

BEFORE THE FAIR WORK COMMISSION

FAIR WORK ACT 2009

ss. 157,158 Application to make a modern award

Applicant: **Menulog Pty Ltd**

Matter Number: **AM2021/72**

**Submission of the Transport Workers' Union of Australia in Reply  
to Menulog Submissions regarding Current Award Coverage**

***Introduction***

1. The Transport Workers' Union of Australia submits that the Commission should answer the threshold question it has posed for determination in these proceedings as follows:

*Employees and employers to whom the proposed 'On-Demand Distribution Award' (Proposed Award) is proposed to cover and apply are covered by the Road Transport and Distribution Award 2020 (RTA) to the exclusion of any other modern award.*
2. The submissions of **Menulog Pty Ltd** filed 18 October 2021 (**MS**) are premised on an impermissibly narrow and a-contextual reading of clause 4.2(a) of the RTA. Menulog and its competitors who provide on demand food delivery services are *in* the road transport and distribution industry as they are each employers involved in the transport by road of food, drinks and meals which are *goods, wares, merchandise or anything whatsoever* for the purposes of clause 4.2(a) of the RTA. The transport by road of food, drinks and meals represent the core aspect of their businesses and plainly bring these employers within the coverage of the RTA.
3. Further, Menulog and its competitors are *in* the road transport and distribution industry even if the Commission accepts Menulog's primary submission that it and its competitors operate in a novel or unique industry that falls outside the traditionally understood private road-transport industry, as the transport of goods, wares, merchandise and 'anything whatsoever' is at least ancillary to their businesses,

undertakings or industries for the purposes of clause 4.2(a) of the RTA. Tellingly, the MS fail to mention and grapple with the ‘ancillary’ limb of the definition of the road transport and distribution industry in clause 4.2(a) of the RTA.

4. The work arranged, organised and controlled by employers such as Menulog, **Portier Pacific** Pty Ltd, **Deliveroo** Australia Pty Ltd and other entities operating in the ‘gig-economy’ space is analogous to and an outgrowth of ad hoc courier work, which has been a feature of the road transport industry for decades.<sup>1</sup> The work arranged and controlled by Menulog is not particularly novel or idiosyncratic as the MS suggest. Rather, it is the product of new forms of technology which have facilitated the arrangement and performance of what is, for all intents and purposes, ad hoc courier work using mobile phone and internet technologies without the interposition of human beings to manage and coordinate courier work.
5. Menulog is, with respect, correct to conclude at MS [5.22] that the *Fast Food Award 2010* does not cover employers and relevant employees in the on demand delivery services industry. The Transport Workers’ Union of Australia (**TWU**) repeats its submissions filed 9 August 2021 at [22]-[27] in regard to the Fast Food Award. Even if the Fast Food Award did cover employers the on demand delivery services industry, the classifications in the RTA are more appropriate to the work performed by employees undertaking delivery work and to the environment in which that work is normally performed for the purposes of clause 4.7 of the RTA and the Fast Food Award, such that the employees are covered by the RTA in any event.
6. These submissions first set out the task of the Commission in answering the threshold question and principles applicable to the interpretation of modern awards, particularly the coverage provisions of modern awards. Salient provisions of the RTA are then set out, as well as the historical context provided by the Award Modernisation process and the predecessors to the RTA. The reasons why, properly construed, the RTA covers employees and employers working in the on demand delivery services industry are then detailed.

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<sup>1</sup> See for instance *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21 at [4] and [57] (Gleeson CJ, Gaudron, Kirby and Hayne JJ) and [64] (McHugh J).

### *The FW Act and modern award coverage*

7. The question of modern award coverage is dealt with by s 48 of the *Fair Work Act 2009* (Cth). Section 48(1) of the FW Act provides, relevantly, that a modern award *covers* an employee or employer if the award *is expressed* to cover the employee or employer. Section 48(5) determines that modern awards cover employees in relation to *particular employment*. The phrase ‘particular employment’ refers to the employee’s job rather than the actual performance by them of the tasks involved in that job.<sup>2</sup>
8. Section 143 is supplementary to s 48 and requires that modern awards made by the Commission under Part 2-3 of the FW Act must include terms setting out the employers and employees that are covered by the award. Section 143(2) provides, relevantly, that a modern award must be expressed to cover specified employers and specified employees. Section 143(5)(a) provides that for the purposes of s 143(2), employers may be either specified by name or by inclusion in a specified class or specified classes. Likewise, s 143(5)(b) requires that employees must be specified by inclusion in a specified class or specified classes.
9. The principles applicable to the construction of modern awards and the interpretative and evaluative task involved in determining whether a modern award covers an employer and its employees were recently summarised by White J in *Bis Industries Limited v CFMMEU* [2021] FCA 1374:<sup>3</sup>

*The determination of whether particular employment is covered by a modern Award requires the Court first to construe the coverage clause in the award. This requires the ascertainment of the objective meaning of the words used in the clause taking into account the context in which they appear and the purpose which they are intended to serve: Transport Workers’ Union of Australia v Coles Supermarkets Australia Pty Ltd [2014] FCAFC 148; (2014) 245 IR 449 at [22]. Account must also be taken of the industrial context and background of which the FWC objectively may be taken to have been aware: Truck Moves Australia Pty Ltd v Simmonds [2015] FCA 1071 at [48]. The industrial context is particularly important in the case of the Black Coal Award*

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<sup>2</sup> *ALDI Foods Pty Limited v Shop, Distributive & Allied Employees Association* (2017) 262 CLR 593 at [75] (Kiefel CJ, Bell, Keane, Nettle, Gordon and Edelman JJ).

<sup>3</sup> At [28]-[29].

*given the statement in cl 4.2 that the term “black coal mining industry” has the meaning applied by courts and industrial tribunals and the note to cl 4.3 that the coverage clause is intended to reflect the status quo which existed under key pre-modern awards in relation to the kinds of employers and employees to whom those awards applied.*

*There is then the factual question of whether, on the award properly construed, the employment is within the scope of the coverage clause.*

10. The threshold question, consistently with the analysis in *Bis Industries*, therefore, requires a two-pronged analysis involving:
  - (i) a legal question as to the proper interpretation of the RTA;
  - (ii) a mixed legal and factual question as to whether the employers and employees in question fall within the scope of the RTA.
11. The construction of a modern award involves discerning the objective meaning of the words used in the award, in the context in which they appear and in light of the purpose they are intended to serve.<sup>4</sup> The reference in MS [3.3] to words used in awards having a meaning which does not accord with their ordinary and grammatical meaning because of the nature of awards as industrial instruments is derived from the High Court decision in *Ridd v James Cook University* [2021] HCA 32.<sup>5</sup> That statement of principle was made in relation to the terms of an enterprise agreement. Enterprise agreements are, importantly, distinct, from modern awards as they are drafted by the industrial parties. Modern awards stand apart from enterprise agreements as they are the product of an arbitral process under Part 2-2 of the FW Act and are, generally, drafted by the Commission rather than the industrial parties. Hence, whilst background circumstances relating, for instance, to the industry to which the modern award relates, practices in that industry and the history of particular award provisions may be available contextual aides to the construction of a modern award, the oft-cited principle that an award is an instrument drafted by lay persons with a practical bent of mind and should be interpreted accordingly would appear to have less weight in the

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<sup>4</sup> *Transport Workers’ Union of Australia v Coles Supermarkets Australia Pty Ltd* (2014) 245 IR 449 at [22] (*TWU v Coles*).

<sup>5</sup> At [17].

context of modern awards (as compared to enterprise agreements and consent awards which were made by the Commission's predecessors under the power conferred by s 51(xxxv) of the Constitution).<sup>6</sup>

12. Whilst acknowledging the importance of context, Wheelahan J underscored the importance of giving primacy to the natural meaning of the language of an award in *King v Melbourne Vicentre Swimming Club Inc* [2020] FCA 1173, which was recently applied and endorsed by the Full Court on appeal in *King v Melbourne Vicentre Swimming Club Inc* [2021] FCAFC 123. His Honour detailed:<sup>7</sup>

*... There are, however, limits on the extent to which the resolution of questions of construction may be driven by reference to history and context, and a liberal approach to construction, because ultimately what is to be determined is the proper construction of the instrument based on the objective meaning of the text. The Fair Work Act contains provisions that require the Commission to publish its written decisions, reasons, approved enterprise agreements, and variations to modern awards, with the consequence that they are widely available to members of the public: s 168, s 601. There is much to be said for the notion that instruments such as awards should be reasonably capable of being understood and implemented by the participants in the industries to which they apply by reference to the language employed in the instrument itself, without having to investigate and ascertain the pedigree of the instrument in order to identify some latent meaning to be discerned by an analysis of the mental states or purposes of others...*

13. The MS fail to grapple with the ordinary meaning of the terms used in the coverage provisions of the RTA. Instead, they seek, impermissibly, to use asserted (and irrelevant) matters of historical context to read down the terms used to accommodate Menulog's preferred interpretation. This approach is, for the reasons described below, artificial and contrary to principle.

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<sup>6</sup> Cf *City of Wannaroo v Holmes* (1989) 30 IR 362 at 379-380 (French J). See generally as to the difference in jurisdiction exercised by the Commission and its predecessors: *Truck Moves Australia Pty Ltd v Simmonds* [2015] FCA 1071 at [45]-[47] (Rares J).

<sup>7</sup> At [128].

14. Whilst primacy must be given to text, the constructional task remains a contextual one and regard must be had to the context provided by the instrument as a whole.<sup>8</sup> No assessment is made in the MS of salient provisions of the RTA which shed significant light on the breadth of meaning of the coverage terms nor is any analysis made of the historical context to the coverage provisions of the RTA.

### *The RTA*

15. Clause 4.1 states that the RTA is an industry award that covers employers in the *road transport and distribution industry* and their employees in the classifications listed in Schedules A and B. In other words, the RTA is expressed to cover, for the purposes of ss 48(1) and 143(2) and (5) of the FW Act, employers who operate in the industry defined in clause 4.2 and their employees who fall within one or other of the classification stipulated in the RTA.
16. The expression *road transport and distribution industry* is the subject of a multi-part definition in clause 4.2.<sup>9</sup> Relevantly for present purposes, clause 4.2(a) of the definition provides that the industry includes:
- ... the transport by road of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock, including where the work performed is ancillary to the principal business, undertaking or industry of the employer; (emphasis added)*
17. The industry defined by clause 4.2(a) is one:
- (i) involving the transport by road of the things detailed in clause 4.2(a);
  - (ii) including where the transport by road of the things detailed in clause 4.2(a) is ancillary to the principal business, undertaking or industry of the employer.
18. The TWU submits that Menulog and its competitor's businesses are directly in the road transport and distribution industry as defined in clause 4.2(a) as it involves the transport by road of goods, wares, merchandise, material or anything whatsoever.

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<sup>8</sup> *Sydney Night Patrol and Inquiry Co Ltd v Pulleine* [2014] FCA 385at [25] (Katzmann J); *Truck Moves* at [51].

<sup>9</sup> *Zader v Truck Moves Australia Pty Ltd* [2016] FCAFC 83 at [3] (North and Jessup JJ) (*Truck Moves Appeal*).

Further and in the alternate, at the very least, Menulog and its competitors operate undertakings involving the transport by road of things detailed in clause 4.2(a) as an ancillary part of their business.

### **Textual matters**

19. The noun *transport* in clause 4.2(a), as a matter of ordinary English, means the act or method of transporting from one place to the other, or the action of carrying or conveying a thing or person from one place to another.<sup>10</sup> The ‘transportation’ envisaged by clause 4.2(a) is required to occur ‘by road’. In other words, the means by which the things described in clause 4.2(a) are to be carried is by road rather than, for example, by air or on water. The preposition *of* is followed by a list the things which are transported by road. These include *goods, wares, merchandise, material or anything whatsoever* and in raw, natural or manufactured states or otherwise.
20. The words ‘goods’, ‘wares’, ‘merchandise’ and ‘anything whatsoever’ are nouns of broad connotation.
21. The terms *goods* has been said been described as being of general and indefinite import.<sup>11</sup> As a matter of ordinary English, goods are items of movable personal property.<sup>12</sup> Instructively, for the purposes of the *Sale of Goods Act 1923* (NSW) and the former *Trade Practices Act 1974* (Cth), ‘goods’ have been held to be ‘tangible chattels’ or ‘identifiable physical property’.<sup>13</sup> In other contexts, the term ‘goods’ has been said to extend to any ‘commodity of commerce’<sup>14</sup> or anything having the essential feature of ‘being moveable and therefore capable of manual delivery’.<sup>15</sup> Food, meals and drinks produced by a restaurant are tangible chattels and specific items of personal property. They are, items of movable personal property and, therefore, ‘goods’ for the purposes of clause 4.2(a) of the RTA.

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<sup>10</sup> *Truck Moves* at [52]

<sup>11</sup> *The Noordam (No 2)* [1920] AC 904 at 908-909.

<sup>12</sup> Encyclopaedic Australian Legal Dictionary.

<sup>13</sup> *Toby Constructions Products Pty Ltd v Computa Bar (Sales) Pty Ltd* [1983] 2 NSWLR 48 at 54B (Rogers J).

<sup>14</sup> *M P Metals Pty Ltd v Commissioner of Taxation (Cth)* (1968) 117 CLR 631 at 637 (Windeyer J); *State Electricity Commission of Victoria v Commissioner of Taxation* (1999) 96 FCR 22 at [28] (Heerey and Merkel JJ).

<sup>15</sup> *AGL Victoria Pty Ltd v Lockwood* [2003] VSC 453; (2003) 183 FLR 242 at [69] (Byrne J).

22. *Wares* refers to goods or commodities that a merchant or shop has to sell.
23. *Merchandise* refers to goods, commodities or manufactured goods bought and sold in a business.<sup>16</sup> A meal cooked or prepared by a restaurant is, as a matter of ordinary English, a commodity or a ware of a merchant, in this case, a restaurant.
24. *Material* means the substance or substances of which a thing is made or composed or any constituent element of a thing. This term is used to extend the breadth of the things which fall within the clause 4.2(a) to those which are parts or components of other things.
25. The expansive expression *or anything whatsoever*, conveys that the definition captures the transport of all manner of things and, indeed, anything. The noun 'anything' means 'a thing of any kind', whilst the relative pronoun *whatsoever* is the intensive form of *whatever* and means 'anything that'.
26. MS [4.26] must be rejected. There is no basis for reading the collocation '*goods, wares, merchandise, material or anything whatsoever*' as only capturing 'raw goods' and 'manufactured items'. This is dis-consonant with the plain meaning of the nouns used and premised on a failure in the MS to apprehend that the food, meals and drinks sold by restaurants who contract with Menulog and its competitors to arrange the distribution of these wares, goods or things to their customers are items of tangible personal property. Moreover, why only 'manufactured items' are or should be wares, merchandise or goods is not properly explained in the MS and not defensible in light of the ordinary meaning of those terms as used in clause 4.2(a).
27. That the food, drinks and meals are 'delivered to the consumer' and offered for sale as a convenient alternative to the consumption of the meals at a restaurant is both beside the point and demonstrate that Menulog's submission is untenable. The sale of food or drinks by a restaurant to a customer who 'dines in', contrary to the un-reasoned conclusion at MS [4.27], is an example of the sale of an item or items of personal property (i.e. goods, wares, merchandise or other things) by the restaurant to the customer. What Menulog and its competitor businesses do is arrange the transportation of those commodities by road to consumers, thus bringing their business within the coverage of the RTA.

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<sup>16</sup> Ibid.



28. Contrary to MS [4.25] no principled basis to apply the *ejusdem generis* canon of construction to the words *or anything whatsoever* in the collocation *goods, wares, merchandise, materials and anything whatsoever* clause 4.2(a). No reasons are proffered by Menulog as to why the maxim ought be applied to read down what are plainly words of expansion. It is well-established in Australian law that the *ejusdem generis* maxim is a rule of construction rather than one of law which should not to be automatically applied where there was a list of specific words followed by general ones.<sup>17</sup> Dixon J (as he then was) explained in *Cody v JH Nelson Pty Ltd* (1947) 74 CLR 629:<sup>18</sup>

... *In the modern search for a real intention covering each particular situation litigated, however much held and guidance may be obtained from the principles and rules of construction, their controlling force in determining the conclusion is likely to be confined to cases where the real meaning is undiscoverable or where the court of construction, sceptical of the foresight of the draftsman or of his appreciation of the situation presented, is better content to supply the meaning by a legal presumption than subjectively.*

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... *it is wrong to use the rule for an ejusdem-generis construction as a piece of abstract or mechanical reasoning. It must be applied not simpliciter but secundum quid. It should be used as a guide in the process of interpretation which takes into account the whole instrument and the subject matter.*

29. The MS commit the fallacy identified in *Cody v JH Nelson*. Menulog seeks to apply what is, in truth, a rule of thumb as a categorical proposition and, in so doing, fails to read the phrase in context or properly assess whether the words in the phrase constitute a genus such that the maxim is capable in the first place.

30. The maxim only applies where it is possible to identify a genus from specific words.<sup>19</sup> No genus is discernible from the phrase *goods, wares, merchandise, materials and anything whatsoever* because the words *goods, wares, merchandise* and *material* are, themselves, words of significant generality. Tellingly (and fatally) Menulog fails to identify any

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<sup>17</sup> *R v Regoes* (1947) 74 CLR 613 at 623 (Latham CJ); *Cody v JH Nelson Pty Ltd* (1947) 74 CLR 629 at 639 (Starke J).

<sup>18</sup> At 647 and 649.

<sup>19</sup> *Lloyd v Wallach* (1915) 20 CLR 299 at 307-308 (Isaacs J).

relevant genus. There is, therefore, no scope for application of the *ejusdem generis* maxim. The fact that the terms '*goods, wares, merchandise and material*' have potentially overlapping application demonstrates that the intention of the drafters was not to establish a genus, but rather to ensure that the phrase covered anything that could be the subject of transport by road and therefore sought to cover for every possible eventuality.

31. Further, the expression *anything whatsoever* is so broad as to evince an intention that the *ejusdem generis* maxim not apply in any event. Read contextually, these words are intended to convey that the component of the industry captured by clause 4.2(a) extends to the transport of all manner of things, regardless of what state they are in. The only qualification inherent in the phrase '*anything whatsoever*' when read in clause 4.2(a) as a whole is that it captures the transport of things rather than human beings.<sup>20</sup> Meals, plainly, fall within the '*anything whatsoever*' aspect of the definition under clause 4.2(a) and the conclusion at MS [4.29] must be rejected on this further basis.
32. Additionally, clause 4.2(a) applies to an employer whose principal business, undertaking or industry is not the transport by road of goods etcetera but where the transportation of goods etcetera is ancillary to the employer's business. On the premise that the industry of Menulog and analogous '*gig economy*' food distribution providers is, contrary to these submissions, not that of the transport by road of *goods, wares, merchandise, or anything whatsoever*, the question arises as to whether the transport by road of food, meals and drinks is *ancillary* to the *business, undertaking or industry* of Menulog.
33. This extensive aspect of clause 4.2(a) is not analysed as in the MS. This is a serious deficiency particularly as the MS proceed on the premise that Menulog operates in a novel or unique industry. Presuming that premise be correct, the RTA will still cover and apply to Menulog if the transport by road of goods etcetera is ancillary to its business, undertaking or industry.<sup>21</sup>

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<sup>20</sup> *Truck Moves* at [54].

<sup>21</sup> Cf *TWU v Coles* at [23].

### Context—courier work

34. Of some significance in assessing whether Menulog’s business is distinct or separate from those conventionally covered by the RTA is the context provided by the fact that the RTA covers courier work. Clause 2 of the RTA defines a ‘courier’ to mean an employee *engaged as a courier* and who uses a passenger car or station wagon, light commercial van, motorcycle or bicycle or who delivers on foot, in the course of such employment. Foot and bicycle couriers fall within the Transport Worker Grade 1 under Schedule B to the RTA. Employees performing courier work in motorcycles or vehicles fall within other transport worker grades. Hence, courier work is envisaged to be captured by the RTA and, therefore, to fall under clause 4.2(a).
35. Courier work involves the transport of goods and other things from one place to another within a standard time requested of the courier and advertised by the employer or within the shortest time possible.<sup>22</sup> Courier work<sup>23</sup> is of its nature ad hoc and the courier does not have a set list of pick ups and drop offs and will be allocated work by the employer (or, where the courier is an independent contractor, the principal contractor) as required and usually on-demand. Further, an employee performing courier work does not deliver parcels and packages of goods and items produced or manufactured by the employee’s employer. Rather, the courier delivers things produced or manufactured by the employer’s client, with the employer acting as agent of its client in effecting the delivery. Deliveries made by couriers are undertaken, generally, on an ad hoc and as needs basis.
36. The work performed by riders and drivers employed by Menulog is akin to and a modern iteration of courier work. It is courier work organised, controlled and mediated by the online platforms operated by Menulog and its competitors. That does not, however, take it outside the realms of the RTA and into a different and distinct industry. Rather, it places the work squarely within the ambit of the RTA.

### Contextual matters—the making of the RTA

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<sup>22</sup> See generally the definition of ‘courier work’ under clause 1 to the *Transport Industry – Courier and Taxi Truck Contract Determination*.

<sup>23</sup> The Australian Legal Dictionary defines a courier to be ‘A carrier who travels from one place to another to provide a safe and urgent letter or parcel delivery service’.

37. In a decision published on 23 January 2009 in *Request from the Minister for Employment and Industrial Relations* [2009] AIRCFB 50; 180 IR 124, the Full Bench of the AIRC described the coverage clause of the then proposed RTA as follows:<sup>24</sup>

*The RT&D Modern Award covers the road transport and distribution industry as defined in the exposure draft. **The definition is broad and is intended to incorporate the scope of the pre-reform Transport Workers Award 1998 (Transport Workers Award) and NAPSAs operating in each state as the general industry transport award.** It also incorporates the transport activities previously covered by freight forwarding, petrol and petroleum products, crude oil and gas and quarried materials awards. These are a subset only of the sectors covered by the exposure draft and the parties should give close consideration to the definition of the industry. (emphasis added)*

38. A significant NAPSA which was synthesised in the award modernisation process to become the RTA was the New South Wales *Transport Industry (State) Award (TI State Award)*. The TI State Award, relevantly, defined the word ‘courier’ in clause 48.6 as:

*... an employee who drives a vehicle and who is engaged in the delivery of documents, packages, etc, as part of a “courier service” as recognised in the industry covered by this award.*

39. The classification ‘Transport Worker Grade One’ covered, amongst other things, bicycle couriers. Further, the TI State provided, at clause 50, that its ‘Area, Incidence and Duration’ was in relation to employees in the classifications it prescribed as were within the jurisdiction of the Transport Industry (State) Industrial **Committee**. The Committee’s jurisdiction extended to:

*All drivers of... vehicles... including motor cycles engaged in the carriage of goods, merchandise and the like, together with bicycle couriers...*

40. The Full Bench also explained the genesis of the ‘ancillary’ aspect of the then proposed clause 4.2(a) as follows:

***The coverage of the award also extends to the transport of goods, etc. where the work performed is ancillary to the principal business, undertaking or industry of the employer.** This reflects the scope of the pre-reform Transport Workers (Mixed Industries) Award 2002.<sup>3</sup> That award contained a majority clause. The wording of that*

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<sup>24</sup> At [98].

clause is not suitable for a modern award. We have included a draft provision in cl.4.3 of the RT&D Modern Award designed to operate in circumstances where the principal business of the employer is not road transport and distribution and that employer is covered by another modern award as is the relevant employee. The intention is that, in those circumstances, the other modern award will regulate the employee's terms and conditions. This issue has not arisen in any significant way during the making of the priority awards and we invite the parties' submissions in relation to the wording of this clause and any related matters. (emphasis added)

41. When it decided to make the RTA, the Full Bench published a further decision in *Re Request from the Minister for Employment and Industrial Relations* [2009] AIRCFB 345; 181 IR 19. The Commission noted that no party cavilled with the definition of industry proposed when it issued its first statement, which is set out in paragraph 37 above.<sup>25</sup> It went on to deal with the 'ancillary' aspect of the clause 4.2(a) as followed:<sup>26</sup>

*We have retained the reference in paragraph (a) of the definition of the road transport and distribution industry to the transport of goods etc where that work is ancillary to the principal business, undertaking or industry of the employer. In our January 2009 statement we raised this aspect of the award's coverage and, for the purposes of encouraging submissions about it, we put cl.4.3, as it then was, in the exposure draft. We also noted that this issue had not arisen before in the award modernisation process in any significant way. As it transpired few parties made submissions about this matter. AiGroup submitted that it was appropriate that the award have a majority clause in terms similar to that in the Transport Workers (Mixed Industries) Award 2002 (Mixed Industries Award). We should comment on how that award, and the majority clause in it, operates. The incidence of award clause is in terms similar to paragraph (a) of the definition of the road transport and distribution industry in the RT&D Modern Award. However the Mixed Industries Award provides that it only binds an employer respondent to that award. Modern awards are not to have the equivalent of named respondent employers. The Mixed Industries Award makes it clear that it only applies where the employee of a respondent employer is required to perform*

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<sup>25</sup> At [168].

<sup>26</sup> At [169]-[170].

*work in one of the classifications in the award. In this respect we note that the classification structure is very similar to the RT&D Modern Award which in turn has been based on the pre-reform Transport Workers Award 1998 (TWU Award 1998).<sup>47</sup> Clause 9 of the Mixed Industries Award provides that if employees are in a minority of employees in a respondent employer's enterprise and the majority of the employer's employees are covered by another award then certain identified provisions would apply and the balance of provisions could be those applying in an award covering the majority of the employer's employees. The identified provisions included the rates of pay, and in this respect, we note that those rates were the same as in the TWU Award 1998.*

*Based on the observations we have made above we have not been persuaded to put a majority clause in the RT&D Modern Award. The manner in which the clause in the Mixed Industries Award operated cannot easily be accommodated in the modern award regime. We also note in this respect, the submission that in the absence of named employers, the manner in which a majority and a minority of relevant employees may be identified and the time when that assessment should occur was likely to give rise to some doubts about award coverage*

42. The *Transport Workers Award 1998*, from which the coverage clause under clause 4.2(a) was, in large part, derived was a respondency award. Clause 6 of that Award, which was headed 'Incidence', provided that:

*The industry covered by this award is or is in connection with the transport of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock.*

43. Clause 7 of the *Transport Workers Award* set out the parties bound and its area of operation. Clause 7.1 relevantly provided that:

*This award shall be binding on the Transport Workers' Union of Australia, its officers and its members, and on those employers whose names are set out in Schedule "A" hereto in respect of all their employees whether members of the Union or not and who are required to perform work covered by this award.*

44. Significantly, a number of respondents to the *Transport Workers Award* were courier companies.

45. The *Transport Workers (Mixed Industries) Award 2002 (Mixed Industries Award)* provided in clause 6 that its incidence was as follows:

*The industry covered by this award is or is in connection with the transport of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock where the work performed is ancillary to the principal business, undertaking or industry of an employer respondent to this award.*

46. The foregoing history establishes that:

- (i) the definition of the private transport industry in the RTA was intended to be broad rather than narrow. It picked up and applied the broad definition of 'industry' under clause 6.1 of the *Transport Workers Award*, as well as the wide definition in certain NAPSAs, such as the TI State Award;
- (ii) the *Transport Workers Award* and NAPSAs such as the TI State Award covered courier work and, in particular, employers who operated courier businesses;
- (iii) courier work has, historically, been regulated by the RTA and its predecessors at a federal and State level;
- (iv) the ancillary aspect of clause 4.2(a) was intended to capture employers operating in other industries who operated a business or undertaking or in an industry other than the road transport and distribution industry where transportation of goods etcetera was ancillary to the principal business, undertaking or industry of the employer;
- (v) the 'ancillary' limb to clause 4.2(a) picked up and extended the coverage of the Mixed Industries Award by determining that employers who operated in other industries but who performed work involving the transport of goods etcetera by road ancillary to their principal business, undertaking or industries were covered by the RTA. The RTA in fact extended the coverage of the Mixed Industries Award as the RTA removed the majority clause contained in that award.

47. This historical context demonstrates that there is no warrant for reading down the plain and ordinary meaning of the terms of clause 4.2(a). In its principal aspect, it was designed to capture employers engaged in the carriage by road of all manner of tangible chattels and other identifiable items of physical property. In its ancillary aspect it was designed to encompass employers whose principal business, undertaking or industry was not the transportation of goods by road, but who performed such work where that work was ancillary to their principal business, undertaking or industry and regardless of whether that work constituted the majority of the work performed by the employer and its employees.

### *Analysis*

48. Menulog and its competitors are *in* the road transport and distribution industry as their business involves at its core the delivery, by road, of food, meals and drinks from restaurants to consumers. Food, meals and drinks are, *goods, wares* or *merchandise* for the purposes of clause 4.2(a). Alternatively, and as a minimum, they are *anything whatsoever*, being 'things of any kind'. It matters not that the food, drinks and meals delivered by couriers employed by Menulog are produced by persons other than restaurants. It is entirely irrelevant to the definition under clause 4.2(a) that the employer be responsible for the manufacture or production of the things which are to be transported by road.
49. It is also irrelevant (contrary to the attempt to deploy an 'originalist' interpretative approach at MS [4.6]) that the system for arranging work used by Menulog and its competitors may not have existed in its precise current form when the RTA was made. This submission is factually misguided as the work performed by Menulog and its competitors is plainly a form of ad hoc courier work which has for decades been the subject of regulation by the RTA and its predecessors at a Commonwealth and State level. Further, it proceeds on the erroneous premise that the meaning of the nouns *goods, wares, merchandise and anything whatsoever* was limited to goods, wares, merchandise and anything whatsoever which existed in 2009 when the RTA was made. There is no principle or authority which supports the general words of an award or industrial instrument being having connotations frozen in time from the date



on which the award was made. Finally, it is plainly wrong as meals, food and drink were in 2009 (and have always been) goods, wares, merchandise or 'other things'.

50. In the alternative, and presuming that Menulog and its competitors are, as they assert 'not in the primary business of providing transport or delivery services at large or any other item that has not been purchased' on their respective online platforms, the transport of food, drinks and meals by Menulog and its competitor's riders and drivers is, on any analysis, ancillary to its principal business, undertaking or industry. Menulog is correct to say at MS [4.8] that the application of clause 4.2(a) of the RTA requires examination of the business of the employer. However, an employer will be *in* the road transport and distribution industry even if the transport by road of goods etcetera is not its principal business.
51. In this connection, it is useful to have regard to the facts in *TWUA v Coles Supermarkets Australia Pty Ltd* (2014) 245 IR 449, a case cited by Menulog in its summary of principles at MS [3.3], but the analysis of which bears repeating in the present matter as it is fatal to any attempt by Menulog to assert that it and its competitors are not covered by the RTA. In *Coles Supermarkets*, Coles had established an online aspect of its retail supermarket business.<sup>27</sup> The business model, which is now a familiar one following the Covid-19 pandemic and associated government restrictions, involved customers purchasing orders online and Coles employing workers, initially to: (1) pick the orders and; (2) deliver them to a customer's premises. The employees in issue were employed in a position known as a 'CSA'. CSA's predominantly performed driving and delivery roles, but performed some picking functions.<sup>28</sup>
52. The Primary Judge had held that the substantial character of Coles' business was the sale of supermarket products to retail customers.<sup>29</sup> He ignored (much like Menulog in its submissions) the *ancillary* limb of clause 4.2(a). On this basis, he dismissed the TWU's contention that the RTA applied. The Full Court overturned this aspect of the Primary Judge's analysis. Having regard to clause 4.2(a), the Full Court held that it

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<sup>27</sup> At [7].

<sup>28</sup> At [8]-[9].

<sup>29</sup> At [20].

was an error to ask whether the ‘substantial character’ of an employer’s business was the transport by road of goods etcetera.<sup>30</sup> The Full Court concluded:<sup>31</sup>

*The employment in question fell comfortably within the road transport and distribution industry as defined by cl 3 of the Transport Award, and therefore within the coverage of the Transport Award stated in cl 4. The work in question was transport of the requisite kind and was ancillary to the principal business of Coles.*

53. The delivery of food, drinks and meals is, plainly, at least ancillary to the business of Menulog and its competitors, even if their principal business are not considered to be the transport by road of goods etcetera.
54. For one or both of the above reasons, Menulog is *in* the road transport industry.
55. Finally, there does not appear to be any question that, if the RTA applies to Menulog or similar businesses, then the relevant employees fall within the classifications in the RTA. Menulog’s employees fall within the Transport Worker Grades 1 and 2 classifications set out in Schedule B to the RTA. Employees who ride bikes fall within the ‘courier – foot or bicycle’ aspect of grade 1 whilst those who drive rigid vehicles (including motorcycles) under 4.5 tonnes GVM fall within grade 2.

### ***Conclusion***

56. For these reasons, the RTA covers Menulog and its employees who perform food delivery work in its business. It also covers Menulog’s competitors and their employees performing similar work. The preliminary view of the Commission that the Fast Food Award does not cover employers and courier employees in the on demand delivery services industry is correct. Even if the Fast Food Award is capable of covering Menulog and its competitors, the classifications in the RTA are more appropriate for the purposes of clause 4.7 of the RTA and the Fast Food Award, such that the employees are covered by the RTA in any event.
57. The Commission should answer the threshold question accordingly. The Commission should list Menulog’s application for conciliation to determine whether the application should continue to be progressed and, if so, in what form.

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<sup>30</sup> At [21].

<sup>31</sup> At [23].

**Mark Gibian SC**

**Philip Boncardo**

**Counsel for the TWU**

**29 November 2021**

**BEFORE THE FAIR WORK COMMISSION**  
*Fair Work Act 2009*  
s. 158 Application to make a modern award

**Proposed On-Demand Delivery Services Award**  
(AM2021/72)

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**STATEMENT OF DAVIS CLAYTON**

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I, Davis Clayton, of [REDACTED] in the State of Victoria 3051, state as follows:

1. I am currently engaged as a delivery rider or courier in the road transport industry. I predominately perform work in the so-called "On-Demand sector" or "On-Demand industry".
2. I currently perform work for the following companies in the On-Demand sector:
  - a. DoorDash;
  - b. Deliveroo;
  - c. Uber Eats;
  - d. Menulog;
  - e. Other ("On-Demand Delivery Employers").
3. I commenced performing delivery work for:
  - a. Uber Eats on 17/11/2016;
  - b. Giffi on 4/1/2019;
  - c. GoFetch on 10/1/2019;
  - d. DoorDash on 29/9/2019;
  - e. Easi on 12/8/2019;
  - f. Yello on 31/3/2021;
  - g. Deliveroo on 28/7/2021;
  - h. Fuel it Up on 2/9/2021;
4. In all cases I am engaged as an independent contractor.

5. I use an e-bike in the performance of my work. An e-bike is a push-bike with an additional motorised function that allows me to travel at greater speeds (up to 30 kilometres per hour). E-bikes are permitted for use in the State of Victoria.
6. I am a member of the Transport Workers' Union of Australia.
7. I am part of the Delivery Riders Alliance, organised by the Transport Workers' Union of Australia.
8. I have been provided with a copy of the statement of Morten Birk Belling dated 18 October 2021.

### **Accessing Work**

9. Each On-Demand Delivery Employer currently operating in Australia has different requirements with respect to delivery riders commencing the work for their business. In each case, when I was applying to commence work, I was generally required to apply online by entering my personal details and other information, which have included:
  - a. Australian Business Number
  - b. Photo Identification
  - c. A current picture of my delivery vehicle (e-bike).
  - d. Evidence that I own an insulated delivery bag.
10. Generally, the application processes were automated. In some cases I would be required to watch training videos, or complete a test. In my experience, any tests were a 'spoon-fed' activity that were impossible to fail. The training was not certified or standardised in any way.
11. In the case of Uber Eats, Doordash and Giffi, I was required to attend their premises to complete in-person training and/or processing.
12. Generally, training would cover various matters, including:
  - a. Delivery expectations, including acceptance of delivery work and related information about how that work is to be performed;
  - b. Road safety and workplace health and safety information;

- c. Information about how to use the application required to be used to access work from the On-Demand Delivery Employer;
13. I was told by each of my On-Demand Delivery Employers that I would need to at least provide the following:
- a. A smart phone capable of downloading the On-Demand Delivery Employer's application;
  - b. A mode of transportation (in my case a bicycle/e-bike);
  - c. An insulated delivery bag;
  - d. Safety equipment (lights, raincoat etc.)
14. In each case, the employers' software was mandated, I was not able to use my own custom, or third-party phone application or software.
15. In the case of each employer, I was told I would need to obtain an Australian Business Number to complete my application. Where in my case, I used my Australian Business Number for other contracting purposes, it was common among delivery workers I spoke with for them to have obtained their Australian Business Number for the sole purpose of being able to access the On-Demand Delivery Employers' delivery platforms. They did not use their Business Number for any other purpose. Many workers I have spoken with have little understanding of their obligations as a business holder, such as taxation.
16. In the case of Uber Eats and Deliveroo, once I completed the training, I was provided with a "contract agreement" or "service contract" (**agreement**) for me to review and execute. This was sometimes emailed to me and in other cases, such as with Deliveroo, I was sent a link to review and execute the document online. The agreement for each On-Demand Employer was offered to me on a take it or leave it basis. There was no scope to amend or revise the agreement. A copy of my agreement with Deliveroo is hereto annexed to this statement and marked "**DC1**". A copy of my agreement with Uber Eats is hereto annexed to this statement and marked "**DC2**".
17. In cases where no formal written contract was executed (such as with Doordash or Menulog), agreement took the form of an understanding that was reached throughout either the training or induction process. This included delivery expectations that, if not met, could result in penalty or termination.

18. After completing an induction process, I was in all cases provided with login credentials and details about how to access the phone application that would allow me to receive delivery offers.
19. In all cases, the application technology is available for download through the Apple store, Google Play store or similar platform. Generally, my On-Demand Delivery Employers would provide me with instructions about how to use and download the application.
20. There is no difficulty associated with downloading and installing any of the applications I use as provided by my On-Demand Delivery Employers. In every case, the applications are freely available and accessible once I was provided my login credentials. I do not require any special skill or training to access the applications or download them. There is no greater difficulty in downloading the application than downloading a game or weather application.
21. Further, once logged in, I do not require any special skill or knowledge to use the phone applications to accept and perform work. The applications are simple to use. Their design is such that any person can use the device irrespective of their level of education or experience. I have personally met and assisted several delivery workers who were undertaking deliveries using the On-Demand Delivery Employers' phone applications with little knowledge of the English language.

### **Description of Delivery Work**

22. The actual performance of my delivery work involves travel from one location to another as directed by my On-Demand Delivery Employers. Although there are slight differences between the various employers in terms of the way that the work is displayed or offered, the overall structure of the work itself, work expectation and related requirements are the same.
23. A typical day in the performance of delivery work for an On-Demand Delivery Employer is as follows:
  - a. For shift-based offers, it is generally required that I deliver within a 'zone' for the duration of the shift. These zones are virtual geographical overlays that automatically restrict your work to a particular area. Access to zones can be toggled on or off at the employers discretion. In some cases, shifts need to be reserved days in advance. In the

case of Menulog, one way these shifts are allocated includes a rostering and availability system that operates to a weekly schedule.

- b. Where an On-Demand Delivery Employer offers deliveries on a 'free-roaming' basis, it is typically necessary for me to be within a few kilometres of a participating merchant. For example, it is generally not practical to login at my own home, I am required to travel several kilometers to the nearest restaurant before logging in.
- c. Once logged in, I wait, typically on a public bench in an area with restaurants, until I receive a notification with an offer from an On-Demand Delivery Employer to perform a delivery. In ideal cases, I might receive an offer after only a few minutes of logging in. However, depending on various factors, it is not uncommon to be required to wait for periods of anywhere up to 30 minutes or longer. In extreme cases, I have been logged in for multiple hours without receiving an offer.
- d. Once an offer notification is received, In the case of UberEats, Menulog and DoorDash, the offer will display an option to accept or reject the offer and provide the following information:
  - i. Rate offered,
  - ii. Distance to be travelled;
  - iii. Merchant location; and
  - iv. Drop-off location/where the products are to be delivered.
- e. Offers are displayed for a short period of time, generally between 10-60 seconds. The rates offered are not negotiable.
- f. Rates offered can be based on clear factors such as distance and time. However, some On-Demand Delivery Employers will offer flat rates without any detail or explanation.
- g. In the case of Deliveroo, I am not notified of the customer's drop-off location until after I have collected the order from the merchant. At this point, there is little flexibility to reject the offer if I find the dropoff location is unsuitable, or undesirable.



- h. Where employers advise workers that they are free to reject offers, several employers, including Menulog, utilise 'acceptance' rates. Rejecting offers impacts your acceptance rate. How a low acceptance rate impacts your future offers is not clear.

In Menulog's 'Frequently Asked Questions' section of their phone application for couriers, it is stated that:

*"...declining an offer will impact your acceptance rate. Maintaining a high acceptance rate is the best way to receive offers more quickly."*

The implied penalty inherent in this type of system clearly inhibits my capacity to refuse offers.

- i. After accepting a delivery offer, I will immediately travel to the merchant. Once I have found a suitable location to secure my e-bike, I will enter the merchant's premises. If the food or other goods are not prepared, I am required to wait. Depending on various factors, waiting times are generally from 5 to 10 minutes. In some cases, waiting times can exceed periods of 20 minutes or longer. I inform the merchant that I have arrived and also mark myself as 'arrived' in the phone application.
- j. Once finalised and available I collect the goods as prepared and then mark the products as collected in the relevant phone application. I then unsecure my bike and undertake the delivery.
- k. I travel to the delivery drop-off location specified by the Employer. I do so taking the most direct route and without delay.
- l. Once I arrive at the delivery location, I secure my e-bike and approach the entrance of the customer's premises, alerting the customer that I have arrived. If a customer fails to respond, or some other issue occurs, the dropoff process can be subject to delay.
- m. I then mark the goods as 'delivered', or equivalent, in the application. Once finalised, I then return to the nearest restaurant area or back to the specified zone. How long this takes depends on the end location of the previous delivery.
- n. In some cases, I may be offered a 'double' delivery, an offer that requires two orders to be completed. This has become a standard across most platforms.

24. I refer to the statement of Morten Birk Belling dated 18 October 2021. Mr Belling describes the operation of the works at paragraphs 24-38.
25. Mr Belling has included at paragraph 32 what he describes as a flowchart representing how the work is performed at Menulog as an employee. I cannot comment on the organisation of work for an employee engaged by Menulog.
26. At paragraph 30 he describes the flowchart for the sequence of delivery of goods as an independent contractor. In all cases, the high-level system for the delivery of the work is consistent with the flowchart.
27. However, Mr Belling's statement does not set out the process where a delivery worker will not be completing a job they have otherwise already collected. That is, whether the delivery rider will need to explain why they have not completed the work and could, for example, be deprioritised for future orders, or locked out of the application and not offered more work if there is no valid or accepted explanation.
28. The flowchart also fails to describe other common practices in the On-Demand sector for what occurs when a delivery worker refuses offers, which can, in the case of some On-Demand Delivery Employers, result in being de-prioritised for future offers, or even losing access to the application. This includes where a valid reason for non-acceptance of an offer exists, such as:
- a. The dropoff location is too far, or at an undesirable location;
  - b. The offer of payment is too low;
  - c. The delivery worker is already undertaking another delivery;
  - d. The merchant is known to the delivery worker to be low performing or disreputable;

### **Engagement and Operations in the On-Demand Sector**

29. The delivery work I perform is all subject to what is made available through the On-Demand Delivery Employer phone applications. I have no control over what work is offered to me or the rate that I will be paid for that work.
30. In the case of Uber Eats, I only have approximately 15 seconds to accept a delivery offer. For other On-Demand Delivery Employers such as DoorDash, that timeframe is only slightly longer at up to 60 seconds.

31. Some On-Demand Delivery Employers, such as DoorDash and Deliveroo, use geographical zones where delivery riders can travel to perform the work. Others, such as UberEATS, do not have any zones.
32. For companies that utilise zones, they are able to control the number of delivery riders who can access the application to perform the work at any one time. DoorDash, for example, does not allow a worker to login to a zone if there are too many delivery riders currently working in that zone. This type of system prevents areas from becoming overly populated with workers, increasing the number of orders per worker. However, this often results in workers not being able to login at all, or being forced to travel to a distant zone, as no local zones are available. In my experience, obtaining a shift in a zone does not necessarily guarantee that I will receive more offers. It is not uncommon to find that no zones are available, preventing me from logging in and impacting my earnings.
33. Where the zoneless 'free roaming' system is used, there can be an unlimited number of delivery riders in close proximity awaiting delivery work for allocation. When working on this system, I may not be offered a delivery job for an extended period. In any case, when work is offered, it is work requiring the collection of goods and their immediate delivery.
34. My work is limited to the collection of goods and their immediate delivery. While some employers explicitly claim there is no set time limit imposed upon my deliveries, I clearly understand that anything less than *immediate* delivery may result in warnings, penalties or termination. Customers are provided the ability to track my movements in real-time and are sold the goods with an estimated delivery time, creating an expectation of immediate delivery. Not meeting these expectations will be reflected in customer feedback, which, in most cases, customers are actively encouraged to provide.
35. In cases where a customer has requested a 'scheduled' delivery, for a later time, my delivery experience is unchanged. I will not receive the delivery request until the scheduled time, at which point I am still required to deliver the goods immediately.
36. In practice, when using one or more of these apps simultaneously, there is no real capacity to accumulate or combine orders from multiple On-Demand Delivery Employers, as a traditional independent parcel courier may do, in an effort to maximise their earnings. Offers can only be

undertaken in sequence. The only real option available to me to increase my revenue is to either work faster, longer, disregard traffic laws or utilise sometimes dangerous shortcuts.

37. While there is some capacity to 'shop' for offers when logged in to multiple apps, the very short acceptance window, combined with inconsistent and unpredictable rates, impedes my ability to reasonably compare offers and give them proper consideration. The frequency at which I am required to review these offers is also an extreme distraction and a notable risk factor when operating my e-bike in open traffic.

Signed:

A black rectangular redaction box covering the signature of Davis Clayton.

Davis Clayton

Date: 28/11/2021

# "DC1"

**THIS SUPPLIER AGREEMENT** is entered into on  
**BETWEEN**

1. Davis Clayton (ABN 50 994 847 385) ("You");  
of [REDACTED] [REDACTED] North Melbourne Victoria 3051
2. **DELIVEROO AUSTRALIA PTY LTD (ABN 73 607 915 640)** of Level 2, 161 Collins Street, Melbourne, Victoria, 3000, Australia ("Deliveroo")

## **BACKGROUND**

- A. You are a supplier in business on your own account who wishes to arrange the provision of delivery services to Deliveroo subject to the terms and conditions below.
- B. You are free to supply the Services either personally or through someone else engaged by you in accordance with clause 9. For ease of reference, where an obligation involving the provision of Services or the provision of a warranty is set out in this Agreement (and save for clause 2.1, 5, 6.2, 9, 10 or where expressly stated otherwise), "you" should be read as meaning either you personally, or procured by you in relation to any person engaged by you.

## **IT IS AGREED AS FOLLOWS:**

### **1. COMMENCEMENT AND DURATION**

- 1.1. This Agreement commences on the date set out above and will continue until it is terminated by either party in accordance with clause 10 below.

### **2. SUPPLIER SERVICES**

- 2.1. Deliveroo authorises You to arrange the provision of Services from time to time on the terms set out in this Agreement. "Services" means the collection by you of food, drinks and/or other items ("Order Items") from restaurants or other partners ("Partners") notified to you through the Deliveroo rider app ("App"), and the delivery of Order Items by bicycle (including e-bicycles), car or motorbike to Deliveroo's customers at locations notified to you through the App.
- 2.2. You are not obliged to do any work for Deliveroo, nor is Deliveroo obliged to make available any work to you. Throughout the term of this Agreement you are free to work for any other party including competitors of Deliveroo.
- 2.3. It is entirely up to you whether, when and where you log in and/or perform deliveries. The App enables you to log in and offer to provide Services at any time and in any area where Deliveroo anticipates a need for riders. Deliveroo makes available a self-service booking ("SSB") tool through the App which can be used to freely login, where Deliveroo has a need for services, or to book sessions when you want to work. Booking in advance using the SSB tool is optional, but if used and a booking is confirmed then you have an assurance that you will be able to log in to provide Services at a particular place and time.
- 2.4. While logged into the App, you can decide whether to accept or reject any order offered to you and if you do not wish to receive offers of work at any time, you can use the "offline" status.
- 2.5. When you choose to provide Services, you should:
  - 2.5.1. where you have accepted an order, and unless you choose to un-assign from the order, go to the Partner to collect the Order Items and then deliver the Order Items to the customer. In both instances, you should complete the Services within a reasonable time period, using any route you determine to be safe and efficient; and
  - 2.5.2. be professional in your dealings with Deliveroo staff, other riders, Partner personnel and members of the public while providing the Services, and provide the Services with due care, skill and ability.

### **3. HEALTH & SAFETY**

- 3.1. You are responsible for complying with all applicable work-related health and safety legislation and Deliveroo's work health and safety guidelines.
- 3.2. Deliveroo will comply with its responsibilities under all applicable work-related health and safety legislation and will provide appropriate work health and safety materials to you prior to commencement of the supply of Services by you under this Agreement. These materials are available online and you should ensure that any delegate is suitably aware of the content and will comply with it.
- 3.3. Please inform a member of the Rider Support Team if you or a delegate are involved in any accident or near miss when using your bicycle, car, motorbike or scooter while supplying Services as soon as possible after the occurrence of the incident.
- 3.4. If Deliveroo wishes to conduct inquiries in relation to the matters described in this clause 3, you must assist Deliveroo with its reasonable inquiries and promptly cooperate with any requests by Deliveroo for information and documentation.

### **4. EQUIPMENT**

- 4.1. You will provide the equipment necessary to provide the Services including your own phone and vehicle.
- 4.2. While providing the Services, you will:
  - 4.2.1. comply with all applicable legal requirements in relation to the usage of your vehicle, and ensure that it is in a good state of repair and roadworthy;
  - 4.2.2. not use your vehicle while under the influence of drugs or alcohol; and
  - 4.2.3. use food transportation equipment and road safety equipment which meets Deliveroo's safety standards. Deliveroo's safety standards, as updated from time to time, will be communicated to you. Equipment which meets Deliveroo's safety standards can be obtained from Deliveroo.

### **5. FEES AND INVOICING**

- 5.1. Deliveroo will pay you a delivery fee ("Delivery Fee") for each completed delivery. A completed delivery for these purposes is the collection of Order Items from a Partner and delivery to a customer, or the collection of Order Items from one or more Partners and delivery to one or more customers in the case of a stacked order.
- 5.2. The Delivery Fee offered to you will be communicated by Deliveroo in the App. If you do not wish to accept the order for the Delivery Fee offered, you can reject the order.
- 5.3. You will pay Deliveroo an administrative fee of 4% (inclusive of any GST payable) of the total fees payable to you for the supply of Services in respect of administrative services provided to you by Deliveroo including:
  - 5.3.1. access to Deliveroo's proprietary software that allows you to supply the Services; and
  - 5.3.2. administrative services on your behalf, such as providing invoices.
- 5.4. You will be paid based on an invoice. You can raise invoices for Services provided by you or your delegate in the App, subject to Deliveroo's invoicing process in place at the time. Deliveroo will then pay your invoice by electronic transfer to your nominated bank account.
- 5.5. You should keep any tips or gratuities paid to you directly by any of Deliveroo's customers in respect of Services provided by you under this Agreement.
- 5.6. As a supplier in business on your own account, you are responsible for accounting for and paying any tax and insurance due in respect of sums payable to you under or in connection with this Agreement. You are required, at your own expense, to acquire and maintain at all times whilst this Agreement remains in operation, an Australian Business Number ("ABN") and will provide your ABN to Deliveroo on request.

## **6. WARRANTIES**

- 6.1. You warrant upon commencement and in respect of any time during which you intend to provide Services that:
  - 6.1.1. you have the right to reside and work in Australia and have all necessary visas, licenses and permits allowing you to do so;
  - 6.1.2. You have no unspent convictions for any criminal offence;
  - 6.1.3. You are proficient in the use of your chosen vehicle and will comply with all legal obligations (including the Road Rules applicable in each State) which apply to you or the provision of the Services from time to time;
  - 6.1.4. You will ensure that, to allow customers to track the progress of deliveries, Deliveroo is able to track using GPS technology the progress of any delivery which you agree to accept.
- 6.2. You will notify Deliveroo of any driving or other conviction which may impact your ability to provide the Services.

## **7. INSURANCE**

- 7.1. Deliveroo offers you insurance which covers specified liabilities to third parties, subject to the terms and conditions of the relevant policy (as in place at the time). While this insurance is provided free of charge, you (and not any delegate) are responsible for any excess fee payable in relation to any claim. You are also responsible for liaising with the insurer in relation to any claims relating to your rider account. We may on occasion disable your access to the App pending provision of such information to the insurer. Deliveroo may deduct such sums from fees payable to you if the excess fee is not paid by you to the insurer. If you provide services using a car or motorbike, you must obtain relevant third party liability insurance which covers you for the business of food delivery throughout any period in respect of which you provide Services. You will, on request, supply Deliveroo with evidence that you had or have up-to-date cover. Any delegate appointed by you need not have their own food delivery insurance as long as they are covered under your insurance.
- 7.2. Deliveroo also offers you insurance which covers specified injuries and other losses following an accident, subject to the terms and conditions of the relevant policy (as in place at the time).

## **8. LIABILITY**

- 8.1. You acknowledge and agree that you (and not any delegate) are responsible for the provision of the Services if and when undertaken, regardless of whether actually delivered by you, and accept liability for any losses suffered by Deliveroo as a result of negligent provision of the Services by you or your delegate.

## **9. RIGHT TO APPOINT A DELEGATE**

- 9.1. Deliveroo recognises your right to engage others to provide the Services. You have the right, without the need to obtain Deliveroo's prior approval, to arrange for another courier to provide the Services (in whole or in part) on your behalf. This can include provision of the Services by others who are employed or engaged directly by you; however, it may not include an individual who has previously had their Supplier Agreement terminated by Deliveroo for a serious or material breach of contract or who (while acting as a delegate, whether for you or a third party) has engaged in conduct which would have provided grounds for such termination had they been a direct party to a Supplier Agreement.
- 9.2. It is your responsibility to ensure your delegate(s) have the requisite skills and training, and meet the requirements set out in the warranties at clause 6 above. You continue to bear full responsibility for ensuring that all obligations under this Agreement are met. All acts and omissions of the delegate will be treated as though those acts and/or omissions were your own. You are wholly

responsible for the payment to or remuneration of any delegate under such terms as you may agree with that delegate and the normal invoicing arrangements as set out in this Agreement between you and Deliveroo will continue to apply. Further information on working with delegates is available on the rider community site, where you can also access the up-to-date onboarding videos and rider materials if you want to show these to your delegate at any time.

## 10. TERMINATION

- 10.1. You may terminate this Agreement with Deliveroo at any time and for any reason on giving Deliveroo immediate notice in writing.
- 10.2. Subject to 10.3, Deliveroo may terminate this Agreement with you at any time and for any reason but Deliveroo will give you not less than one week's notice in writing.
- 10.3. Deliveroo reserves the right to terminate this Agreement with immediate effect in the event of any serious or material breach of any obligation owed by you (including for the avoidance of doubt where such breach is the responsibility of any delegate engaged by you).

## 11. DATA PROTECTION

- 11.1. You must not (unless required to do so by law) use any confidential information of Deliveroo other than as set out in the Agreement and you must only process personal data relating to Deliveroo's customers ("Customer Data") in compliance with the following:
  - 11.1.1. you must only process Customer Data as required to provide the Services, including as notified to you through the App;
  - 11.1.2. you must inform Deliveroo as soon as possible of any data breach or if you are not able to provide the Services in compliance with this clause 11 or any applicable law or regulation relating to the processing, privacy, and use of personal data, that applies to you, Deliveroo and/or the Services;
  - 11.1.3. you must put in place and maintain appropriate measures to ensure that your processing of Customer Data is secure, for example, you should maintain password protection on the smartphone that you use to provide the Services and keep your App log-in details and password confidential at all times (except for providing them to a delegate in accordance with this Agreement);
  - 11.1.4. you must ensure that any delegates processing Customer Data on your behalf understand their obligation to keep Customer Data confidential and to treat it in accordance with this clause 11; and
  - 11.1.5. you must never retain any Customer Data after completion of, or unassignment from, an order (unless necessary in order to provide the Services and in accordance with this Agreement) and without unreasonable delay after Deliveroo's written request at any time, securely delete, return to Deliveroo or remove your access to any Customer Data.
- 11.2. Deliveroo processes your personal data and the personal data of your delegate(s) as described in the Rider Privacy Policy which can be found at <https://rider.deliveroo.com.au/rider-privacy>. You are responsible for ensuring that your delegate(s) understand the Rider Privacy Policy and this Agreement before riding with Deliveroo, and in particular that they know that their personal data processed by Deliveroo will be shared with you.

## 12. MISCELLANEOUS

- 12.1. In performing your obligations under the Agreement, you will comply with all applicable anti-slavery and human trafficking laws and/or policies communicated to you.
- 12.2. At any point when providing or arranging the provision of Services, if you or any delegate has any cause for concern in relation to personal safety or security, please contact the police immediately and notify the Rider Support Team of the relevant facts giving rise to your concern(s).



- 12.3. No person other than you and Deliveroo may enforce any term of this Agreement (for the avoidance of doubt, this includes any delegate engaged by you in the provision of the Services).
- 12.4. This Agreement contains the whole agreement between you and Deliveroo. You confirm that you are not entering into the Agreement in reliance upon any oral or written representations made to you by or on behalf of Deliveroo.
- 12.5. This Agreement is personal to you and may not be assigned to a third party without Deliveroo's express written agreement (for the avoidance of doubt, this includes any delegate engaged by you in the provision of the Services).
- 12.6. No waiver by Deliveroo of any breach by you of the Agreement shall be considered as a waiver of any subsequent breach. A waiver of any term of the Agreement shall be effective only if given in writing and signed by Deliveroo. No failure or delay on the part of any party in exercising any right under the Agreement shall operate as a waiver of such right.
- 12.7. This Agreement is governed by the laws of Victoria and each party to this Agreement submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

**EXECUTED AS AN AGREEMENT**

Signed .....  
You

Dated .....



Signed .....  
On behalf of Deliveroo

Dated .....

# "DC2"

PORTIER PACIFIC PTY LTD

UBER PORTIER B.V.

SERVICES AGREEMENT

Last update: 1 December 2017

This Services Agreement ("**Agreement**") constitutes a legal agreement between you, an individual ("**you**"), Portier Pacific Pty Ltd, an Australian company registered in New South Wales under ACN 622 365 459 ("**Portier Pacific**") and Uber Portier B.V., a private limited liability company established in the Netherlands, having its offices at Mr. Treubaan 7, 1097 DP Amsterdam, The Netherlands, registered at the Amsterdam Chamber of Commerce under number 65851307 ("**Uber**").

Portier Pacific will procure and facilitate the provision of the lead generation services, being on-demand intermediary and related services rendered via a digital technology application that enable independent providers of delivery services to seek, receive and fulfil on-demand requests for Delivery Services ("**Uber Services**") to you, an independent provider of Delivery Services. Uber will license you the Provider App (as defined below). The Uber Services and Provider App enable you to seek, receive and fulfil requests for Delivery Services from authorized users of the Uber App (as defined below). In order to use the Uber Services and Provider App, you must agree to the terms and conditions that are set forth below. Upon your execution (electronically or otherwise) of this Agreement, you, Uber and Portier Pacific shall be bound by the terms and conditions set forth herein. References herein to "Uber Group" shall be taken as a reference to Uber, Portier Pacific and each of their Affiliates.

If you receive services from an Affiliate of Portier Pacific (e.g. Rasier Pacific Pty Ltd) that enable you to seek, receive and fulfil requests for passenger transportation services from Users (as defined below), the services provided by Portier Pacific's Affiliate are separate and independent of the services provided by Portier Pacific under this Agreement and are subject to separate terms with Portier Pacific's Affiliate.

**You acknowledge and agree that Uber is a technology services provider and that neither Uber, Portier Pacific nor their Affiliates provide delivery services.**

## 1. Definitions

- 1.1 "**Addendum**" means an addendum to this Agreement setting forth additional Territorial-specific and/or service-specific terms, as made available and as updated by Uber or Portier Pacific from time to time.
- 1.2 "**Affiliate**" means an entity that, directly or indirectly, controls, is under the control of, or is under common control with a party, where control means having more than fifty percent (50%) of the voting stock or other ownership interest or the majority of the voting rights of such entity, the ability of such entity to ensure that the activities and business of that Affiliate are conducted in accordance with the wishes of that entity or the right to receive the majority of the income of that Affiliate on any distribution by it of its income or the majority of its assets on winding up.
- 1.3 "**Cancellation Fee**" has the meaning set forth in clause 4.6.
- 1.4 "**Delivery Fee**" has the meaning set forth in clause 4.1.
- 1.5 "**Delivery Recipient**" means, with respect to *UberRUSH*, the intended recipient of goods being delivered by you in connection with your Delivery Services.
- 1.6 "**Delivery Recipient Information**" means information about a Delivery Recipient made available to you in connection with a request for and use of Delivery Services, which may include delivery drop-off location, a Delivery Recipient's name, a Delivery Recipient's contact information, a Delivery Recipient's signature, and a Delivery Recipient's photo, as well as any other relevant details specific to the items to be delivered.
- 1.7 "**Delivery Services**" means your provision of delivery services to or on behalf of Users via the Uber Services in the Territory using the application Transportat on Method.
- 1.8 "**Negotiated Cancellation Fee**" has the meaning set forth in clause 4.6.
- 1.9 "**Provider App**" means the mobile application licensed to you by Uber that enables delivery providers to access the Uber Services for the purpose of seeking, receiving and fulfilling on-demand requests for delivery services by Users, as may be updated or modified from time to time.

- 1.10 “*Provider ID*” means the identification and password key assigned to you that enables you to use and access the Provider App.
- 1.11 “*Service Fee*” has the meaning set forth in clause 4.4.
- 1.12 “*Territory*” means the city or metro areas within Australia in which you are enabled by the Provider App to receive requests for Delivery Services.
- 1.13 “*Tolls*” means any applicable road, bridge, ferry, tunnel and airport charges and fees, including inner-city congestion, environmental or similar charges as reasonably determined by the Uber Services based on available information.
- 1.14 “*Transportation Method*” means a mode of transportation that: (a) meets the then-current Uber or Porter Pacific requirements for the delivery of the applicable items by you when using the Uber Services or Provider App (e.g., if Delivery Services require a motor vehicle, then “Transportation Method” shall mean a motor vehicle); and (b) Uber or Porter Pacific authorizes for your use for the purpose of providing Delivery Services.
- 1.15 “*Uber App*” means the mobile application provided to authorized Users seeking on-demand requests for delivery services.
- 1.16 “*Uber Data*” means all data related to the access and use of the Uber Services hereunder, including all data related to Users (including User Information), all data related to Delivery Recipients (including Delivery Recipient Information), all data related to the provision of Delivery Services via the Uber Services and the Provider App, and the Provider ID.
- 1.17 “*User*” means an end user (an individual or an entity) authorized by Uber to use the Uber App for the purpose of requesting Delivery Services offered by Porter Pacific’s delivery provider customers (for clarity, such Delivery Services may be obtained in either of the following ways by a User: (a) to receive specific goods **from** a third party (including goods purchased from a third party (e.g., a restaurant)), or (b) to deliver specific goods **to** a third party).
- 1.18 “*User Information*” means information about a User made available to you in connection with a request for and use of Delivery Services, which may include delivery pick-up location, delivery drop-off location, the User’s name, the User’s contact information, the User’s signature, and the User’s photo, as well as any other relevant details specific to the terms to be delivered.
- 1.19 “*Your Device*” means a mobile device owned or controlled by you: (a) that meets the then-current Uber and/or Porter Pacific specifications for mobile devices; and (b) on which the Provider App has been installed as authorized by Uber solely for the purpose of providing Delivery Services.

## 2. Use of the Uber Services

- 2.1 **Provision of Delivery Services.** When the Provider App is active, User requests for Delivery Services may appear to you via the Provider App if you are available and in the vicinity of the User. The User request may also specify the User’s required deadline for your completion of the Delivery Services. If you accept a User’s request for Delivery Services, you will be provided with certain User Information, Delivery Recipient Information, and User instructions via the Provider App, including (as applicable) the User’s first name and the pickup and drop-off location of the applicable goods to be delivered. In order to enhance User satisfaction with the Provider App and your Delivery Services, it is recommended that you follow the User instructions for pickup and drop-off, including details of the location with the building address to pickup/drop-off a package and waiting at least ten (10) minutes for a User or Delivery Recipient to appear at the requested pickup or drop-off location. You acknowledge and agree that once you have accepted a User’s request for Delivery Services, the Uber App may provide certain information about you to the User and Delivery Recipient, including your first name, contact information, photo and location, and as applicable, information about your Transportation Method. You shall not contact any Users or Delivery Recipients or use any User’s personal information for any reason other than for the purposes of fulfilling Delivery Services. You acknowledge and agree that: (a) you shall be solely responsible for determining the most effective, efficient and safe manner to perform each instance of Delivery Services; and (b) except for the Uber Services, you shall provide a necessary equipment, tools and other materials, at your own expense, necessary to perform Delivery Services. Additionally, depending on the type of Delivery Services you are providing, you acknowledge that you may need to acquire third party inventory (e.g., food in the case of *UberEATS*) from various locations from time to time in order to fulfill certain requests for Delivery Services. In order to provide Delivery Services, you may need to accept from time-to-time, certain additional terms, as set forth in an Addendum.
- 2.2 **Your Relationship with Users and Delivery Recipients.** You acknowledge and agree that your provision of Delivery Services to Users creates a direct business relationship between you and the User, to which Uber, Porter Pacific and the affiliates are not a party. Uber, Porter Pacific, and the affiliates are not responsible or liable for the actions or

nactions of a User or Devery Recp ent nre at on to your act v t es or your Transportat on Method. You sha have the so e respons b ty for any ob gat ons or ab t es to Users, Devery Recp ents or other th rd part es that ar se from your prov s on of Devery Serv ces. You acknow edge and agree that you are so e y respons b e for tak ng such precaut ons as may be reasonab e and proper ( nc ud ng ma nta ng adequate nsurance that meets the requ rements of a app cab e aws) regard ng any acts or om ss ons of a User, a Devery Recp ent or other th rd party.

- 2.3 **Your Relationship with Uber Group.** You acknow edge and agree that Port er Pac f c’s prov s on of the Uber Serv ces creates a ega and d rect bus ness re at onsh p between Port er Pac f c and you. You a so acknow edge and agree that Uber’s cence to you of the Prov der App creates a ega and d rect bus ness re at onsh p between Uber and you. Ne ther Uber nor Port er Pac f c sha be deemed to, d rect or contro you genera y or n your performance under th s Agreement spec f ca y, nc ud ng n connect on w th your prov s on of Devery Serv ces, your acts or om ss ons, or your operat on and ma ntenance of your Transportat on Method. Except as express y set out here n, you reta n the so e r ght to determ ne when, where, and for how ong you w ut ze the Prov der App or the Uber Serv ces. You reta n the opt on, v a the Prov der App, to attempt to accept or to dec ne or gnore a User’s request for Devery Serv ces v a the Uber Serv ces, or to cance an accepted request for Devery Serv ces v a the Prov der App, subject to Uber s then-current po ces ( nc ud ng the Commun ty Gu de nes ocated at [www.uber.com/ega/commun ty-gu de nes/ubereats/anz-en/](http://www.uber.com/ega/commun ty-gu de nes/ubereats/anz-en/)). You w not: (a) dsp ay Uber s, Port er Pac f c’s or any of the r Aff ates’ names, ogos or co ors on your Transportat on Method; or (b) wear a un form or any other c oth ng dsp ay ng Uber s, Port er Pac f c’s or any of the r Aff ates’ names, ogos or co ors. The forego ng does not app y f you and Uber or Port er Pac f c (as app cab e) have agreed otherw se or f so requ red by aw. You acknow edge and agree that you have comp ete d scret on to prov de serv ces or otherw se engage n any bus ness or emp oyment act v t es. For the sake of car ty, you understand that you reta n the comp ete r ght to: ( ) use other software app cat on serv ces n add t on to the Uber Serv ces and the Prov der App; and ( ) engage n any occupat on or bus ness. Port er Pac f c reta ns the r ght, at any t me at ts so e d scret on, to restr ct you from us ng the Uber Serv ces n the event of a v o at on of th s Agreement or any re evant Uber po cy, your dsp aragement of Uber, Port er Pac f c or any of the r Aff ates, or your act or om ss on that causes harm to Uber s, Port er Pac f c’s or the r Aff ates’ brand, reputat on or bus ness as determ ned by Port er Pac f c n ts so e d scret on. Port er Pac f c a so reta ns the r ght to restr ct you from us ng the Uber Serv ces for any other reason at the so e and reasonab e d scret on of Port er Pac f c. Uber reta ns the r ght to, at any t me at ts so e d scret on, deact vate or otherw se restr ct you from access ng the Prov der ID and/or Prov der App, n the event of a v o at on of th s Agreement, any re evant Uber po cy, nc ud ng the Commun ty Gu de nes or the Uber Pr vacy Po cy ( ocated at [pr vacy.uber.com/po cy/](http://pr vacy.uber.com/po cy/)), your dsp aragement of Uber, Port er Pac f c or any of the r Aff ates, your act or om ss on that causes harm to Uber s Port er Pac f c’s or the r Aff ates’ brand, reputat on or bus ness as determ ned by Uber n ts so e d scret on. Uber a so reta ns the r ght to deact vate or otherw se restr ct you from access ng the Prov der ID and/or Prov der App, for any other reason at the so e and reasonab e d scret on of Uber.
- 2.4 **Ratings.** You acknow edge and agree that: (a) after comp et on of an nstance of Devery Serv ces, a User and/or Devery Recp ent may be prompted by the Uber App to prov de a rat ng of you and such Devery Serv ces and, opt ona y, to prov de comments or feedback about you and such Devery Serv ces; and (b) after prov d ng Devery Serv ces, you w be prompted by the Prov der App to prov de a rat ng of the User and, opt ona y, to prov de comments or feedback about the User. You sha prov de your rat ngs and feedback n good fa th. Uber, Port er Pac f c and the r Aff ates reserve the r ght to use, share and dsp ay your, User and Devery Recp ent rat ngs and comments n any manner n connect on w th the bus ness of Uber, Port er Pac f c and the r Aff ates w thout attr but on to you or your approva . You acknow edge and agree that Uber, Port er Pac f c and the r Aff ates are d str butors (w thout any ob gat on to ver fy) and not pub shers of User, Devery Recp ent and your rat ngs and comments, prov ded that Uber, Port er Pac f c and the r Aff ates reserve the r ght to ed t or remove comments n the event that such comments ncude obscen t es or other object onab e content, ncude an nd v dua ’s name or other persona nformat on, or v o ate any pr vacy aws, other app cab e aws, or Uber s, Port er Pac f c’s or the r Aff ates’ content po ces. There s no ob gat on on you, a User or a Devery Recp ent to prov de rat ngs or comments nor s there any consequence for not prov d ng a rat ng.
- 2.5 **Your Device.** You are respons b e for the acqu s t on, cost and ma ntenance of Your Dev ce as we as any necessary w re ss data p an that you use to access the Prov der App. Uber grants you a persona , non-exc us ve, non-transferab e, non-sub censab e r ght to nsta and use the Prov der App on Your Dev ce so e y for the purpose of prov d ng Devery Serv ces. You agree to not prov de, d str bute or share, or enab e the prov s on, d str but on or shar ng of, the Prov der App (or any data assoc ated therew th) w th any th rd party. The forego ng r ght sha mmed ate y term nate and you w de ete and fu y remove the Prov der App from Your Dev ce n the event that you cease to prov de Devery Serv ces us ng Your Dev ce. You agree that: ( ) use of the Prov der App on Your Dev ce

requires an active data plan with a wireless carrier associated with Your Device, which data plan will be provided by you at your own expense; and ( ) use of the Provider App on Your Device as an interface with the Uber Services may consume very large amounts of data through the data plan. Uber and Porter Pacific advise that Your Device may be used under a data plan with unlimited or very high data usage limits, and neither Uber, Porter Pacific, nor the Affiliates, shall be responsible or liable for any fees, costs, or overage charges associated with any data plan.

### 3. You and Your Transportation Method

- 3.1 **Your Requirements.** You acknowledge and agree that at all times, you shall: (a) hold and maintain ( ) a valid applicable license with the appropriate level of certification to operate your Transportation Method (e.g., a driver's license for your Transportation Method as a motor vehicle), ( ) a license, permits, work enticements, approvals and authority applicable to you that are necessary to provide delivery services to third parties in the Territory; and ( ) a citizenship, residency or visa status that allows you the right to work in Australia; (b) provide Delivery Services in a professional manner with due skill, care and diligence; and (c) maintain high standards of professionalism, service and courtesy. You acknowledge and agree that you may be subject to certain background and driving record checks from time to time in order to qualify to provide, and remain eligible to provide, Delivery Services. You acknowledge and agree that Porter Pacific reserves the right to restrict you from using the Uber Services, if you fail to meet the requirements in this Agreement. You also acknowledge and agree that Uber reserves the right, at any time in its sole discretion to deactivate or otherwise restrict you from accessing the Provider ID and/or Provider App, if you fail to meet the requirements in this Agreement.
- 3.2 **Transportation Method Requirements.** You acknowledge and agree that your Transportation Method will at all times: (a) meet the then-current Porter Pacific requirements for a vehicle to provide the Delivery Services and must be authorized by Porter Pacific for its use; (b) be properly registered and licensed to operate as a delivery vehicle in the Territory (for your Transportation Method as a vehicle); (c) be owned or leased by you, or otherwise in your lawful possession; (d) be suitable for performing the Delivery Services contemplated by this Agreement; and (e) be maintained in good operating condition, consistent with any applicable industry safety and maintenance standards for a Transportation Method of this kind and any additional standards or requirements in the applicable Territory, and in a clean and sanitary condition.
- 3.3 **Documentation.** To ensure your compliance with all requirements in clauses 3.1 and 3.2, you must provide Porter Pacific (or a Porter Pacific Affiliate) with written copies of all such licenses, permits, work enticements, approvals, authority, registrations and certifications prior to your provision of any Delivery Services. Thereafter, you must submit to Porter Pacific written evidence of all such licenses, permits, work enticements, approvals, authority, registrations and certifications as they are renewed. Porter Pacific (or a Porter Pacific Affiliate) shall, upon request, be entitled to review such licenses, permits, work enticements, approvals, authority, registrations and certifications from time to time, and your failure to provide or maintain any of the foregoing shall constitute a material breach of this Agreement. Porter Pacific reserves the right to independently verify your documentation from time to time in any way Porter Pacific deems appropriate in its reasonable discretion. Your failure to meet any of the requirements in this clause 3.3 or clauses 3.1 and 3.2 shall constitute a material breach of this Agreement.

### 4. Financial Terms

- 4.1 **Delivery Fee Calculation and Your Payment.** You can charge a delivery fee for each instance of completed Delivery Services provided to a User that are obtained via the Uber Services ("**Delivery Fee**"), where such Delivery Fees, as applicable (a) calculated based upon a base delivery fee amount plus distance (as determined by Porter Pacific) and/or time amounts; or (b) a flat fee, each as detailed at <http://ubermovement.com/> for the applicable Territory ("**Delivery Fee Calculation**"). Distance and time amounts may be based on the expected, not actual, trip distance and duration as reasonably determined by Uber. You acknowledge that the Delivery Fees shall be the only payment you will receive in consideration for your provision of Delivery Services to a User and that neither the Delivery Fee nor the Delivery Fee Calculation includes any gratuity. You can also charge Users for any Tolls, taxes and/or fees incurred during the provision of Delivery Services, if applicable, whether charged by a third party or Porter Pacific. You: ( ) appoint Porter Pacific as your limited payment collection agent solely for the purpose of accepting the Delivery Fee, applicable Tolls and, depending on the region and/or if requested by you, applicable taxes and fees from the User on your behalf via the payment processing functionality facilitated by the Uber Services that are related to your provision of Delivery Services; and ( ) agree that payments made by Users to Porter Pacific shall be considered the same as payment made directly by Users to you. In addition, the parties acknowledge and agree that as between you and Porter Pacific, the Delivery Fee is a recommended amount, and the primary purpose of the pre-arranged Delivery Fee is to act as the default amount in the event you do not negotiate a different Delivery Fee. You shall always have the right to: ( ) charge a delivery fee that is less than the pre-arranged Delivery Fee, a "**Negotiated Delivery Fee**"). Porter

Pac f c sha consider a such requests from you n good fa th. Port er Pac f c agrees to rem t, or cause to be rem tted, to you on at east a week y bas s: (a) the De very Fee ess the app cab e Serv ce Fee and other fees charged by Port er Pac f c; (b) the To s; (c) any ncent ve payments; and (d) depend ng on the reg on, certa n taxes and anc ary fees (where app cab e). If you have separately agreed that other amounts may be deducted from the De very Fee pr or to rem ttance to you (e.g., veh ce f nanc ng payments, ease payments, government fees and charges, etc.), the order of any such deduct ons from the De very Fee s to be determ ned exc us ve y by Port er Pac f c (as between you and Port er Pac f c).

- 4.2 **Changes to Delivery Fee Calculation.** Port er Pac f c reserves the r ght to change the De very Fee Ca cu at on at any t me n Port er Pac f c s d scret on. Port er Pac f c w prov de you w th not ce n the event that any such change wou d resu t n a change n the recommended De very Fee. Cont nued use of the Uber Serv ces after any such change sha const tute your consent to such change.
- 4.3 **Delivery Fee Adjustment.** Port er Pac f c reserves the r ght to: ( ) adjust the De very Fee for a part cu ar nstance of De very Serv ces (e.g., you took an neff c ent route, you fa ed to properly end a part cu ar nstance of De very Serv ces n the Prov der App, techn ca error n the Uber Serv ces, etc.); or ( ) cance the De very Fee or f the De very Fee has a ready been pa d, requ re re mbursement of the De very Fee from you for a part cu ar nstance of De very Serv ces (e.g., a commun cated User dead ne for comp et on of de very serv ces was not met, User s charged for De very Serv ces that were not prov ded, n the event of a User comp a nt, fraud, etc.). Port er Pac f c's dec s on to reduce or cance the De very Fee n any such manner sha be exerc sed n a reasonab e manner.
- 4.4 **Processing Errors.** Port er Pac f c reserves the r ght, n ts so e d scret on, to seek re mbursement from you f Port er Pac f c d scovers payment process ng errors. Port er Pac f c may obta n re mbursement of any amounts owed by you to Port er Pac f c by deduct ng from future De very Fees owed to you, deb t ng your card on f e or your bank account on record, or seek ng re mbursement from you by any other awfu means. You author se Port er Pac f c to use any or a of the above methods to seek re mbursement.
- 4.5 **Service Fee.** In cons derat on of Port er Pac f c's prov s on of the Uber Serv ces to you, you agree to pay Port er Pac f c a serv ce fee on a per De very Serv ces transact on bas s, wh ch as at 1 December 2017 s ca cu ated as a percentage of the De very Fee determ ned by the De very Fee Ca cu at on (regard ess of any Negot ated De very Fee) ("**Service Fee**"). Port er Pac f c w prov de you w th not ce v a ema or v a the Prov der App, of the Serv ce Fee that app es to each De very Serv ce that you prov de. You acknow edge that, un ess regu at ons app cab e to your Territory requ re otherw se, taxes ( n part cu ar GST) w be ca cu ated and charged on the De very Fee, and Port er Pac f c sha ca cu ate the Serv ce Fee on an amount equa to the De very Fee Ca cu at on p us the amount of such taxes ( n part cu ar GST) that wou d be ca cu ated on the amount of the De very Fee. You acknow edge and agree that Port er Pac f c may adjust: ( ) the Serv ce Fee; or ( ) ntroduce a new mode to determ ne the Serv ce Fee payab e to you. Port er Pac f c w prov de you w th at east 14 days not ce n the event of an ncrease to the Serv ce Fee under ( ) above or the ntroduct on of a new Serv ce Fee mode under ( ) above. If e ther of these occurs, you have the r ght to term nate the Agreement mmed ate y, w thout not ce. Cont nued use of the Uber Serv ces after any such change n the Serv ce Fee ca cu at on sha const tute your consent to such change.
- 4.6 **Cancellation Charges.** You acknow edge and agree that Users may ect to cance requests for De very Serv ces that have been accepted by you v a the Prov der App at any t me pr or to your arr va at the drop-off ocat on. In the event that a User cance s an accepted request for De very Serv ces or the package s not ava ab e for your p ck-up based on Port er Pac f c's then-current po ces w th respect to the forego ng, Port er Pac f c may charge the User a cance at on fee on your beha f and a Serv ce Fee w be payab e to Port er Pac f c ("**Cancellation Fee**"). The part es acknow edge and agree that as between you and Port er Pac f c, th s Cance at on Fee s a recommended amount, and the pr mary purpose of such Cance at on Fee s to act as the defau t amount n the event you do not negot ate a d fferent amount. You sha a ways have the r ght to charge a cance at on fee that s ess than the Cance at on Fee ("**Negotiated Cancellation Fee**"). If charged, the Cance at on Fee (regard ess of any Negot ated Cance at on Fee) sha be deemed the De very Fee for the cance ed De very Serv ces for the purpose of rem ttance to you hereunder.
- 4.7 **Receipts.** As part of the Uber Serv ces, Port er Pac f c prov des you w th a system for de ver ng rece pts to Users for De very Serv ces rendered. Upon your comp et on of De very Serv ces for a User, Port er Pac f c prepares and ssues a rece pt to the User v a ema on your beha f. Such rece pts are a so prov ded to you v a ema or the on ne porta ava ab e to you through the Uber Serv ces. Rece pts ncude the breakdown of amounts charged to the User for De very Serv ces and may ncude certa n nformat on about you, ncud ng your name, contact nformat on and photo, and the route taken. Any correct ons to a User's rece pt for De very Serv ces must be subm tted to Port er Pac f c n wr t ng w th n three (3) bus ness days after the comp et on of such De very Serv ces. Absent such a not ce,

Porter Pacific shall not be liable for any mistakes or corrections to the receipt or for recalculation or disbursement of the Delivery Fee.

- 4.8 **No Additional Amounts.** You acknowledge and agree that, for the mutual benefit of the parties, through advertising and marketing, Uber, Porter Pacific and the affiliates may seek to attract new Users and to increase existing Users' use of the Uber App. You acknowledge and agree such advertising or marketing does not entitle you to any additional monetary amounts beyond the amounts expressly set forth in this Agreement. You acknowledge that the Uber Services do not provide Delivery Recipients or Users the ability to apply a gratuity through the Uber Services, as the Delivery Fees are full payment for your Delivery Services. In the event that a User pays Porter Pacific via a gratuity on your behalf, Porter Pacific will transmit such gratuity to you and will not retain any portion of that gratuity. With regard to cash gratuities provided by a User or Delivery Recipient directly to you, no portion of that gratuity is owed to or should be paid to Porter Pacific.
- 4.9 **Taxes.** You acknowledge and agree that you are required to: (a) complete all tax registration obligations and calculate and remit all tax liabilities related to your provision of Delivery Services as required by applicable law; and (b) provide Porter Pacific with all relevant tax information requested of you by Uber, Porter Pacific and/or each of the affiliates (including, a valid Australian Business Number (ABN) and/or Goods and Services Tax (GST) registration number under which you provide Delivery Services, if obtaining such a valid ABN and/or GST registration number is required of you by applicable law). You further acknowledge and agree that you are responsible for taxes on your own earnings arising from your provision of Delivery Services, including income tax and GST. Notwithstanding anything to the contrary in this Agreement, Porter Pacific may in its reasonable discretion based on applicable tax and regulatory considerations, or as required under the law, collect and remit taxes resulting from your provision of Delivery Services and/or provide any of the relevant tax information you have provided pursuant to the requirement mentioned in this clause 4.9, directly to the applicable governmental tax authorities on your behalf or otherwise.
- 4.10 **GST.** Unless expressly stated otherwise in this Agreement, all amounts payable or consideration to be provided under this Agreement by you to Porter Pacific are exclusive of GST. If GST is payable on any supply by Porter Pacific made under this Agreement, for which the consideration is not expressly stated to include GST, you agree to pay Porter Pacific an additional amount equal to the GST at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. In this Agreement, GST that is payable by Porter Pacific includes GST that is payable by the representative member of Porter Pacific's GST group.
- 4.11 **GST Law.** The parties agree that, for the purposes of the GST law, Porter Pacific supplies to you the Uber Services in so far as consideration for the Service Fee. In addition, Uber supplies to you a licence to use the Provider App under clause 5 for no consideration.
- 4.12 **Incentives.** From time to time, Porter Pacific may make an incentive payment(s) to you as consideration for your satisfaction of certain conditions as determined by Porter Pacific in its discretion ("**Conditions**"). These Conditions may be included in promotional materials, and/or may be communicated to you, including via text message and email. You acknowledge and agree that any incentive payment(s) is made to you at Porter Pacific's sole discretion, subject to the Conditions.
5. **Intellectual Property.** Subject to the terms and conditions of this Agreement, Uber hereby grants you, for no consideration, a non-exclusive, royalty-free, non-transferable, non-sublicensable, non-assignable license, during the term of this Agreement, to use the Provider App in connection with the provision of the Uber Services by Porter Pacific solely for the purpose of providing Delivery Services to Users and tracking resulting Delivery Fees and fees. Uber, its affiliates and respective licensors reserve all rights not expressly granted in this Agreement. The Provider App and Uber Data (including all intellectual property rights in and of the foregoing) are and remain the property of Uber, its affiliates and respective licensors. You shall not improperly use the Uber Services or Provider App. You shall not use any of Uber's names, logos or marks for any commercial purpose except as Uber expressly allows, nor shall you try to register or otherwise use or claim ownership over any of Uber or its affiliates' names, logos or marks. You shall not copy, modify, distribute, sell or lease any part of the Provider App or Uber Data, nor shall you reverse engineer or attempt to extract the source code of Uber's software, except as allowed by law.
6. **Confidentiality.** This Agreement and any information provided by Uber or Porter Pacific to you, which Uber or Porter Pacific designates as confidential or which you should reasonably know should be treated as confidential, should be treated accordingly.
7. **Privacy.** Your personal information will be collected, stored and processed in accordance with the Uber Privacy Policy (located at [privacy.uber.com/policy](http://privacy.uber.com/policy)).
8. **Insurance**

- 8.1 You agree that before entering into this Agreement you will obtain the coverage required by clause 8.2 below at your sole cost and expense. You agree to review the terms and conditions of such coverage to ensure that it provides the amounts of coverage required by clause 8.2 while you are using a motor vehicle to provide Delivery Services. As between you, Uber and Porter Pacific, it is your sole responsibility to inform your insurer of the use of your motor vehicle while providing Delivery Services.
- 8.2 You agree to maintain during the term of this Agreement motor vehicle liability insurance on a vehicle which you operate under this Agreement at insurance levels that satisfy the minimum requirements to operate a private vehicle on the public roads within the Territory, as well as any other minimum motor vehicle liability insurance cover which Porter Pacific requests you hold. You must be the policyholder or a duly rated driver, for which a premium is charged or calculated, on the insurance policy required in this clause 8.2 at all times. You agree to provide Porter Pacific with a copy of the insurance policy, policy declarations, proof of insurance identification card and proof of premium payment for the insurance policy required in this clause 8.2 upon request. Furthermore, you must provide Porter Pacific with written notice of cancellation of any insurance policy required by Porter Pacific. Uber and Porter Pacific shall have no right to control your selection or maintenance of your policy.
- 8.3 You agree that you are not an employee, independent contractor, a worker or a deemed worker of Uber and/or Porter Pacific for the purposes of Australian workers compensation laws and therefore acknowledge that Uber and/or Porter Pacific does not, and is not required to, maintain or provide you with workers' compensation insurance or maintain any other occupational accident injury insurance on your behalf. You agree to maintain at your cost during the term of this Agreement workers' compensation insurance or other occupational accident injury insurance (or the equivalent) as required by any applicable law in the Territory (provided that the foregoing shall have no impact on the mutual understanding between you, Uber and Porter Pacific that you are a self-employed individual (incuding from a labour and social security perspective) and otherwise comply with a statutory workers compensation requirements. If permitted by applicable law, you may choose to insure yourself against industrial injuries by maintaining occupational accident insurance in place of workers' compensation insurance. Furthermore, if permitted by applicable law, you may choose not to insure yourself against industrial injuries at all, but do so at your own risk.
- 8.4 You understand and acknowledge that your private motor vehicle insurance policy, including any insurance coverage held via a commercial arrangement you have with a vehicle rental or leasing provider, may not afford liability, comprehensive, collision, medical payments, first or third party no fault personal injury protection, uninsured motorist, underinsured motorist or other coverage for any Delivery Services you provide pursuant to this Agreement. If you have any questions or concerns about the scope or applicability of your own insurance coverage, it is your responsibility, not Uber's or Porter Pacific's, to resolve them with your insurer(s).
- 8.5 Porter Pacific may maintain during the term of this Agreement motor vehicle insurance related to your provision of Delivery Services as determined by Porter Pacific in its reasonable discretion, provided that Porter Pacific and its Affiliates are not required to provide you with any specific insurance coverage for any loss to you or your motor vehicle. Should Porter Pacific procure insurance related to your provision of Delivery Services, Porter Pacific may cancel such coverage at its sole discretion at any time. You are required to promptly notify Porter Pacific of any accidents that occur while providing Delivery Services and to cooperate and provide all necessary information related thereto.

## 9. Representations and Warranties; Disclaimers

- 9.1 **By You.** You hereby represent and warrant that: (a) you have full power and authority to enter into this Agreement and perform your obligations hereunder; (b) you have not entered into, and during the term will not enter into, any agreement that would prevent you from complying with this Agreement; and (c) you will comply with all applicable laws in your performance of this Agreement, including holding and complying with all permits, licenses, registrations and other governmental authorizations necessary to provide (i) Delivery Services using the Transportation Method pursuant to this Agreement, and (ii) delivery services to third parties in the Territory generally.
- 9.2 **Disclaimer.** This clause 9.2 applies to the maximum extent permitted by applicable law and does not (and is not intended to) override any rights that you have pursuant to applicable law, including the Australian Consumer Law. Uber, Porter Pacific and the r Affiliates (as applicable) provide, and you accept, the Uber Services and Provider App on an "as is" and "as available" basis. Uber, Porter Pacific and the r Affiliates do not represent, warrant or guarantee that your access to or use of the Uber Services or Provider App: (a) will be uninterrupted or error free; or (b) will



result in any requests for Delivery Services. Uber, Porter Pacific and the r Aff ates function as an on-demand lead generation and related service providers only and Uber, Porter Pacific and the r Aff ates make no representations, warranties or guarantees as to the actions or inactions of Users or Delivery Recipients who may request or receive Delivery Services from you, and Uber, Porter Pacific and the r Aff ates do not screen or otherwise evaluate Users or Delivery Recipients. By using the Uber Services and Provider App, you acknowledge and agree that you may be introduced to a third party that may pose harm or risk to you or other third parties. You are advised to take reasonable precautions with respect to interactions with third parties encountered in connection with the use of the Uber Services or Provider App. Uber and Porter Pacific do not represent, warrant or guarantee the safety of any items provided to you for Delivery Services. Notwithstanding Porter Pacific's appointment as the limited payment collect agent of you for the purpose of accepting payment from Users on your behalf as set forth in clause 4 above, Uber, Porter Pacific and the r Aff ates expressly disclaim liability for any act or omission of you, any User, any Delivery Recipient or other third party.

- 9.3 **No Service Guarantee.** This clause 9.3 applies to the maximum extent permitted by applicable law, and does not (and is not intended to) override any rights that you have pursuant to applicable law, including the Australian Consumer Law. Uber, Porter Pacific and the r Aff ates do not guarantee the availability or uptime of the Uber Services or Provider App. You acknowledge and agree that the Uber Services and Provider App may be unavailable at any time and for any reason (e.g., due to scheduled maintenance or network failure). Further, the Uber Services and Provider App may be subject to matters, delays, and other problems inherent in the use of the internet and electronic communications, and Uber, Porter Pacific and the r Aff ates are not responsible for any delays, delivery failures, or other damages, liabilities or losses resulting from such problems.

## 10. Indemnification

- 10.1 **Generally.** You shall indemnify, defend (at Uber's and Porter Pacific's option) and hold harmless Uber, Porter Pacific and the r Aff ates and each of the respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, expenses (including legal fees), damages, penalties, fines, social security contributions and taxes arising out of or related to (a) your breach of your representations, warranties or obligations under this Agreement; or (b) a claim by a third party (including Users, Delivery Recipients, regulators and governmental authorities) directly or indirectly related to your provision of Delivery Services or use of the Uber Services ("**Losses**"). Your liability under this clause 10.1 shall be reduced proportionately, and to the extent that, Uber or Porter Pacific directly caused or indirectly contributed to any such Losses.
- 10.2 **Tax Indemnity.** You shall comply with all of your obligations under tax and social security laws to the extent applicable to this Agreement. You shall indemnify Uber, Porter Pacific and the r Aff ates from all tax liabilities, duties, evas, claims and penalties that may be imposed on you or on Uber, Porter Pacific and/or the r Aff ates as a result of your failure to comply with any of your tax obligations. In particular, but without limitation to the foregoing, such taxes or duties shall include taxes, wages or other duties or withholdings (including any wage tax, social insurance premiums or employee insurance premiums) ("**Tax Liabilities**") arising in the event that the relationship described in this Agreement, contrary to the intent and meaning of the parties, should be held to be an employment agreement between Uber or Porter Pacific and you by the Dutch or Australian tax authority, social security authority or the tax authority of any other country. The indemnity set out in this clause 10.2, insofar as it relates to a finding by a judicial body or legislative authority of competent jurisdiction that there is an employment relationship between you and Uber, Porter Pacific or an Affiliate of Uber or Porter Pacific, applies to that proportion of Uber's or Porter Pacific's liability that directly or indirectly relates to or arises from you holding yourself out to be an employee of Uber, Porter Pacific or any of the r Aff ates, or any other act or omission by you that is not expressly authorized by Uber or Porter Pacific and would reasonably suggest to a third party that you are an employee of Uber, Porter Pacific or any of the r Aff ates.
11. **Limitation of Liability.** This clause 11 applies to the maximum extent permitted by applicable law and does not (and is not intended to) override any rights that you have pursuant to applicable law, including the Australian Consumer Law. Uber, Porter Pacific and each of the r Aff ates shall not be liable under or related to this Agreement for any of the following, whether based on contract, tort or any other legal theory, even if a party has been advised of the possibility of such damages: ( ) any incidental, punitive, special, exemplary, consequential, or other indirect damages of any type or kind; or ( ) your or any third party's property damage or loss, or loss or inaccuracy of data, or loss of business, revenue, profits, use or other economic advantage. Except for the obligations on Porter Pacific to pay amounts due to you pursuant to clause 4 above, but subject to any matters or other provisions contained in this Agreement which are applicable thereto, in no event shall the liability of Uber, Porter Pacific and/or the r Aff ates under this Agreement exceed the amount of Service Fees actually paid to or due to Porter Pacific hereunder in the six (6) month period immediately preceding the event giving rise to such claim. You acknowledge and agree that any and all claims you have or purport to

have against Uber, Porter Pacific and/or the Affiliates should be not filed to Uber, Porter Pacific and/or the Affiliates within one (1) year after the event(s) that gave rise to such claim and that you forfeit all rights in respect of that claim if you fail to do so. These limitations do not purport to limit liability that cannot be excluded under applicable law.

## 12. Term and Termination

- 12.1 **Term.** This Agreement shall commence on the date executed by you (electronically or otherwise) and shall continue until terminated as set forth herein.
- 12.2 **Termination.** Either party may terminate this Agreement: (a) without cause at any time upon thirty (30) days' prior notice to the other party; (b) immediately, without notice, for the other party's material breach of this Agreement; or (c) immediately, without notice, in the event of the insolvency or bankruptcy of the other party, or upon the other party's filing or submission of request for suspension of payment (or similar action or event) against the terminating party. In addition, Porter Pacific may restrict you from using the Uber Services and/or Uber may deactivate or otherwise restrict you from accessing or using the Provider ID and/or Provider App immediately, without notice, in the event you no longer qualify, under applicable law or the standards and policies of Uber, Porter Pacific, and the Affiliates, to provide Delivery Services or to operate your Transportation Method, or as otherwise set forth in this Agreement.
- 12.3 **Effect of Termination.** Upon termination of the Agreement, you shall immediately delete and fully remove the Provider App from Your Devices. Outstanding payment obligations and causes 1, 2.2, 2.3, 2.4, 4.8, 4.9, 5, 6, 8, 9, 10, 11, 12.3, 13, 14 and 15 shall survive the termination of this Agreement.

## 13. Relationship of the Parties

- 13.1 Porter Pacific shall act as the limited payment collection agent solely for the purpose of collecting payment from Users on your behalf, except as otherwise expressly provided herein. This Agreement is not an employment agreement, and does not create an employment, independent contractor or worker relationship (including from a labour law, tax law or social security law perspective), joint venture, partnership or agency relationship. You have no authority to bind Uber, Porter Pacific and/or the Affiliates, or hold yourself out as an employee, independent contractor, agent or authorized representative of Uber, Porter Pacific and/or the Affiliates.
- 13.2 Where, by implication of mandatory law or otherwise, you may be deemed an employee, agent or representative of Uber, Porter Pacific or an Affiliate of Uber or Porter Pacific, you undertake and agree to indemnify, defend (at Uber's or Porter Pacific's option) and hold Uber, Porter Pacific and the Affiliates harmless from and against any claims by any person, entity, regulators or governmental authorities based on such implied employment, agency or representative relationship. The indemnity set out in this clause 13.2, insofar as it relates to a finding by a judicial body or regulatory authority of competent jurisdiction that there is an employment relationship between you and Uber, Porter Pacific or an Affiliate of Uber or Porter Pacific, applies to that proportion of Uber's or Porter Pacific's liability that directly or indirectly relates to you holding yourself out to be an employee of Uber, Porter Pacific or any of the Affiliates, or any other act or omission by you that is not expressly authorized by Uber or Porter Pacific and would reasonably suggest to a third party that you are an employee of Uber, Porter Pacific or any of the Affiliates. You expressly agree that where required or implied by applicable law or otherwise, you may be deemed an employee, agent or representative of Uber, Porter Pacific or an Affiliate of Uber or Porter Pacific, any payments made to you will be taken to be inclusive of ( ) superannuation contribution amounts; and ( ) amounts equivalent to a taxes (including but not limited to income taxes) payable by you in respect of those payments, in each case that Uber, Porter Pacific (or any of the Affiliates) may otherwise be required to pay under applicable law.

## 14. Miscellaneous Terms

- 14.1 **Modification.** Uber and Porter Pacific reserve the right to modify the terms and conditions of this Agreement at any time, effective upon publishing an updated version of this Agreement on the online portal available to you on the Uber Services. Uber and Porter Pacific reserve the right to modify any policies or information referenced at hyperlinks from this Agreement from time to time. Porter Pacific or Uber will provide you with at least fourteen (14) days' notice in the event of a material change to any clause of this Agreement, provided that in such event you have the right to terminate the Agreement immediately upon receiving notice from Porter Pacific or Uber. You hereby acknowledge and agree that, by using the Uber Services, or the Provider App, you are bound by any future amendments and additions to information referenced at hyperlinks herein, or documents incorporated herein,

in connection with respect to Delivery Fee Calculations. Continued use of the Uber Services or Provider App after any such changes shall constitute your consent to such changes.

- 14.2 **Supplemental Terms.** Supplemental terms may apply to your use of the Uber Services, such as use policies or terms related to certain features and functionality, which may be modified from time to time ("**Supplemental Terms**"). You may be presented with certain Supplemental Terms from time to time. Supplemental Terms are in addition to, and shall be deemed a part of, this Agreement. Porter Pacific will provide you with fourteen (14) days' notice in the event that it adds or modifies Supplemental Terms in a manner that materially alters your rights under the Agreement, provided that in such event you shall have the right to terminate the Agreement immediately upon receiving notice from Porter Pacific. Supplemental Terms shall prevail over this Agreement in the event of a conflict.
- 14.3 **Severability.** If any provision of this Agreement should be held to be illegal, invalid or unenforceable, in whole or in part, under any law, such provision or part thereof shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected. In that event, the parties shall replace the illegal, invalid or unenforceable (part of the) provision with a (part of a) provision that is legal, valid and enforceable and that has, to the greatest extent possible, a similar effect as the illegal, invalid or unenforceable (part of the) provision, given the contents and purpose of this Agreement.
- 14.4 **Assignment.** You may not assign or transfer this Agreement or any of your rights or obligations hereunder, in whole or in part, without the prior written consent of Uber and Porter Pacific. Each of Uber and Porter Pacific may assign or transfer this Agreement or any or all of the respective rights or obligations hereunder, in whole or in part, under this Agreement without consent or notification. Should Uber or Porter Pacific do so, you have the right to terminate this Agreement immediately, without prior notice.
- 14.5 **Entire Agreement.** This Agreement, including the recitals and all Supplemental Terms, constitutes the entire agreement and understanding of the parties with respect to its subject matter and replaces and supersedes all prior or contemporaneous agreements or undertakings regarding such subject matter. In this Agreement, the words "include" and "include" mean "include, but not limited to." The recitals form a part of this Agreement.
- 14.6 **No Third Party Beneficiaries except for Uber's and Portier Pacific's Affiliates.** You acknowledge that there are no third party beneficiaries to this Agreement, except for Uber's and Porter Pacific's Affiliates. Nothing contained in this Agreement is intended to or shall be interpreted to create any third-party beneficiary claims, except with respect to Uber's and Porter Pacific's Affiliates.
- 14.7 **Notices.** Any notice delivered by Uber or Porter Pacific to you under this Agreement will be delivered by email to the email address associated with your account or by posting on the portal available to you on the Uber Services. Any notice delivered by you to Uber or Porter Pacific under this Agreement must be delivered by contacting Uber or Porter Pacific at [t.uber.com/partner-contact](mailto:t.uber.com/partner-contact). Additional Territory-specific notices may be required from time to time.
15. **Governing Law; Arbitration.** Except as otherwise set forth in this Agreement, this Agreement shall be governed by and construed in accordance with the laws of New South Wales, excluding its rules on conflicts of laws. The Vienna Convention on the International Sale of Goods of 1980 (CISG) shall not apply. Any dispute, conflict or controversy, howsoever arising out of or broadly in connection with or relating to this Agreement, including those relating to its validity, its construction or its enforceability, shall be first mandatorily submitted to mediation proceedings under the International Chamber of Commerce Mediation Rules ("**ICC Mediation Rules**"). If such dispute has not been settled within sixty (60) days after a request for mediation has been submitted under such ICC Mediation Rules, such dispute can be referred to and shall be exclusively and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("**ICC Arbitration Rules**"). The ICC Rules Emergency Arbitrator provisions are excluded. The dispute shall be resolved by one (1) arbitrator to be appointed in accordance with the ICC Rules. The language of the arbitration shall be English. The existence and content of the mediation and arbitration proceedings, including documents and briefs submitted by the parties, correspondence from and to the ICC, correspondence from the mediator, and correspondence, orders and awards issued by the sole arbitrator, shall remain strictly confidential and shall not be disclosed to any third party without the express written consent from the other party unless: ( ) the disclosure to the third party is reasonably required in the context of conducting the mediation or arbitration proceedings; and ( ) the third party agrees unconditionally in writing to be bound by the confidentiality obligation stipulated herein.

Nothing herein limits or excludes (nor is intended to limit or exclude) any statutory rights that you may have under applicable law, including the Australian Consumer Law, that cannot be waived, limited or excluded.

By clicking "Yes, I accept" or signing below (as such may be required by applicable law), you expressly acknowledge that you have read, understood, and taken steps to thoughtfully consider the consequences of this Agreement, that you agree to be

bound by the terms and conditions of the Agreement, and that you are legally competent to enter into this Agreement with Uber and Porter Pacific.

Your Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_