

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of November 30, 2022 (“Effective Date”), between Uber Technologies, Inc. (“Uber”) and the City of Chicago (“City”) (each individually a “Party” and collectively, “Parties”), the latter acting through its Department of Business Affairs and Consumer Protection (“BACP”) and its Department of Law.

RECITALS

WHEREAS, the City is a home rule unit of government as defined in Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, Uber is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in San Francisco, California; and

WHEREAS, Uber offers marketing and delivery services to Merchants¹ in Chicago, and offers online ordering and delivery services to individuals in Chicago (among other locations), through its Uber Eats and Postmates Platforms (the “Platforms”); and

WHEREAS, the City contends that, in Chicago, Uber listed unaffiliated Merchants on its Platforms without consent, deceptively advertised that Eats Pass and Postmates Unlimited subscribers would receive “free delivery” or “\$0 Delivery Fees,” deceptively advertised that certain Merchants were “exclusive to” or “only on” the Platforms, and linked its Platforms to the “Order” buttons on Merchants’ business listings on Google Search and Google Maps (“Google business listings”) without adequate disclosure to consumers and without consent from the Merchants, in violation of MCC §§ 2-25-090 and 4-276-470; and

WHEREAS, Uber completed its removal of unaffiliated Merchants in Chicago listed on its platforms, and agreed not to list unaffiliated Merchants on its platforms without written consent in the future, after the City issued a demand on June 28, 2021 that Uber cease and desist from engaging in that conduct; and

WHEREAS, Uber maintains that Uber accurately advertised Merchants as “exclusive to” or “only on” the Platforms where Merchants expressly agreed to be exclusive on the Platforms; and

WHEREAS, Uber states that on information and belief that Google LLC controlled whether the Platforms were linked to the Order buttons in the Merchants’ Google business listing; and

¹ As used herein, “Merchant(s)” is defined to have the meaning set forth in the Illinois Fair Food and Retail Delivery Act, Public Act 102-1056, § 5, and includes Food Dispensing Establishments, as that term is defined by the City’s Emergency Fee Cap ordinances.

WHEREAS, Uber owns and operates Third-Party Food Delivery Services covered by the City's Emergency Fee Cap ordinances²; and

WHEREAS, the City contends that Uber charged Food Dispensing Establishments in excess of 15% of these businesses' monthly net sales earned through its Third-Party Food Delivery Services, in violation of the City's Emergency Fee Cap ordinances; and

WHEREAS, Uber reimbursed Food Dispensing Establishments in Chicago over \$3.3 million in September 2021 based on the City's contention that Uber failed to comply with the City's Emergency Fee Cap ordinances prior to their expiration on October 31, 2021; and

WHEREAS, Uber denies the City's contentions; and

WHEREAS, the Parties wish to settle, compromise, and resolve any and all claims, demands, disputes, fines, penalties, violations, citations, and all causes of actions and claims alleged against Uber in any actions, under any law or theory, concerning the alleged violations of MCC §§ 2-25-090 and 4-276-470 and Emergency Fee Cap ordinances set forth in these Recitals through the date that this Agreement is executed (the "Claims"); and

WHEREAS, the Parties acknowledge and agree that settlement of the Claims is not an admission of liability by or on the part of Uber; and

WHEREAS, the Parties acknowledge and agree that this Agreement is made to resolve the Claims expeditiously and to avoid the cost and uncertainty of the outcome of litigation;

NOW, THEREFORE, in consideration of the covenants set forth below and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties mutually warrant and agree as follows:

AGREEMENT

1. **RECITALS.** The recitals set forth above constitute material and integral parts of this Agreement and are incorporated herein by reference.
2. **WAIVER AND RELEASE.**
 - a. In consideration of this Agreement and upon receipt of the relief described in Paragraph 3 of this Agreement, the City, on its own behalf and on behalf of its officers, employees, agents, representatives, attorneys, insurers, and subcontractors of whatever level, and anyone claiming through them or acting or purporting to act on their behalf hereby releases, waives, and discharges all claims, demands, disputes, fines, penalties, violations, citations, and all causes of action and requests

² Journal of Proceedings of the City Council of Chicago, Ill., Nov. 23, 2020, pp. 23875-79; Ordinance 2021-2592A, Journal of Proceedings of the City Council of Chicago, Ill., June 25, 2021, pp. 31925-31.

for additional relief relating to the conduct set forth in the Recitals that have or could have been brought by the City against Uber and its current or former employees, agents, attorneys, contractors, representatives, affiliates, independent contractors, and assigns.

- b. This Waiver and Release shall not apply to claims, demands, disputes, fines, penalties, violations, citations, and all causes of action and requests for additional relief relating to Uber's presentation of fees or prices to Chicago consumers on its Platforms except for such allegations set forth in the Recitals.
3. SETTLEMENT RELIEF. In consideration of and exchange for the City's Waiver and Release, Uber agrees to provide the following relief:
- a. ATTESTATION. Within seven (7) days from the Effective Date, an Uber executive with authority to bind the company shall deliver to the Commissioner of BACP a written attestation that all Merchants in Chicago with which Uber does not have a current contractual agreement to provide delivery and/or marketing services have been removed from and are no longer listed on its Platforms, and that Uber shall not use the name, likeness, registered trademark, or intellectual property belonging to a Merchant (unless Uber has lawfully purchased that name, likeness, registered trademark, or intellectual property belonging to a Merchant), and may not take or arrange for the pickup or delivery of an order from a Merchant through a digital network, without first obtaining written consent from the Merchant (Appendix A).
 - b. \$2.5 MILLION COMMISSION CREDIT FUND.
 - i. Subject to the terms and conditions in this Paragraph 3(b), Uber shall offer its third-party delivery and marketing service at no cost to those Merchants in Chicago with which, as of the Effective Date, Uber does not have a current contractual agreement and which Uber previously listed on its Platform(s) without the Merchant's consent. Chain Restaurants, defined as any group of businesses licensed as Food Dispensing Establishments in the City with 10 or more locations and operating under a common business name, shall not be eligible for this offer.
 - ii. Eligible Merchants shall be permitted to choose between Uber's "premium" and "plus" plans. All plans will include access to order data, a tablet loaded with Uber's ordering software, a menu photo shoot, and customer support.
 - iii. The value of this relief (the "Commission Credit Fund") shall be calculated as the amount of the commissions and fees that Uber would otherwise collect from Merchants participating in these plans. The value of the Commission Credit Fund shall total the sum of \$2.5 million and any funds not disbursed pursuant to Paragraph 3(c)(i), *infra*.
 - iv. The per-Merchant allocation of the Commission Credit Fund shall be determined pro-rata, taking into account the volume of orders processed by the

Platforms from January 1, 2019 to June 30, 2021 concerning each Merchant. Uber will convert the dollar amount allocation to a number of weeks the Merchant would be eligible to receive third-party delivery and marketing services at no cost (“Eligible Weeks”), by dividing the per-Merchant allocation by the expected weekly value of waived commissions, which shall take into account the average weekly order volume processed by the Platforms from January 1, 2019 to June 30, 2021 concerning each Merchant. Notwithstanding any provision to the contrary, participating Merchants shall receive no fewer than 44 Eligible Weeks.

- v. Within 15 days from the Effective Date, Uber shall issue notice of this offer, an example of which is provided at Appendix B, to eligible Merchants by either mail or electronic mail and create a website providing notice of this offer and that includes a dedicated phone number and email address to field inquiries from eligible Merchants.
- vi. Merchants shall have 60 days from the Effective Date to accept the offer. Uber shall determine the per-Merchant allocation of the Commission Credit Fund upon the close of this period.
- vii. Uber may condition the offer on the Merchant’s acceptance of Uber’s U.S. Merchant Terms and Conditions and Community Guidelines. No other conditions may be imposed on a Merchant’s participation.
- viii. Uber shall clearly disclose to each participating Merchant the amount of the Commission Credit Fund allocation and the time period in which the Merchant will receive third-party delivery and marketing services at no cost. Uber shall notify each participating Merchant when its eligibility to receive such services will expire.
- ix. The exhaustion of a Merchant’s Commission Credit Fund allocation shall end the Merchant’s contractual relationship with Uber absent the Merchant’s express, affirmative consent to contract with Uber under such terms as Uber may choose to offer. Uber shall not charge a participating Merchant any commission or fee without such consent. Uber’s communications with participating Merchants for the purpose of entering into such contracts shall clearly and conspicuously disclose the amount or rate of each fee or commission the restaurant would pay under the contract’s terms. If a participating Merchant does not consent to continue its relationship with Uber beyond its use of the Commission Credit Fund allocation, whether by entering into a contract with Uber or by providing written consent allowing Uber to use the Merchant’s name, likeness, registered trademark, or intellectual property and to arrange for the pickup or delivery of orders from the Merchant, Uber shall remove the participating Merchant’s listing from its Platforms within 24 hours after the Merchant’s Fund allocation has been exhausted. Uber shall allow a Merchant that ends its relationship with Uber to retain access to Uber’s Restaurant Manager software tool to the same extent as allowed for other

Merchants who have ended their relationship with Uber, which shall include access to the following data concerning orders placed to the Merchant on the Platforms: order date, cost, and the first name and last name initial of the individual that placed the order.

c. Unauthorized Listings: \$500,000 Fund for Merchants Listed Without Written Consent.

- i. Uber shall reserve \$500,000 in a fund for Merchants in Chicago with which Uber does not have a current contractual agreement and which Uber previously listed on its Platform(s) without the Merchant's consent.
- ii. To qualify for this payment, eligible Merchants will be required to submit a short attestation to the City. Merchants will have 60 days from the Effective Date to qualify for the payment. The City will post a link to an online attestation form for Merchants to use to submit the form. At the close of this period, the City shall provide Uber with a list of the Merchants that qualify for payment.
- iii. The payment will be distributed evenly among the qualifying Merchants. The maximum payment for qualifying Merchants shall be \$1,000. In the event that fewer than 500 Merchants qualify for payment, any amount not distributed from the \$500,000 shall be added to the total value of the Commission Credit Fund provided for by Paragraph 3(b).
- iv. Within 15 days from the Effective Date, Uber shall issue notice of eligibility for this payment, an example of which is at Appendix B, to eligible Merchants by either mail or electronic mail. Uber shall provide a list of eligible Merchants to the City, including the Merchant's business name and address. The City will provide Uber with the link to the attestation form for inclusion in this notice. In the event that notice to a Merchant is returned as undeliverable, Uber, with assistance from BACP, shall undertake reasonable efforts to identify alternative contact information for the Merchant and reissue the notice. Uber shall provide a list of the Merchants for whom notice is returned undeliverable to the City, including the Merchant's name, address, phone number, email address, and the reason the notice was returned as undeliverable.
- v. In the event that a qualifying Merchant is no longer in operation, Uber shall pay the owner of the Merchant as indicated on the Merchant's business license filed with the BACP, or an entity designated by the owner.
- vi. Uber shall make payments to qualifying Merchants by ACH payment, within 30 days of Uber's receipt of the list of qualifying Merchants from the City.
- vii. At the close of the 30-day period following Uber's receipt of the list of qualifying Merchants, Uber will provide the City with a Microsoft Excel file containing a list of the qualifying Merchants to which Uber completed payment, including each Merchant's name, address, and the amount of the payment. Uber

shall further provide the City with a Microsoft Excel file containing a list of any qualifying Merchant to which Uber was not able to issue payment, including each such Merchant's name, address, and the reason(s) Uber was unable to do so. In the event that Uber is ultimately unable to issue payment to a qualifying Merchant, Uber shall remit the funds to the City within 30 days, according to instructions to be provided by the City.

- d. \$2.25 Million for Merchants Charged in Excess of Chicago's Emergency Fee Cap Ordinances.
- i. Within 45 days from the Effective Date, Uber shall pay a total of \$2.25 million to those Food Dispensing Establishments covered by the City's Emergency Fee Cap ordinances which Uber charged any combination of fees, commissions, or costs in excess of 15% of the Food Dispensing Establishment's monthly net sales through Uber's Platforms, while the Emergency Fee Cap ordinances were in effect. The \$2.25 million shall be divided pro-rata based on the amount of the reimbursement paid in September 2021 to each such Food Dispensing Establishment, except that no eligible Food Dispensing Establishment shall receive less than \$200.
 - ii. In the event that a Food Dispensing Establishment eligible for this payment is no longer in operation, Uber shall pay the owner of the Food Dispensing Establishment as indicated on the Food Dispensing Establishment's business license filed with the BACP, or an entity designated by the owner.
 - iii. Uber shall make payments by direct deposit (ACH) into the bank account designated by the Food Dispensing Establishment to receive earnings from Uber's Platforms.
 - iv. Uber shall issue a notice by mail or electronic mail to each Food Dispensing Establishment to which payment is made. The content of this notice must be approved by the City and shall state that the Food Dispensing Establishment is receiving the payment pursuant to this Agreement.
 - v. At the close of the 45-day period, Uber will provide the City with a list of the Food Dispensing Establishments that received payments, including each Food Dispensing Establishment's name, address, phone number, email address, and the amount of the payment. Uber shall further provide the City with a list of any Food Dispensing Establishments eligible for payment to which Uber was not able to issue payment, including each such Food Dispensing Establishment's name, address, phone number, email address, and the reason(s) Uber was unable to do so. In the event that Uber is ultimately unable to issue payment to an eligible Food Dispensing Establishment, Uber shall remit the funds to the City within 30 days, according to instructions to be provided by the City.

- e. Payment to the City. Uber shall pay the City \$1.5 million (the “Settlement Amount”) by no later than November 30, 2022. Uber’s payment must be paid pursuant to instructions to be provided by the City.
4. Uber shall not seek to enforce, and shall not expressly or impliedly represent to Chicago Merchants that it will or may seek to enforce, its non-disclosure agreements with Chicago Merchants with respect to information concerning conduct that was the subject of the City’s investigation or Uber’s compliance with the terms of this Agreement.
5. Uber shall not assess new, additional, or increased fees or prices, of any kind or in any form, to Merchants or consumers on its Platforms in Chicago for the purpose of recouping the cost of the relief provided for in this Agreement. This provision shall not prevent Uber from changing the amount or form of the fees or prices charged on its Platforms in Chicago or elsewhere in the normal course of its business. The City shall meet and confer with Uber prior to bringing an action for breach of this paragraph.
6. DEFAULT, MATERIAL BREACH, AND REMEDIES.
 - a. DEBT DUE AND OWING. The Settlement Amount shall become a debt immediately due and owing to the City on the date that said payment is due.
 - b. DEFAULT. Uber’s failure to provide relief in the amount, manner, and time specified in Paragraph 3 shall constitute default of the Agreement (“Default”).
 - c. REMEDY. Any Default that is not timely cured, as defined by Paragraph 6(e), after written notice of default or breach constitutes a material breach of this agreement (“Breach”), which shall entitle the City to, among other things, recover any unpaid portion of the Settlement Amount. Upon Breach, the City shall have the right to the entry of a judgment for the unpaid portion of the Settlement Amount (“Judgment”).
 - d. NO WAIVER OF DEFAULT OR BREACH FOR PARAGRAPH 3(e). The City shall not be obligated to provide any notice to Uber of its Default or Breach of Paragraph 3(e), and any failure by the City to provide Uber notice of its Default or Breach shall not constitute a waiver of the City’s rights to enforce this Settlement Agreement or a Default or Breach hereunder. Any notice of Uber’s Default or Breach of Paragraph 3(e) provided by the City will not create an obligation on the part of the City to continue to provide notices to Uber that it is in Default or Breach in the future. Any delay on the part of the City in enforcing a Default or Breach by Uber shall not constitute a waiver by the City. The City’s acceptance of any payment that is not timely hereunder or is less than payment in full of the amount due and payable at the time of such payment shall not constitute a waiver of the City’s right to pursue any available remedies at that time or at any subsequent time or nullify any prior pursuit of any such remedy, or in any way or manner prejudice, impair, diminish or restrict any right, power, or remedy available to the City, without its express written consent.

- e. ALLEGED DEFAULTS OF BREACHES OF PARAGRAPHS 3(a)–3(d), 4, AND 5. For alleged defaults or breaches of Paragraphs 3 (other than default or breach of Paragraph 3(e)), 4, and 5, the City agrees to provide notice of any default or breach in writing and allow Uber 21 days to timely cure such alleged default or breach.
7. COMPLETE DEFENSE. If either Party sues, or initiates administrative or regulatory or any other proceeding of any nature against, the other Party for the purpose of asserting a claim that has been waived under this Agreement, then this Agreement shall be and constitute a complete defense and bar to such claim, action, or proceeding, and the Party being sued shall be entitled to receive an order, award, or declaratory judgment and/or an injunction against such lawsuit or proceeding.
8. NO ADMISSION OF WRONGDOING. This Agreement shall not in any way be construed as an admission of fault or liability on the part of either of the Parties, who expressly deny any fault or wrongdoing. Further, nothing hereunder shall be construed as an agreement to toll any applicable statute of limitations. It is understood and agreed that the terms of this Settlement Agreement have been made solely to accomplish an expeditious resolution and settlement of the matter in controversy between the Parties and for no other purpose.
9. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement between the Parties solely with respect to the Claims, and fully supersedes any and all prior or contemporaneous agreements or understandings between the Parties pertaining to the Claims.
10. PARTIES RELIED SOLELY ON THEIR OWN JUDGMENT AND INVESTIGATION. The Parties acknowledge and expressly represent and warrant that they have relied solely upon their own judgment, together with advice of counsel, when deciding whether to enter into this Agreement. Each Party further agrees, acknowledges and expressly warrants that no information, statement, promise, representation, warranty, condition, inducement, or agreement of any kind, whether oral or written, made by or on behalf of any other Party shall be, or has been, relied upon by it in entering into this Agreement unless specifically contained and incorporated herein.
11. JOINT PARTICIPATION. The Parties warrant and represent that they have each knowingly and voluntarily entered into this Agreement following consultation with their respective legal counsel and participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.
12. ADVICE OF COUNSEL. Each of the Parties hereto represents and warrants that it has had the advice of counsel concerning the terms and conditions of this Agreement. In entering into this Agreement, Uber and the City represent that each has relied upon the advice of its attorney, who is the attorney of its choice, and that the terms of this Agreement have been

interpreted and explained by its attorney, and that these terms are fully understood and voluntarily accepted by the Parties.

13. BINDING NATURE OF AGREEMENT. The terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties hereto, and their respective successors, administrators, executors, beneficiaries, and/or assigns.
14. CONTROLLING LAW. This Agreement shall be construed in accordance with, and its validity and effect, including any claims of breach of any of the terms hereof, shall be governed by, the laws of the State of Illinois, without regard to Illinois law regarding choice of law.
15. VENUE. The venue of any action commenced for the purposes of interpretation, implementation, and/or enforcement of the terms and conditions of this Agreement shall be in Illinois state court or appropriately removed to Illinois federal court.
16. ATTORNEYS' FEES. The Parties shall be responsible for their own attorneys' fees, costs and expenses related to the negotiation, drafting, and execution of this Agreement and all issues relating to the Parties' disputes relating to the Claims.
17. NO THIRD-PARTY RIGHTS. Nothing in this Agreement is intended or shall be interpreted to confer any rights, privileges or rights of action of any kind upon any person or entity not a party to this Agreement, or to effectuate a release by the Parties of any claims or causes of action that either Party has or may have against any person or entity not a Party to this Agreement.
18. MODIFICATION. This Agreement may not be altered, amended, changed, terminated, or modified in any material respect without the express, written consent of both of the Parties hereto. No waiver by any Party hereto of any breach or default hereunder shall be deemed a waiver of any other or subsequent breach or default.
19. EXECUTION IN COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement.

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20. AUTHORITY. Each Party hereto represents and warrants that its undersigned officer has full authority and capacity to execute this Agreement on that Party's behalf.

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be signed as of the last date below written.

Uber Technologies, Inc.

Celia Meza, Corporation Counsel
City of Chicago Department of Law

By: Sarfras Maredia

By: Stephen Kane

Title: VP, Uber Eats

Stephen J. Kane
Deputy Corporation Counsel

Date: November 21, 2022

Date: November 22, 2022

APPENDIX A

Sarfraz Maredia VP, Uber Eats
I, _____, _____, certify that all Merchants in

Chicago with which Uber does not have a current contractual agreement to provide delivery and/or marketing services have been removed from and are no longer listed on its Platforms, and that Uber shall not use the name, likeness, registered trademark, or intellectual property belonging to a Merchant (unless Uber lawfully has purchased that name, likeness, registered trademark, or intellectual property belonging to a Merchant), and may not take or arrange for the pickup or delivery of an order from a Merchant through a digital network, without first obtaining written consent from the Merchant.

Uber Technologies, Inc.

By: Sarfraz Maredia

Title: VP, Uber Eats

Date: November 21, 2022

APPENDIX B

NOTICE TO CITY OF CHICAGO ELIGIBLE MERCHANTS OF CREATION OF COMMISSION CREDIT FUND

This Notice is being provided pursuant to a settlement with the City of Chicago. This is not a solicitation.

- **Pursuant to a settlement with the City of Chicago, Uber is offering its third-party delivery and marketing service at no cost to Eligible Merchants receiving this notice.**
 - **Eligible Merchants:** Those Merchants in Chicago with which Uber does not have a current contractual agreement and which Uber previously listed on its Platform(s) without the Merchant's written consent.
 - If your business name and address is listed on this notice, you are an Eligible Merchant.
 - As an Eligible Merchant, you are permitted to choose between Uber's "premium" and "plus" plans. Learn more at <https://merchants.ubereats.com/us/en/pricing/>
 - All plans will include access to order data, a tablet loaded with Uber's ordering software, a menu photo shoot, and customer support.
 - You will have access to these services at no cost from the date of this notice for at least 44 weeks. The total length of time you will have access to the service may be longer, and will depend on how many orders you received while listed on Uber's Platform(s) without written consent.
 - You have until Sunday, January 29, 2023 to accept this offer.
 - If you would like to take advantage of this offer, please email **chicagosettlement2022@uber.com** or call **773-839-2784**.
- **In addition, Eligible Merchants may also qualify for a separate, monetary payment.**
 - To qualify for this payment, Eligible Merchants are required to submit a short attestation to the City of Chicago. The form is available at <https://forms.office.com/g/tXXvJXgMaR>.
 - Eligible Merchants have until Sunday, January 29, 2023 to submit the attestation form.