

ORIGINAL

**VOLUNTARY COLLECTION AGREEMENT  
FOR  
CITY OF SAN JOSE TRANSIENT OCCUPANCY TAX**

**THIS VOLUNTARY COLLECTION AGREEMENT** (the “**Agreement**”) is dated January 8, 2015 and is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”) and **THE CITY OF SAN JOSE** (the “**City**”). Each party may be referred to individually as a “**Party**” and collectively as “**Parties.**”

**RECITALS:**

WHEREAS, Airbnb represents that it provides an Internet-based platform through which a third party desiring to rent out 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 and the dates to book such accommodations, that only the Host and not Airbnb has the right and ability to book an accommodation, and that Airbnb does not own any property or have possessory interest in any accommodations offered by Hosts, and therefore cannot and does not transfer any possessory interest in any property or accommodations to any person;

WHEREAS, Airbnb represents that Guests booking accommodations through the Platform pay 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 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, and only provides communications, payment processing and other services through the Platform, and receives only fixed service fees which are a percentage of the price set by Hosts and Airbnb collects such service fees from the Guest and from the Host;

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](http://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 City of San Jose Transient Occupancy Tax (“**TOT**”) imposed by Chapter 4.72 and Chapter 4.74 et seq. (hereinafter collectively referred to as “**Chapt. 4.72**”) of the City of San Jose Municipal Code (the “**Code**”), and 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 TOT from Hosts and Guests, resulting from Booking Transactions completed 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) During the period in which this Agreement is effective (as defined below), and pursuant to the terms and conditions of this Agreement, Airbnb will assume the duties of a TOT operator pursuant to Chapt. 4.72 of the Code, and as agreed further below, for Hosts and Guests who make agreements for occupancy of accommodations, as defined in the Code, located in the City and which are transacted on the Platform.

(A-1) Airbnb assumes no obligation to assume the duties of an operator and/or assumes no obligation contractually or otherwise to collect or remit TOT relating to any user’s transaction completed, made or facilitated through any means, or method or other platform, other than 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 transactions directly between them on the Platform.

#### **PROSPECTIVE COLLECTION OF TOT**

(B) Starting on February 1, 2015 (the “**Effective Date**”), Airbnb shall commence collecting and remitting TOT, pursuant to the terms of this Agreement, at the applicable rate, on

Booking Transactions completed on the Platform for occupancy of accommodations located in the City, in accordance with this Agreement. For the avoidance of doubt, neither this Agreement, nor any action or inaction taken pursuant to it, shall extend to any period or transaction prior to the Effective Date.

#### **REMITTANCE OF TOT**

(D) Airbnb shall reasonably report information on the tax return form prescribed by the City's tax administrator, including all TOT that is subject to the provisions of this Agreement, and it shall remit the TOT evidenced on such returns in the time and manner described in the Code.

#### **AIRBNB LIABILITY**

(E) Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the proper amount of TOT with respect to Booking Transactions covered by this Agreement including, but not limited to, penalties and interest, in accordance with this Agreement and 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 have the right to audit Airbnb on the basis of TOT returns filed with the City by Airbnb and Airbnb's supporting documentation for such returns. The parties acknowledge and agree that nothing in this Agreement limits the obligations of Hosts to comply with the requirements of the Code including but not limited to maintenance of records regarding compliance with Chapt. 4.72.

(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 City shall not engage in a general audit of all individual Airbnb Hosts on behalf of whom Airbnb has agreed to collect and remit TOT under this Agreement, unless and until an audit of Airbnb has been concluded with the matter unresolved. The City reserves the right to audit any individual Airbnb Hosts for activity that has been brought to the attention of the City in the form of a complaint or other means. 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 under Chapt. 4.72. The Parties acknowledge and agree that nothing contained in this

Agreement is intended to waive the requirements of the Code imposed on Hosts to retain records documenting the payment of TOT to the City for a minimum of three (3) years after each period of Incidental Transient Occupancy as that term is defined in the Code; or to provide copies of records documenting payment of the TOT including but not limited to records showing collection of TOT by Airbnb on behalf of Hosts, upon request by City Manager, City Attorney, City Auditor or any designee of each of these. The Parties acknowledge and agree that nothing contained in this Agreement is intended to waive any Host or Guest's objections to any such aforementioned request by City Manager, City Attorney, City Auditor or any designee of each of these.

(H) The City agrees that pursuant to this Agreement, Airbnb shall register as an operator for the reporting, collection and remittance of TOT, in connection with its obligations 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, 4<sup>th</sup> Floor, San Francisco, CA 94103. Airbnb, Inc. will be the registered taxpayer on behalf of Airbnb Ireland, an Irish unlimited company, and/or any other subsidiary or affiliate of Airbnb, Inc. collecting TOT from Guests.

#### **GUEST AND HOST LIABILITY**

(I) So long as this Agreement is in effect, solely with respect to a Host's activity on the Platform, said Host shall not be required to individually register with the City as a hotel operator to collect, remit and report TOT, 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 TOT, including any obligation to register with the City to collect, remit and report TOT 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 TOT imposed by the Code, except as noted in paragraphs (E) (F), (G) and (H) above, nor limit the City's authority to hold such Guest or Host responsible for any applicable TOT, 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 City in complying

with its responsibilities under this Agreement. Nothing herein shall relieve any Host from any other obligations or requirements under applicable law, including without limitation, City's zoning regulations.

#### **NOTIFICATION TO GUESTS AND HOSTS**

(K) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it shall notify all Guests and Hosts booking accommodations in the City through the Platform of the following:

- (1) the amount of TOT collected and remitted on each Booking Transaction;
- (2) the provisions of this Agreement (including specific notification of the provisions of paragraphs (I) and (J) herein); and
- (3) the Hosts' responsibility to maintain proper books and records (including, but not limited to, such records as may be necessary to substantiate the adjustments authorized pursuant to the provisions of paragraph (E) herein).

#### **PROSPECTIVE TAX TREATMENT**

(L) Collection and remittance of TOT under this Agreement shall begin on the Effective Date.

#### **LIMITATION OF APPLICATION**

(M) This Agreement is solely for the purpose of facilitating the administration and collection of the TOT with respect to Booking Transactions and, except with respect to the rights and liabilities herein set forth, the execution of this Agreement by the Parties 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 California, or the City of San Jose. By entering into this Agreement, Airbnb does not waive, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions (i) to contest the validity, including without limitation, any construction of the Code that extends the express terms of Chapt. 4.72; (ii) that Airbnb is not an "operator" as defined in Section 4.72.020(E) of the Code; (iii) that Airbnb is not an operator or vendor for any other purpose under any other provision of state, local and/or federal law; (iv) that Airbnb collects or receives or otherwise comes into possession of taxable "rent" as defined in Section 4.72.020(G) of the Code; or (v) that any third party occupies a taxable "hotel" as defined in Section 4.72.020(C) of the Code.

#### **MODIFICATIONS**

(N) 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**

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

(P) This Agreement may be terminated by Airbnb or the City for convenience, provided that proper notice is given and that any such termination may only take effect on the close of business of the day immediately preceding one of the following dates: January first, April first, July first or October first. 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 Internet platform that Airbnb will no longer be collecting and remitting TOT 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 TOT 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.

(Q) Notwithstanding paragraph (P), (1) the City retains the right to terminate this Agreement upon issuing any guidance document regarding the obligation of a person providing an Internet site in which the person, as agent for or otherwise on behalf of the person required to collect TOT on every occupancy of a room or rooms in a hotel within the City, accepts the consideration for the occupancy of a room or rooms in a hotel within the City subject to such TOT; and (2) either Party may terminate the Agreement, effective on or after the effective date of any change in statutory law or City ordinance that, in the reasonable opinion of said Party, is inconsistent with the substantive provisions of this Agreement. For the termination to be effective under this paragraph, (i) the party seeking to terminate the Agreement pursuant to this Paragraph shall provide 30 days notice by certified or registered mail to the other party; and (ii) where Airbnb is the party seeking to terminate the agreement, Airbnb must also reasonably provide 30 days e-mail notification to each Host offering accommodations in the City through

the Platform that Airbnb will no longer be collecting TOT. Any termination under this paragraph shall not affect the duty of Airbnb to remit to the City any TOT it actually collected from the Guests up through and including the effective date of termination under this paragraph, even if such amounts collected have not been remitted 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 California 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 Superior Court of California for the County of Santa Clara or the United States District Court for the Northern District of California and 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.

(V) RELATIONSHIP OF THE PARTIES.. 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: Darren Weingard  
888 Brannan St  
San Francisco, CA 94103  
Fax: 800-738-3350  
Email: Darren.weingard@airbnb.com

With a copy to:  
Airbnb, Inc.  
Attn: Beth Adair  
888 Brannan St  
San Francisco, CA 94103  
Fax: 800-738-3350  
Email: beth.adair@airbnb.com

To the City:

The City of San Jose  
Attn: Julia H. Cooper  
Director of Finance  
200 East Santa Clara Street, 13<sup>th</sup> Floor

San Jose, CA 95113  
Fax: (408) 292-6482  
Email: julia.cooper@sanjoseca.gov

**(Signatures follow on next page)**

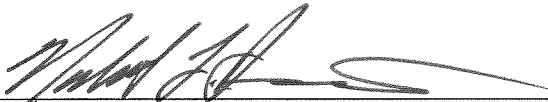
**IN WITNESS WHEREOF**, Airbnb and the City have executed this Agreement effective on the date set forth in the introductory clause.

**AIRBNB, INC.**, a Delaware corporation

By:  11/9/15

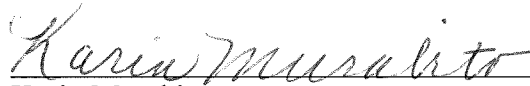
*Beth Adair, Global Tax Director*

**CITY OF SAN JOSE**



Norberto Dueñas  
Interim City Manager

APPROVED AS TO FORM:



Karin Murabito  
Senior Deputy City Attorney