemed to be consent by Airbnb to the transfer of any data or information to any third party. In the event of a freedom of information, public records law request or similar request or other challenge to this provision of this Agreement, (including but not limited to any third party request to disclose the Agreement or any part thereof) the City agrees to provide written notice prior to any such disclosure to the attention of Airbnb's

General Counsel via e-mail (legal@airbnb.com) to permit Airbnb to seek protective or other relief at its sole expense. Airbnb recognizes that the Public Records Act requires the City to approve or deny requests made under the Act within 5 days after receipt of the request, unless the time to respond is properly extended in accordance with the provisions of the Act. The City agrees that it will inform any and all relevant employees of this obligation and that it will instruct each to abide by the confidentiality provision contained in this paragraph.

- (ii) Any information or data provided by Airbnb, a “vendor” or “vendee” (as defined in Chapter 18, Section 11.3 of the Code) in connection with, relating to or concerning Lodgers’ Tax with respect to Booking Transactions on the Platform, which shall include, without limitation, information in a taxpayer return, information on the total “rent” (as defined in Chapter 18, Section 11.3) charged by a “vendor” to a “vendee” (as defined in Chapter 18, Section 11.3), information about underlying transactions that are or may be subject to Lodgers’ Tax or any other records that may relate to the determination of the applicability of or amount of Lodgers’ Tax that is or may be due shall be confidential. Any information that the City learns about Airbnb’s business, including information about a Host or Guest, from Airbnb or in response to the City’s request for information shall be confidential.
- (iii) Information regarding the City’s investigation of Airbnb or any of its Hosts with respect to Booking Transactions on the Platform as a taxpayer, including the fact that the City has sent a request for information to any person or is investigating a particular taxpayer, is also confidential. Except as permitted herein, or as otherwise required by law, neither the City nor its staff, nor any other of the City’s current employees or agents may disclose taxpayer confidential information to any person.
- (iv) At the discretion of the City, otherwise confidential information may be disclosed in any judicial proceeding or administrative proceeding pertaining to tax administration, determination, assessment, collection, or enforcement, of any civil or criminal liability arising under Chapter 18, Section 11 of the Code

if the information concerns a person who is a party to the proceeding, or the proceeding arose out of, or in connection with determining that person's civil or criminal liability, or the collection of that person's liability with respect to any tax imposed thereunder.

- (v) At the discretion of the City, disclosure of otherwise confidential information may be made to the extent such disclosures are reasonably necessary to obtaining information bearing a direct relationship to the determination, assessment, collection, or enforcement of any civil or criminal liability arising under the Chapter 18, Section 11 of the Code.
- (vi) At the discretion of the City, the City may disclose otherwise confidential information to employees or agents of the City or other City employees who are engaged in matters preparatory to any judicial or administrative proceeding pertaining to the administration or enforcement of any civil or criminal liability arising out of Chapter 18, Section 11 of the Code.
- (vii) For the avoidance of doubt, any and all data provided to the City by Airbnb in furtherance of meeting its obligations assumed under this Agreement, including but not limited to data provided on tax returns and/or reports and data provided pursuant to an audit by the City, shall not be shared with any other governmental agency, department or division of the City other than the agency, department or division enforcing Lodgers' Tax or any other jurisdiction, including but not limited to federal, state or local, except for the purposes of enforcement of a tax obligation and only if such inter-agency sharing is required by law.

(V) RELATIONSHIP OF THE PARTIES. The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(W) WAIVER AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(X) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(Y) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of the terms of this Agreement and all past due fees are paid in full. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

(Z) MISCELLANEOUS. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

NOTICES

(AA) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To Airbnb:
Airbnb, Inc.
Attn: Deputy General Counsel
888 Brannan Street, 4th Floor
San Francisco, CA 94103
Email: legal@airbnb.com

With copy to:
Airbnb, Inc.
Attn: Global Head of Tax
Tax Department
888 Brannan Street, 4th Floor
San Francisco, CA 94103
Email: tax@airbnb.com

To the City:

Mayor Javier M. Gonzales
City of Santa Fe
P.O. Box 909
Santa Fe, NM 87504-909
Email: jmgonzales@santafenm.gov

With copy to:
Kelley A. Brennan, City Attorney
City of Santa Fe
P.O. Box 909
Santa Fe, NM 87504-909
Email: kabrennan@santafenm.gov

(Signatures follow on next page)

IN WITNESS WHEREOF, Airbnb and the City of Santa Fe have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: See attached
Signature of Taxpayer or
Authorized Representative

Beth Adair, Director of Global Tax

Print Name and Title of Taxpayer or
Authorized Representative

CITY OF SANTA FE

By: Javier M. Gonzales
Javier M. Gonzales
Mayor

ATTEST:

Yolanda Y. Vigil
Yolanda Y. Vigil
City Clerk
CC mtg. 12/23/16

APPROVED AS TO FORM:

Kelley A. Brennan
Kelley A. Brennan
City Attorney

APPROVED:

Oscar Rodriguez
OSCAR RODRIGUEZ
Finance Director

IN WITNESS WHEREOF, Airbnb and the City of Santa Fe have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

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Beth Adair, Director of Global Tax

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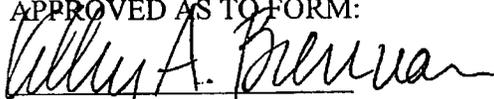
CITY OF SANTA FE

By: 
Javier M. Gonzales
Mayor

ATTEST:

Yolanda Y. Vigil
City Clerk
CC mtg. 6/23/16

APPROVED AS TO FORM:


Kelley A. Brennan
City Attorney

APPROVED:


OSCAR RODRIGUEZ
Finance Director