

MEMORANDUM OF UNDERSTANDING

PASS THROUGH REGISTRATION DATA SHARING AGREEMENT

This Memorandum of Understanding ("MOU" or "Pass-Through Registration Data Sharing Agreement") is entered into by and between Airbnb, Inc. ("Airbnb") and the City of Portland, by and through the Revenue Division ("City") as of the date signed by both parties (the "Effective Date"). The City and Airbnb are sometimes referred to below collectively as "Parties" and individually as a "Party."

RECITALS

The Parties make this MOU with reference to the facts and circumstances set forth below:

- A. Airbnb and its affiliates operate one or more internet-based platforms that allow homeowners or property managers ("Hosts") to advertise the availability of their properties to travelers ("Guests") seeking accommodations through various brands and websites, including, but not limited to, Airbnb.
- B. Since July 2014, Portland law has permitted Hosts to rent out their residential units, referred to as "accessory short-term rentals" ("ASTRs"), on a short-term basis pursuant to registration and application requirements. Portland City Code 33.207.040.C.
- C. Portland law contemplates two types of ASTRs: (1) Type A, where no more than 2 bedrooms are rented to overnight Guests; (2) Type B, where 3 or more bedrooms are rented to overnight Guests. Portland City Code 33.207.020.A.
- D. To register their properties as a Type A ASTR, Hosts must obtain a permit from the Portland Bureau of Development Services. To register their properties as a Type B ASTR, Hosts must undergo a conditional use review through the City and obtain a Conditional Use Case File number.
- E. In order to obtain an ASTR permit or a Conditional Use Case File number from the Portland Bureau of Development Services, Hosts must also (1) register for a business license with the City of Portland Revenue Division, and (2) register for Transient Lodging Tax collection with the City of Portland Revenue Division, Transient Lodging Program.
- F. In February 2017, the City adopted administrative regulations establishing a citation-based enforcement process for violations of Portland City Code 33.207.
- G. In July 2017, the City issued a subpoena ("Subpoena") to Airbnb seeking Host data for all active listings.

- H. Airbnb continues to object to the subpoena on the grounds that it is preempted by the Stored Communications Act (18 U.S.C. § 2701 et seq) and that it violates the Fourth Amendment of the U.S. Constitution.
- I. Airbnb recognizes the importance of being a constructive partner with the City and continuing to work with the City on various policy issues relating to short-term rentals.
- J. The Parties wish to fully, finally, and completely resolve and dispose of all civil charges, claims, causes of actions, complaints, demands, liabilities, rights, obligations, losses, or damages of any kind, known or unknown, arising out of or relating to the Subpoena.
- K. The City is taking proactive steps to streamline and update the ASTR permit process. This includes changing the process for the required Bureau of Development Services verification of Type A Standards from an in-person inspection to a discretionary procedure, and streamlining the application permit process for ASTR permits, business licenses, and Transient Lodging Tax registration to allow hosts to fill out one consolidated form via the Revenue Division to obtain these permits.
- L. In June 2019, the City passed an Ordinance amending PCC 6.04.040 (C) and (D) to prohibit booking transactions, collecting rent or receiving a fee for facilitating or providing short-term rental services unless the STR Platform Operator has entered into a pass-through registration data-sharing agreement in a form acceptable to and approved by the Revenue Division Director, or the Host property is listed on an approved City registry.
- M. The Parties have agreed to implement certain procedures relating to the registration of short-term rental properties as described more fully herein.

ACCORDINGLY, in view of the foregoing Recitals, and in consideration of the agreements and the releases set forth below, the Parties agree as follows:

TERMS AND CONDITIONS

1. PASS-THROUGH REGISTRATION SYSTEM

1.1 Promptly after the Effective Date of this MOU, Airbnb and the City will develop a system that will allow Airbnb, with the consent of Hosts, to facilitate the registration of Hosts with the City and submit data to the City.

1.2 Airbnb and the City will work together to further develop and improve the City's registration requirements and payment systems to ensure an efficient and effective process.

1.3 Airbnb and the City will work together to establish processes and content to educate Hosts about the City's ASTR registration requirements and deadlines.

1.4 Airbnb will utilize a pass-through registration ("PTR") system that sends Host ASTR registration application or registration information, with consent from the Host, directly to the City.

1.5 Subject always to its obligations under applicable privacy and data protection laws, Airbnb will, commencing on the Implementation Date as defined below, provide an Application Programming Interface ("API") that is available to the City to allow the City to receive data that has been provided by Hosts with listings in the City. Airbnb will disclose the Disclosed Data to the City using one or more API(s), data feed(s), data upload(s), and/or data integration(s) (collectively, the "API") and the City will develop and implement an API Integration ("the API Integration") to receive the Disclosed Data and to push additional data to Airbnb.

1.6 Airbnb and the City will cooperate to implement the following PTR procedures by November 1, 2019, ("Implementation Date"). The City shall make available to Airbnb relevant technical information and personnel knowledgeable regarding the City's systems to ensure the proper operation of the PTR system and interconnection with the City's systems. Airbnb shall make available to the City relevant technical information and personnel knowledgeable regarding Airbnb's PTR system to ensure the proper interconnection with the City's systems.

- a. Airbnb shall provide a link to the City's Transient Lodging Tax Ordinance and Short-Term Rental Ordinance web-page, as well as any summary of requirements, if any, that the City wishes to provide, to any new or existing Host listing a property for short-term rental in the City on the Airbnb Platform.
- b. Airbnb shall develop an online registration system to gather and send to the City the following information on a going forward basis, subject to subparagraph 1.6.h for all new short-term rental property listings once a month. On the 1st of each month, Airbnb shall send data for the month immediately prior to the period ending on that date (e.g., December 1, Airbnb shall send data for the period ending November 30).
 - i. the first and last name, or business name, of the person listing the property ("Host") and the property owner or resident if different from the person listing the property;
 - ii. the Host, resident and property owner's mailing address (if different from the listing address);
 - iii. the Host, resident and property owner's phone number and email address (if different from the listing address);
 - iv. the address of the short-term rental property;
 - v. the application permit type;
 - vi. the number of rooms and number of guests advertised for rent in the short-term rental property;
 - vii. a description of the listing written by the Host including the listing type ("Entire place," "Private room" or "Shared room");
 - viii. the rental listing number or unique identification number for the registration submission generated by Airbnb, and the listing URL; and

- ix. an attestation in a form mutually agreeable to the parties that by clicking "submit," the Host has read and understands and agrees to abide by the City's applicable requirements and agrees to allow Airbnb to submit all registration information covered by this agreement to the City.
 - x. The Host's existing permit numbers, if any. Existing permit numbers include the ASTR permit number, and may include the Host's business license number or the Host's Transient Lodging Tax registration number, if provided by the Host.
 - xi. Booking and transactional data by listing location and Host. Such data shall include the number of guests booked as provided to Airbnb, the date(s) the listing is booked, and the date and amount of the transaction booking the location/listing. Transactional data shall be updated for all listings every month.
 - xii. Any other such information as the Director of the Revenue Division shall require as documented in a successor MOU, if any.
- c. For existing listings of short-term rental properties in the City of Portland that were posted on the Airbnb Platform prior to the Implementation Date, Airbnb will gather the information specified in subparagraph 1.6.b.i-xii over a sixty (60) day period beginning on the Implementation Date and send the information to the City via API within seven business days of the end of that period, unless the Host declines to provide this information. If a Host declines to provide this information, their listing(s) in the City of Portland, Oregon will be removed from the Airbnb website at the end of the sixty (60) day period. Once the information specified in this subparagraph has been submitted by a Host to Airbnb for an existing listing, the listing will have "pending" status. Until the end of the sixty-day period, existing listings may remain live on the Airbnb Platform, the property may be booked, and Airbnb and the Host shall be deemed in compliance with the Short-Term Rental Ordinance and with any obligations in the Transient Lodging Tax Laws relating to the registration, permitting, display, advertising, or representations regarding short-term rentals.
- d. The City will review the information regarding new and existing listings provided by Airbnb ("Disclosed Data") and will coordinate directly with the Host to obtain any additional information necessary to determine whether to issue an ASTR permit. For Hosts that have a "pending" status, the City will generate a Consolidated Short-Term Rental Registration form, pre-populate the form with the Disclosed Data and indicate the information needed to complete registration, and mail it to the Hosts. The City will provide Hosts no fewer than 60 days from the date of mailing of the Consolidated Short-Term Rental Registration form to complete registration before issuing a permit denial. In this MOU, the term "ASTR permit" includes both Type A and Type B accessory short-term rental permits, the term "ASTR permit application" includes applications for both Type A and Type B accessory short-term rental permits, and the term "ASTR number" includes both Type A and Type B short-term rental permit numbers, as well as numbers issued by the Revenue Division for properties that offer short-term rentals by right of zoning and building occupancy code.
- e. Once the Disclosed Data has been submitted by a Host to Airbnb for a new listing, the listing may go live on the Airbnb Platform and the property may be booked. In such instances, Airbnb will display a "pending" status in a designated field on the listing. Until an accessory short-term rental permit application is either granted or denied, Airbnb shall

be deemed in compliance with the Short-Term Rental Ordinance and with any obligations in the Transient Lodging Tax Laws relating to registration, permitting, display, advertising, or representations regarding short-term rentals.

- f. If the ASTR permit application is denied, the City will inform both the Host (with a letter or e-mail explaining the reason for the denial) and Airbnb (sending a physical or electronic copy of the letter or a denial code via e-mail or API that indicates which denial letter the Host received). Airbnb will remove the listing from its website within seven business days after receipt of notice from the City. If an appeal is filed, the City will notify Airbnb that the listing may be restored until the appeal is resolved. If the Host files timely notice of an appeal, Airbnb shall not be required to remove the listing from its website until all appeals are exhausted, unless the grounds for removal relate to specific violations of the City Code that constitute public safety issues identified and documented in writing by the City. The City shall inform Airbnb when all appeals are exhausted. If Airbnb fails to remove such listing within seven business days after receipt of notice from the City that the appeal is exhausted or no appeal is filed, the City shall provide Airbnb with notice and two business days to remove the listing before bringing any enforcement or other action against Airbnb for any alleged violation of the Short-Term Rental Ordinance. The City shall provide an administrative appeal process under applicable City Code provisions for any ASTR permit application that is denied. Airbnb shall provide the City a dedicated e-mail address for timely communications concerning any matter related to the Portland Host or listing. Airbnb shall monitor this e-mail address and reply to City e-mails within 48 hours.
- g. If the ASTR permit application is approved or the property is subject to short-term rental by right of zoning and building occupancy code, the City will inform both the Host and Airbnb and provide them with the ASTR number and expiration date (if applicable). Airbnb will update the listing to display the ASTR permit number on the listing in a designated field within (7) seven days after the receipt of such information via API.
- h. If the Host already has an ASTR permit number, he or she may supply the ASTR permit number to Airbnb in lieu of going through the online application process described in subparagraph 1.6.b. Airbnb is not obligated to verify the validity of the permit number but will send the ASTR permit number supplied by the Host to the City in the same report described in subparagraph 1.6.c. In such instances, Airbnb will display the ASTR permit number provided by the Host on the listing in a designated field instead of "pending." The short-term listing may go live on the Airbnb Platform and the property may be booked once the Host supplies the ASTR permit number to Airbnb. In such instances, Airbnb and the Host shall be deemed in compliance with the Short-Term Rental Ordinance and with any obligations in the Transient Lodging Tax Laws relating to the registration, permitting, display, advertising, or representations regarding short-term rentals.
- i. A Host may apply to renew their ASTR permit via Airbnb's website by (a) attesting that their ASTR permit application information has not changed and that it is a renewal, or (b) by providing updated ASTR permit application information and that it is a renewal. Airbnb

will send that information to the City as part of the monthly reports described in subparagraph 1.6.b.

- j. Airbnb acknowledges that all non-exempt Host data provided under this agreement may be considered by the City as a public record under ORS 192. Non-exempt data is data that meets no exemption from the Oregon Public Records Act in ORS 192. The parties agree that booking and transactional data pertaining to a particular listing is subject to an exemption under the Oregon Public Records Act. Airbnb agrees to secure Host acknowledgement that all other data shared with the City may be a public record and may be made publicly available in the City's PortlandMaps database. The data provided by Airbnb pursuant to this agreement shall suffice to ensure Airbnb's compliance with the data sharing provisions of the City's Accessory Short-Term Rental Ordinance (Portland City Code 33.207) and are in a form acceptable to the Revenue Division in accordance with the City's Transient Lodging Tax Code (Portland City Code 6.04).

1.7 The Parties shall each use their best efforts to develop and roll out the registration procedures outlined in this section according to the timelines set forth in this Agreement. Any delay in the rollout of the procedures that is in whole or part caused by the City shall not be a basis for termination of this Agreement by either Party. Similarly, any delay in the rollout of the procedures that is in whole or part caused by unforeseen causes or circumstances that cannot reasonably be mitigated by Airbnb shall not be a basis for termination of this Agreement by either Party.

1.8 The City is responsible for verifying the validity of ASTR permit numbers posted by Hosts and exemptions claimed by Hosts, and seeking enforcement against Hosts under its City Code & Charter. Airbnb will, pursuant to the procedures outlined in Sections 1.6(f) above, be responsible for removing from its platform any listings that the City determines have incorrect registration numbers or are otherwise invalid for failing to complete the permitting process. Similarly, the City will pursue enforcement action against Hosts that have otherwise violated provisions of Portland City Code 33.207 or 6.04. Airbnb shall not otherwise be responsible for removing listings from its platform that belong to such Hosts that have otherwise violated provisions of Portland City Code if the Host has completed all registration requirements pursuant to Portland City Code Section 33.207 and Chapter 6.04.

1.9 Airbnb shall not be held responsible under any provision of the City's Accessory Short-Term Rental Ordinance (Portland City Code 33.207) or other City Code sections specific to short-term rentals, including but not limited to Portland City Code 6.04, for information provided by the Host which may be inaccurate. Airbnb shall not be held responsible for any infraction, violation, or non-compliance by Hosts under any provision of the Portland City Code.

1.10. Data Privacy and Security

- a. Privacy Compliance. The City will comply with applicable data protection, security, and privacy laws. The City will provide individuals with reasonable access and correction rights to their personal information and any other rights provided under applicable laws.

- b. Security Program. The City will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.
- c. In the event the City receives a public records request for the Disclosed Data, the City will provide appropriate notice and give Airbnb at least seven business days to seek appropriate legal counsel before rendering a decision regarding whether to redact and/or release the information to the requesting party.

1.11 For Hosts listing an ASTR with Airbnb, the City will not require such Hosts to register for any other permit related to the listing of their short-term rental, other than the ASTR permit, business license, and Transient Lodging Tax registration and pursuant to this MOU (during any period in which this MOU is effective). If the listed property does not need to obtain a Type A or Type B ASTR permit by right of zoning to operate an ASTR, the City may require Hosts to obtain permits to verify Zoning and Building occupancy requirements for allowed commercial uses.

1.12 The City agrees that it will continue to work with Airbnb to update its ASTR registration process. Beginning on the Implementation Date, the City will launch its revised in-home inspections process so that inspections will be conducted on a discretionary basis.

1.13 The City will withdraw its subpoena issued July 20, 2017 on the Implementation Date.

2. MOST FAVORED NATIONS CLAUSE

2.1 Airbnb shall not be obligated to comply with any of the provisions in Section 1 above, to the extent they are less favorable than similar terms and conditions agreed to or imposed by the City of Portland on Airbnb's competitors under a Pass-Through Registration Data Sharing Agreement MOU.

2.2 If any more favorable term or condition to a Pass-Through Registration Data Sharing Agreement MOU is or has been agreed to or imposed by the City of Portland on another online platform that offers short-term rentals, the City shall so notify Airbnb and Airbnb may, at its sole discretion, request that the City agree to amend this MOU to substitute or add the more favorable term or condition. If the City does not agree to Airbnb's proposed amendment within ten (10) business days, Airbnb may withdraw from this MOU.

2.3 Within fourteen (14) business days of the City entering into a Pass-Through Registration Data Sharing Agreement MOU with one or more of Airbnb's competitors relating to the registration for ASTR Permits, advertising the availability of or posting listings for short-term rental properties, providing business records and information, or facilitating short-term rentals, except as protected as confidential under the City's audit authority, the City shall provide a copy of the agreement to Airbnb subject to a good faith application of exemptions provided in Oregon Public Records Law, ORS 192.311 to 192.478; provided, however, that the City must notify Airbnb within the applicable

fourteen (14) day period if it plans on invoking any such exemptions and Airbnb shall be permitted to challenge such refusal under applicable law.

3. TERM

3.1 This MOU shall commence on the Effective Date and remain in effect until terminated by either party or if there are material changes to the Portland City Code relating to short-term rentals or Hosts, including Portland City Code 33.207 and 6.04. If the City amends its ordinances, regulations, administrative rules or policies to impose or attempt to impose materially different tax, fee, or regulatory obligations (including but not limited to registration, renewal, rights and procedures applicable to appeal City decisions on registration), on Airbnb or Hosts, Airbnb shall have the right to terminate this MOU, in its entirety, by giving written notice to the City.

3.2 Such termination must be made within 60 days following the City's notice of any such amendment to an ordinance, regulation, or administrative rule. Such termination shall affect only prospective obligations arising after the date of termination and shall not affect the mutual releases and obligations described above, or any other obligations already incurred as of the date of termination. Either party may terminate this MOU upon 30 days' prior written notice to the other party. This MOU may be modified or amended at the mutual discretion of the parties by written amendment signed by both parties.

4. AUTHORIZATION TO ENTER AGREEMENT

4.1 The Parties acknowledge that they (a) have consulted with legal counsel about this MOU, (b) are entering into this MOU voluntarily and with a full understanding of the terms of the MOU, and (c) have full authority to enter into the MOU.

5. MISCELLANEOUS

5.1 Geographic Scope: This Agreement, and the obligations imposed on the Parties, are limited to listings for short-term residential units located in the City of Portland, Oregon.

5.2 Merger and Integration: This MOU contains the entire agreement of the Parties with respect to the subject matter of this MOU, and supersedes all prior negotiations, agreements and understandings with respect thereto, with the exception of a Voluntary Collection Agreement which the parties may enter into before or during the term of this MOU.

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

5.4 Definition of "Days" for Purposes of Applicable Deadlines: Except as otherwise specifically noted, all references to "days" in this agreement shall be to calendar days and any deadline that falls on a weekend or holiday shall automatically be extended to the first business day thereafter.

5.5 Waiver: Any waiver of any provision of this MOU by a non-breaching Party must be in writing to be valid. Waiver of any breach shall not be deemed to be waiver of any other breach of the same or any other provisions of this MOU.

5.6 Governing Law and Venue: Any and all claims or disputes arising out of this MOU will be resolved as follows: When written notice of a dispute is received, the Parties will make reasonably available executives that have the actual authority to negotiate, to settle the Dispute. The Parties will mutually agree on a venue for negotiation, and then, if no resolution has been reached within ten (10) business days following the original notice, either party may proceed in a court of law.

This MOU shall be deemed to be made under and shall be interpreted in accordance with the laws of the State of Oregon and the laws of the United States, as applicable. The exclusive jurisdiction and venue for any dispute relating to this MOU shall be the United States District Court for the District of Oregon, unless that court would not have jurisdiction over such a dispute in which case the exclusive jurisdiction and venue for the dispute will be the Multnomah County Circuit Court.

5.7 Development of PTR System:

- a. Within 30 days of the Effective Date, Airbnb shall pay the City of Portland Revenue Division a one-time fee of \$20,000 for the maintenance and support of the pass-through registration data sharing agreement API and other STR related enforcement activities. In the event the City agrees to permit another Hosting Platform to build a pass-through registration system under the Ordinance and that platform is not required to make a cost reimbursement payment to the City of at least \$20,000 for the establishment of that system, the City shall pay Airbnb the difference between \$20,000 and the payment by the other platform. The City may elect to pay that amount to Airbnb in the form of credit against any ongoing annual payments owed by Airbnb to the City.
- b. Beginning in 2020, Airbnb shall pay the City \$5,000 annually to reimburse the City of its costs of maintaining and operating the system, with such payment to be made no later than January 31 of each year.

6. CONTACT AND NOTICE INFORMATION

All notices and other communications related to the administration of this MOU will be in writing and delivered to the parties using the following email addresses and/or physical addresses:

Airbnb:

City:

Airbnb, Inc.

City of Portland

Laura Spanjian
laura.spanjian@airbnb.com

With a copy, sent by the same means, to:
Attn: General Counsel
legal@airbnb.com

Thomas Lannom
Thomas.Lannom@portlandoregon.gov

With a copy, sent by the same means, to:
Ken McGair
Ken.McGair@portlandoregon.gov

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the dates set forth below.

AIRBNB:

Airbnb, Inc

By: DocuSigned by:
Crystal Brown
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Name: Crystal Brown

Title: Director, Global Policy Development

Date: 8/30/2019

City:

The City of Portland, a municipal corporation

By: Thomas W. Lannom

Name: Thomas W. Lannom

Title: Director of the City of Portland,
Revenue Division

Date: 8/30/2019