BEFORE THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
OF THE STATE OF CALIFORNIA

In the Matter of the Department of Fair Employment and Housing,

Complainant,

v.

AIRBNB, INC., a Delaware Corporation,

Respondent.

Case Nos. 574743-231889
574743-231624

VOLUNTARY AGREEMENT
I. PARTIES

Complainant: The California Department of Fair Employment and Housing (DFEH) is the state agency charged with enforcing the Fair Employment and Housing Act (FEHA), set forth in Government Code section 12900, et seq. The DFEH exercises its police power under FEHA to implement the public policy of the State of California to eliminate racial discrimination in housing accommodations. (Gov. Code, §§ 12920, 12955.) The DFEH also has authority to enforce the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51) which is expressly incorporated into FEHA (Gov. Code, §12948.)

Racial discrimination in housing is contrary to public policy and harms not only African Americans and other protected persons denied equal access to housing opportunities, but also the public in general and the State of California. (Gov. Code, § 12920) ["the practice of discrimination because of race ... in housing accommodations is declared to be against public policy"].) Pursuant to its statutory authorization, the DFEH opened an investigation of administrative complaints of race discrimination in housing or public accommodations through the platform operated by Respondent Airbnb, Inc. (Airbnb) in 2016. These administrative complaints (DFEH Nos. 574743-231624; 574743-231889) (Director’s Complaints) were filed as authorized by Government Code, section 12961 by the Director of the DFEH, Kevin Kish, alleging potential harm to a group of persons in the State of California.

Respondent: Respondent is Airbnb, Inc., a corporation organized under the laws of the state of Delaware whose headquarters and principal place of business are located in San Francisco, California. Airbnb operates a platform where third parties (Hosts) post listings that offer consumers (Guests) the opportunity to stay in a variety of unique accommodations around the world, from shared spaces to entire homes. Airbnb has Hosts, listings and Guests in over 35,000 cities around the world, including cities throughout California. Airbnb generally does not inspect or “vet” listings that are placed on its platform, nor does it supervise or exercise control over the third-party Hosts, who make their own individual decisions on whether to accept booking from any particular Guest. During all times relevant to this matter, Airbnb had a stated policy on its platform
that forbids its users from discrimination on the basis of race and other protected factors.

II. RESPECTIVE POSITIONS OF THE PARTIES

The following position statements are independently written and each party’s signing of this agreement is not intended as an endorsement of the other party’s position.

**DFEH’s Position:**

On June 7, 2016, the Director of the California Department of Fair Employment and Housing filed timely complaints against Respondent Airbnb pursuant to authority granted in Government Code, section 12961. The Director’s complaints allege that Airbnb may have failed to prevent discrimination against African American guests in violation of Government Code section 12955.8, subdivision (a) and (b) and the Unruh Act, Civil Code, section 51. The complaints also allege that Airbnb may have engaged in acts of discrimination in violation of Government Code, section 12955 and the Unruh Act. The Director’s Complaints were filed on behalf of a group or class of potential victims as authorized by Government Code section 12961.

Airbnb is an online marketplace for housing rentals where third-party Hosts offer Guests places to stay. Both Guests and Hosts are required to register with Airbnb and create a user profile. Airbnb requires that all Guests provide their full name, phone number, and a “profile photo showing the [user’s] face” to book a reservation with a Host on their online marketplace. Airbnb generates revenue primarily by charging service fees on reservations. Airbnb represents to the public that it currently offers over 2 million listings worldwide and reports serving over 60 million guests in more than 191 countries.

In the study *Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment*, researchers at the Harvard Business School inquired about the availability of roughly 6,400 listings on Airbnb across five cities, including Los Angeles, California. The researchers created guest accounts that differed by name, but were otherwise identical. Drawing on the experiment models used for investigating racial discrimination in employment, the study utilized two sets of names for the profiles—one distinctively African American and the other distinctively White.
The researchers found statistically significant discrimination by some Hosts using the Airbnb platform against African American Guests, including Guests in California. Specifically, African American Guests received a positive response from hosts roughly 42% of the time, compared to roughly 50% for White Guests. The study’s authors explained that this 8-percentage point differential for African American Guests is statistically significant.

Pursuant to section 12955.8 of the Government Code “an act or a failure to act,” which has the intent of discriminating, or which is unintentional but results in discrimination, is a violation of FEHA. FEHA expressly provides for liability for “an act or failure to act” which results in a “discriminatory effect, regardless of intent” under a disparate impact theory based on protected classifications of people. There are no Fair Employment and Housing Commission decisions addressing the “failure to act” language of 12955.8. Earlier decisions regarding prevention of housing discrimination predate the January 1, 1994 effective date of section 12955.8, and to the extent those earlier decisions might be inconsistent, they are superseded and overruled by subsequent amendment of the statute. The DFEH disagrees with Airbnb’s analysis of section 12955.8.

The Unruh Act provides that “[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their...race...are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of any kind whatsoever.” (Civ. Code, § 51.) Liability for a violation of the Unruh Act attaches to “[w]hoever denies, aids or incites a denial, or makes any discrimination or distinction.” (Civ. Code, § 52.) FEHA makes it unlawful to “deny, aid, incite, or conspire in the denial of rights” protected by the Unruh Act. (Gov. Code, § 12948.) The Unruh Act makes illegal an intentional failure to prevent discrimination. Thus, “an inadequate response to complaints of [discrimination]” can violate the Unruh Act. (Nicole M. By and Through Jacqueline M. v. Martinez Unified School Dist. (N.D. Cal. 1997) 964 F. Supp. 1369, 1389.) If the facts in the study cited above are taken as true and accurate, Airbnb and some of its Hosts may have violated these statutes and would face liability for violations within the statutory period.
Airbnb’s Position:

Airbnb is an online marketplace where third-party users list, discover, and book unique accommodations around the world. Airbnb’s stated mission is to promote immersion by users that reduces bias and prejudice, and facilitates a greater understanding among people from different backgrounds and cultures. Airbnb believes that its business is best served by creating a platform that is free from unlawful bias and discrimination. Indeed, bias and discrimination are antithetical to Airbnb’s core mission of promoting respect, understanding, and immersion across cultures.

Airbnb’s policies prohibit discrimination based on race, national origin, and other protected grounds, and over the years, Airbnb has enforced its policies and suspended some third-party users of its platform who appeared to engage in discriminatory conduct. Airbnb has not itself engaged in or encouraged intentional discrimination.

While Airbnb simply operates a platform and is not well positioned to make determinations regarding the motivation for the booking decisions Hosts make in each case, Airbnb has recognized on its own based on available data that some third-party hosts on its site are likely violating Airbnb’s policy against racial discrimination, and that its policies and processes have, to date, been insufficient fully to address the problem. In early June 2016, even prior to being contacted by the DFEH and on its own initiative, Airbnb announced a 90-day initiative to review the problem internally and release a plan to more effectively address discrimination on its platform. That plan was announced on September 8, 2016.

Airbnb developed this plan to affirmatively address the misuse of its platform by third parties even though, as a hosting platform that provides its services on a neutral basis to third-party users, Airbnb itself cannot be held directly or secondarily liable for the third-party users’ allegedly discriminatory conduct. This is true for several reasons. Section 230 of the Communications Decency Act, 47 U.S.C. § 230, immunizes Airbnb against any claim that its publication of rental listings gives rise to liability under the FEHA or the Unruh Act. Moreover, Airbnb has not engaged in any conduct that violates either of those two statutes. It has not acted with discriminatory intent, which is an essential element of a claim under the Unruh Act or a disparate-treatment claim under
the FEHA. See Koebke v. Bernardo Heights Country Club, 36 Cal.4th 824, 853-54 (2005). Nor have Airbnb’s actions resulted in any disparate impact in the provision of Airbnb’s services to its users: any discriminatory effects some users may suffer (which, again, Airbnb strongly condemns and is taking voluntary steps to combat) is caused instead by the conduct of certain Hosts.

Airbnb also is not liable on the theory that it has unlawfully failed to prevent discrimination. Airbnb has not acted with the requisite discriminatory intent for such a theory, and administrative decisions of the Fair Employment and Housing Commission have recognized that, outside of the employment context, neither the FEHA nor the Unruh Act impose an affirmative obligation to prevent, investigate, and/or remedy discrimination. Unlike in the employment context, see Gov’t Code §§ 12940(j)(1), (k), the FEHA contains no housing-related provision imposing liability for failure to prevent discrimination by others. See In re Department v. Franks, FEHC Dec. No. 93-09, 1993 WL 726831, at *6-7 (FEHC Nov. 18, 1993) (FEHA and Unruh Act); see also In re Department v. University of California, Berkeley, FEHC Dec. No. 93-08, 1993 WL 726830, at *17 (FEHC Nov. 18, 1993) (Unruh Act).

Section 12955.8 of the Government Code does not impose a duty to prevent discrimination committed by others. It provides that “an act or failure to act that is otherwise covered by this part” (emphasis added) may give rise to liability under either a disparate-treatment or a disparate-impact theory. Section 12955.8 does not impose any additional duties on individuals or entities, as the key language “that is otherwise covered by this part” makes explicit. Rather, the Legislature enacted section 12955.8 in order to “conform[] state housing discrimination law with federal law,” which was necessary to secure federal funds for housing enforcement. See Bill Analysis, AB 2244 (1993). Section 12955.8 simply clarifies that FEHA, like the federal Fair Housing Act, encompasses disparate impact liability. See id. That issue is not in dispute here.

Although Airbnb cannot be held legally liable for the conduct of its third-party users, Airbnb nevertheless is committed to effectively address the existence of discrimination by users of its platform, as such discrimination is wrong and in direct conflict with Airbnb’s business mission.
In that regard, Airbnb and the DFEH share a common purpose, and in furtherance of this common purpose, the Parties enter into this Voluntary Agreement.

III. GENERAL PROVISIONS

1. Recognition of Parties’ Cooperation: The parties wish to resolve the Director’s Complaints against Airbnb in light of the following:

   a. Airbnb’s cooperation with the DFEH and its investigation;

   b. Airbnb’s efforts independently and on its own initiative, consistent with its publicly stated mission to promote belonging across cultures, to fight unlawful discrimination on the Airbnb platform;

   c. The DFEH’s role as the state agency charged with enforcing California’s civil rights laws, including protecting the people of California from unlawful discrimination in housing and public accommodations;

   d. The Parties’ desire to work together cooperatively through their shared mission to address discrimination on the Airbnb platform;

   e. The steps already taken by Airbnb proactively to research and create measures to detect, monitor, and prevent discrimination by third parties using its platform;

   f. The voluntary initial steps that Airbnb has outlined on its own to combat the problem and commitment to working together to solve it.

   g. The methodologically sophisticated and substantial data studied independently and internally by Airbnb and provided cooperatively to the DFEH;

   h. The Parties’ recognition of the value and benefit of good cooperation between a governmental agency and the business community to mutually address solutions to discrimination.

Thus, the Parties enter into this Voluntary Agreement.

2. Nature of Agreement: The Parties agree that, for the duration of this agreement, the DFEH will not file a fair housing or Unruh Act complaint against Airbnb based on the facts and allegations giving rise to the Director’s Complaints, and Airbnb will abide by the provisions of this
agreement. In evaluating Airbnb’s compliance with the provisions of this Agreement, Airbnb’s actions prior to the execution of this Agreement shall count toward Airbnb’s satisfaction of the goals and obligations set forth in this Agreement.

3. No Limitation on Other DFEH Complaints: This Agreement in no way limits or restricts the DFEH’s authority to investigate or prosecute violations of any other complaint of discrimination involving Respondent or its Hosts, including claims of retaliation that may be filed after execution of this Agreement.

4. Non-Admission of Liability: It is understood that the execution of this Voluntary Agreement is not an admission by Respondent of any violations of FEHA or the Unruh Act or any other similar provision of law as alleged in the Director’s complaints. The Parties agree that this Agreement does not represent any admission that the laws referenced herein are applicable or inapplicable to Airbnb’s activities as an online travel platform, nor does the Agreement represent any admission of wrongdoing by Airbnb. The Parties further agree that this Agreement does not represent any admission, nor does it imply, that Airbnb engages in, encourages, causes, enables, or facilitates discrimination, under either a disparate-treatment or disparate-impact theory, or that Airbnb bears any liability or responsibility for discriminatory conduct by users of the Airbnb travel platform.

5. Voluntary Agreement: The Parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaints. The Parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any manner compelled to become a party to this Agreement. As to the issues resolved, this Agreement is final and binding upon the Parties and their successors and assigns.

6. Need for Flexibility: As a general principle, the Parties recognize and agree that there is a need for Respondent to have flexibility in devising and implementing strategies (as Airbnb already has begun doing on its own initiative) to minimize discrimination by users of Airbnb’s Platform. Combating discrimination on this Platform may present new and unique challenges and experimentation may help assess which strategies work best. As reflected in the
operative provisions of this Agreement, the Parties agree that in order to combat discrimination on
Airbnb’s platform, the company will commit to achieving certain goals and reporting data sufficient
to determine whether those goals are being met.

7. **Non-Retaliation:** Respondent acknowledges that FEHA and the Unruh Act make it
unlawful to intimidate, coerce, threaten, or retaliate against any person who has made a complaint,
testified, assisted or participated in any manner in a proceeding under FEHA or the Unruh Act. The
Director’s Complaints do not allege any retaliation and Respondent denies that it has engaged, or
will engage, in any retaliation. Nonetheless, Respondent acknowledges that such conduct shall
constitute a material breach of the Agreement, and a statutory violation of FEHA and the Unruh
Act.

8. **Provision of Documents or Information by Airbnb to the DFEH:** Nothing in this
agreement shall require Airbnb to provide to the DFEH any documents or information whose
dissemination or production by Airbnb is restricted by law. To the extent provided by law or the
terms of this Agreement, such documents may be obtained from Airbnb through a lawful subpoena
or court order.

9. **Modifications in Writing:** No amendment to, modification of, or waiver of, any
provision of this Agreement shall be effective unless: (a) all signatories or their successors to the
Agreement agree in writing to the amendment, modification, or waiver; and (b) the amendment,
modification or waiver is in writing; and (c) the amendment, modification or waiver is approved
and signed by the Director or his or her designee.

10. **Execution in Parts:** The Parties agree that the execution of this Agreement may be
accomplished by separate executions of consent to this Agreement and that the original executed
signature pages attached to the body of the Agreement shall constitute one document.

11. **Non-Confidentiality:** It is understood that after this Agreement has been approved
by the Director or his designee, this Agreement shall become a public document. There is no
limitation imposed by this Agreement on the right to publicize, comment on, or disclose the
Agreement or its contents.
12. **Enforcement by Superior Court:** The Parties agree the Los Angeles County Superior Court shall have jurisdiction to enforce this Agreement and/or resolve any dispute arising out of this Agreement. In the event of a failure by any party to perform in a timely manner any act required by this Agreement, or to comply with the Agreement, any party may move the Court to enforce the Agreement consistent with applicable law.

IV. **RELIEF IN THE PUBLIC INTEREST**

13. **Scope of Agreement:** The terms of this Agreement shall apply to all Airbnb listings physically located in the State of California up to the effective date of the Agreement, and to such California listings as are added thereafter during the term of the Agreement.

14. **Duration:** The duration of this Agreement shall be two years from the Effective Date, except as provided in Paragraph IV.K.43.

15. **Background:** To achieve the Parties’ joint interest in preventing discrimination on the Airbnb platform, the Parties reached an agreement on these terms. Many of the following steps have been devised and implemented by Airbnb in the first instance, with Airbnb and the Department working in a collaborative manner in crafting this Agreement to further their shared goal of combating discrimination.

A. **REVISED DISCRIMINATION POLICY**

16. The Parties recognize that Airbnb has recently implemented a revised Nondiscrimination Policy, which was attached as Appendix A to the report entitled “Airbnb’s Work to Fight Discrimination and Build Inclusion,” dated September 8, 2016 (the “September 2016 Report”). Airbnb has provided notice of the revised Nondiscrimination Policy on its website and by attaching it to the September 2016 Report. The Nondiscrimination Policy shall be applied equally to all Guests and Hosts irrespective of sex, race, color, religion, gender, gender identity, gender expression, sexual orientation, ancestry, national origin, disability, medical condition, genetic information, marital status, familial status, source of income, citizenship, primary language, or immigration status, except as permitted by statute. The policy shall be prominently displayed on Airbnb’s website and mobile application. Airbnb shall develop policies and procedures requiring
users to acknowledge receipt and understanding of the policy with the goal of developing policies
and practices, which are measurable and effective to prevent discrimination. A copy of the revised
Nondiscrimination Policy is attached as APPENDIX A to this Agreement.

17. For the duration of this Agreement, all Airbnb California Guests and Hosts shall be
required to accept the policy as a condition for participation on the Airbnb platform. For purposes
of this Agreement, “California Host” refers to individuals with Airbnb listings located in California,
and “California Guest” refers to individuals booking Airbnb listings in California.

18. Airbnb may, at its discretion, edit or modify the language in the policy set forth in
APPENDIX A. Airbnb will report any material modifications to the policy relevant to
discrimination to the DFEH within 14 days of making the modifications. The Parties agree to meet
and confer in good faith to resolve any dispute arising from such modifications, with any
unresolved disputes to be subject to the jurisdiction of the court pursuant to Paragraph III.12.

B. INTERNAL FAIR HOUSING AND DISCRIMINATION TRAINING

19. Prior to or within six months of the effective date of this Agreement, all active
Airbnb California employees shall receive antidiscrimination and bias-awareness training. For
purposes of this Agreement, “active” refers to employees who are not on leave. Employees who are
not active will receive training within six months of resuming active status. Airbnb has developed
this training working in conjunction with a lecturer of public policy at Harvard University’s John F.
Kennedy School of Government whose research areas include diversity, leadership, and social
justice and who has delivered diversity training and served as a management consultant for both
private and public entities. Airbnb agrees that any replacement or updating of this training will be
designed in conjunction with an expert in the field. The DFEH has provided Airbnb with
comments on existing training. Airbnb shall consider in good faith the comments regarding
training provided by the DFEH, and within 90 days of the effective date of this Agreement, will
certify that it has done so.

20. Prior to or within six months of the effective date of this Agreement, all active
Airbnb customer support employees (CX), as well as employees of third parties or independent
contractors who perform functions akin to Airbnb CX employees who review Airbnb Host and
Guest complaints, will receive training on how to recognize a complaint of discrimination and
training on proper methods for referring discrimination complaints to the Airbnb Tax & Legal unit
which will assume responsibility for investigating and responding to complaints of discrimination
(for purposes of this agreement, the “Airbnb anti-discrimination team”). Airbnb has recently added
a drop-down menu option for user complaints indicating that they pertain to alleged discrimination,
which has made it easier to identify such complaints. However, CX employees still play an
important role in ensuring that all such complaints are referred to the Airbnb anti-discrimination
team.

21. All active Airbnb CX employees, as well as employees of third parties or
independent contractors who perform functions akin to Airbnb CX employees who review Airbnb
Host and Guest complaints, shall receive at least one hour of training on how to recognize a
complaint of discrimination and on proper methods for referring discrimination complaints to the
Airbnb anti-discrimination team. This training shall occur as part of their onboarding and/or
training procedures, but no later than within six months of their start date. Airbnb agrees that any
replacement or updating of this training will be designed in conjunction with an expert in the field.
The members of the Airbnb anti-discrimination team (discussed in Part C below) shall receive
additional training, above and beyond that received by CX employees, on investigating and
responding to complaints of discrimination. All active members of the Airbnb anti-discrimination
team shall receive at least one full day of training, or the time equivalent thereof, within six months
of their start date. Airbnb agrees that any replacement or updating of this training will be designed
in conjunction with an expert in the field.

22. The minimum training requirements shall be as follows:
   a. Acceptable modes of delivery include in-person in a classroom, by video, on-
      line as a live webinar, and/or as a self-teaching on-line module;
   b. Training shall include realistic scenarios or exercises to ensure that the
      trainees have paid attention, have absorbed the material, and can effectively apply it
to real life situations. Perfunctory training in which the policy statement is simply read to the trainees will not suffice; and
c. Where a CX employee, including a member of Airbnb’s anti-discrimination team, displays unsatisfactory job performance relating to handling complaints of discrimination, Airbnb will take appropriate steps (including, where necessary, additional training or other actions) to ensure that such unsatisfactory job performance does not recur.

23. Employees hired during the duration of the Agreement but after the above trainings occur, shall be provided such training within a reasonable time, but no more than six months after their start date. Certification of completion of this training for new employees shall be provided to the DFEH annually.

C. DISCRIMINATION COMPLAINTS – PROCESSING AND INVESTIGATION

24. Airbnb has designated a unit (“Tax & Legal”) whose duty it is to investigate and handle all complaints of discrimination (the “Airbnb anti-discrimination team” referenced above). Prior to or within six months of the effective date of this Agreement, all employees in this designated unit will receive regular and additional training on how to conduct an investigation of a complaint of discrimination.

25. In order to prevent discrimination, to underscore the importance to Respondent of addressing complaints of discrimination, and to ensure accountability, the unit investigating complaints of discrimination will provide a report, at least every six months, to the General Counsel of Airbnb and, subject to redactions based on any applicable privileges and where required by law, to the DFEH. Airbnb will not refuse to provide this report to the DFEH on the ground that it contains information for which a subpoena is required. This report will summarize, in appropriate form, the complaints received by Airbnb regarding alleged discrimination on the basis of race or national origin involving California Hosts by users of Airbnb’s platform, as well as the company’s response to these complaints. The report will provide updates on the status of the company’s efforts to combat discrimination by users of Airbnb’s platform, as discussed in this Agreement and
in the September 2016 Report. For the duration of this Agreement, a summary of the activities of
this program shall be presented at least annually to the Chief Executive Officer.

26. Prior to or within 60 days of the effective date of this Agreement, Airbnb will
modify its website to create and prominently locate a function that will allow users who wish to
complain about discrimination to direct their complaints to the designated unit handling complaints
of discrimination.

27. Airbnb shall provide all California Hosts and Guests with notice of their right to file
a discrimination complaint with the DFEH.

D. FAIR HOUSING AND DISCRIMINATION TRAINING FOR USERS

28. Prior to or within 60 days of the effective date of this Agreement, Airbnb will post
on its website and email to all California Hosts notice of the opportunity to obtain free online
unconscious bias training.

E. INSTANT BOOK AND INCREASING BOOKING PERCENTAGES

29. Airbnb shall study and explore possible changes to increase usage of the “Instant
Book” feature, which is anticipated to have the effect of preventing discrimination. Instant Book
listings do not require approval from the Host before they can be booked. This shall include an
obligation to consider and study revisions to the current Instant Book feature to prevent
discrimination prior to or within 60 days of the execution of this Voluntary Agreement. Airbnb has
already reached its publicly stated goal of 1 million bookings available through Instant Book by

30. Airbnb shall, upon reasonable request but not more frequently than once every six
months, provide to the DFEH a summary of its actions regarding Instant Book. Airbnb will not
refuse to provide this summary to the DFEH to the DFEH on the ground that it contains
information for which a subpoena is required.

F. RECORDKEEPING

31. For the duration of the Agreement, Airbnb shall maintain records pertaining to its
obligations under this Agreement. The DFEH shall have the right to review and copy non-
privileged records upon request. Airbnb reserves the right to object on the basis that the request poses an unreasonable burden, in which case the Parties will meet and confer in good faith to resolve the dispute. The Parties agree that the Confidentiality Agreement already in place in this matter will be applicable to any documents produced in accordance with this paragraph.

G. PROGRESSIVE DISCIPLINE FOR HOSTS

32. Prior to or within 180 days of the execution of this Voluntary Agreement, Airbnb shall develop a progressive system of counseling, warning, and discipline applicable to unlawful discrimination by Hosts against Guests. This system may include intermediate steps of discipline but shall include, at the upper end of discipline, de-listing of Hosts from Airbnb’s platform, where such action is warranted. In response to a lawful subpoena, Airbnb shall provide to the DFEH a list of all California Hosts subject to any form of discipline as a result of suspected racial discrimination, specifying what level of discipline each such Host has been subject to.

33. Airbnb will maintain procedures intended to prevent both de-listed Hosts from rejoining the platform and properties owned or operated by those Hosts from being re-listed on Airbnb.

34. Airbnb shall consider creating in the Host profile a “Gallery” that collects information on all Guests rejected by a Host. Such a Gallery, if created, shall be available both to the Host and for Airbnb’s internal use for the purpose of identifying, monitoring and preventing discrimination. Prior to or within 180 days of the execution of this Agreement, Airbnb shall consider in good faith whether such a Gallery would be an effective tool for promoting inclusiveness and combatting discrimination. If so, Airbnb shall implement this measure. In the event that this measure is not implemented, Airbnb shall provide to the DFEH a summary of its reasoning, and upon reasonable request, the data or information upon which it is based, sufficient to allow the DFEH to assess Airbnb’s conclusion. Airbnb will not refuse to provide this summary to the DFEH on the ground that it contains information for which a subpoena is required.

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Voluntary Agreement Between Dept. Fair Empl. & Hous. and Airbnb Inc.
H. REJECTION OF GUESTS WHERE HOST UNIT UNAVAILABLE

35. Airbnb shall consider developing a feature intended to hold Hosts accountable for rejecting Guests based on claimed unavailability, such that if a Host rejects a Guest by stating that the unit is unavailable, the Host’s ability to accept a different requested booking for that same time period may be restricted in some manner. The Parties recognize that it may be complicated in some cases to ascertain whether a Host had a legitimate, nondiscriminatory reason for rejecting a requested booking, and agree that Airbnb may consider this fact in determining whether to develop this feature, and how to implement it.

36. Prior to or within 180 days of the execution of this agreement, Airbnb shall consider in good faith whether such a feature would be a reasonable and effective tool for promoting inclusiveness and combatting discrimination. If so, Airbnb shall implement such a feature. In the event this feature is not implemented, Airbnb shall provide to the DFEH a summary of its reasoning, and upon reasonable request, the data or information upon which it is based, sufficient to allow the DFEH to assess Airbnb’s conclusion. Airbnb will not refuse to provide this summary to the DFEH on the ground that it contains information for which a subpoena is required.

I. PERMANENT FULL TIME PRODUCT TEAM

37. Airbnb has voluntarily assembled, and agrees to maintain in some form for the duration of the Agreement, a team of engineers, data scientists, researchers, designers, behavioral scientists and/or persons expert in diversity and inclusion whose primary purpose is to advance belonging and inclusion and to root out bias.

J. TESTING

38. The Parties agree that the DFEH and/or its contractor may conduct fair housing testing on California Hosts who have been the subject of one or more discrimination complaints and have three or more listings on Airbnb’s platform. Airbnb shall not interfere with the creation by the DFEH and/or its contractor of accounts and profiles to be used for testing, and will not intentionally remove any such accounts or profiles from its platform even though such accounts and profiles may not be in compliance with Airbnb’s Terms of Service. To the extent the DFEH and/or
its contractor may have logistical or technical questions arising from their use of Airbnb’s platform for testing purposes, Airbnb will make a good-faith effort to answer such questions.

39. For the purposes of testing under this provision, the DFEH will periodically serve subpoenas on Airbnb for information on California Hosts with three or more listings on Airbnb’s platform who are suspected of discrimination, and Airbnb shall comply with such subpoenas pursuant to applicable law. In accordance with Airbnb’s Terms of Service, Airbnb may provide these Hosts with notice informing them, inter alia, of the DFEH’s subpoena. Nothing in this agreement is intended to limit the DFEH’s subpoena power pursuant to applicable law.

40. The Parties agree that during the duration of this Agreement, the DFEH will not file a fair housing or Unruh Act complaint against Airbnb based on the results of the fair housing testing as set forth in this Voluntary Agreement. The DFEH reserves all rights, however, to commence any proceedings or investigations against Hosts that DFEH believes are engaged in violations of civil rights laws. The Parties further agree that the DFEH is not subject to any arbitration clause that would limit its ability to prosecute claims against Hosts in any court of law. Nothing in this Agreement is intended to waive or limit the DFEH’s investigation or prosecution of any other complaints filed against Airbnb by members of the public. Any such complaints will be subject to the applicable administrative regulations and statutory requirements.

K. REPORTING ON DATA

41. To the extent reasonably possible, Airbnb will gather and maintain data regarding:

   a. the average acceptance rate for Caucasian, African-American, Hispanic and Asian American Guests (the “Relative Acceptance Rate”);
   b. the frequency with which California Hosts reject Guests based on claimed unavailability;
   c. the number of discrimination complaints raised with Airbnb by Guests who were rejected by California Hosts; and
   d. the number of California Hosts who are de-listed from the platform based on the Host’s discriminatory or potentially discriminatory conduct.
42. Airbnb shall, within 180 days of the execution of this Voluntary Agreement, and every six months thereafter for the duration of this agreement, provide the DFEH with a report containing the data described above, subject to redactions based on any applicable privileges and where required by law. Airbnb will also provide to the DFEH a written report analyzing changes in the Relative Acceptance Rate over the relevant time period. Airbnb will not refuse to provide this report to the DFEH on the ground that it contains information for which a subpoena is required. In response to a lawful subpoena, Airbnb shall provide to the DFEH any complaints of discrimination made by Guests against California Hosts. Upon reasonable request, Airbnb shall provide the DFEH data underlying such reports.

43. By the third report (i.e., 18 months after execution of this Voluntary Agreement), Airbnb must show statistically significant and operationally meaningful improvement in the Relative Acceptance Rate. If Airbnb fails to show such improvement, the term of this Voluntary Agreement shall be extended for one year and Airbnb shall develop a new plan for increasing the Relative Acceptance Rate, which Airbnb will provide to the DFEH.

L. ALTERNATIVES TO CURRENT USE OF GUEST PHOTOS AND NAMES

44. Airbnb will explore the availability of alternatives to the current use of guest photos and names, including, but not limited to, making the use of photos and names less prominent or smaller; changing the location of the appearance of Guest photos and other information regarding guests; and/or changing the time in the booking process at which prospective Hosts and Guests can access each other’s photos. The goal of this examination is the prevention of discrimination and the reduction in the rejection rates for African American Guests (as compared to Caucasian Guests).

M. INTERNAL STUDIES/MEASUREMENT OF EFFECTIVENESS OF EFFORTS TO PREVENT DISCRIMINATION

45. No later than 18 months after the date of the Agreement, Airbnb shall conduct studies, similar to internal studies conducted on July 20, 2016 and September 6, 2016, sufficient to provide a measurement to assist the Parties in assessing the efficacy of Airbnb’s efforts to prevent
discrimination. The Parties agree to meet and confer following the studies to explore what steps, if any, might be appropriate to assist in the effort to prevent discrimination.

N. COMPLIANCE RESPONSIBILITY

46. No less than every six months, the General Counsel of Airbnb shall prepare and submit to the DFEH a report covering activities and issues concerning all aspects of this Agreement, including without limitation on compliance with terms of the Agreement required to be performed during the applicable reporting period. This report shall be signed by the General Counsel of Airbnb. Airbnb will not refuse to provide this report to the DFEH on the ground that it contains information for which a subpoena is required.

O. DISPUTE RESOLUTION PROCEDURE

47. If differences arise between the DFEH and Airbnb with respect to this Agreement, Airbnb’s compliance with, interpretation of, or implementation of the terms of this Agreement, an earnest effort shall be made to resolve such differences promptly, including but not limited to utilization of dispute resolution services of the DFEH Dispute Resolution Division. If the Parties are unable to resolve their dispute it shall be submitted to the Superior Court for resolution as described in Paragraph III.12 above.

P. ATTORNEYS’ FEES AND COSTS

48. The DFEH shall be entitled to reasonable attorneys’ fees and costs for work performed on any prevailing motion to enforce this Agreement. If the DFEH and Airbnb cannot agree on the amount of fees and costs to which the DFEH is entitled, the dispute shall be submitted to the Superior Court for binding resolution. Airbnb shall deliver payment to the DFEH within a reasonable time after the resolution of any such dispute.
Q. NOTICES

49. All notices and other communications required under this Agreement shall be in writing and delivered by United States mail at the addresses listed below, and also (where reasonably feasible) by email to the attorneys identified on the cover page of this Agreement.

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
320 West Fourth Street
Suite 1000
Los Angeles, California 90013

AGREED:

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

By:

MARI MAYEDA
JONI CARRASCO
IRINA TRASOVAN
Attorneys for Department of Fair Employment and Housing

Date: 4/19/2017

AIRBNB, INC.
c/o Munger, Tolles & Olson LLP
350 South Grand Avenue
50th Floor
Los Angeles, CA 90071

AGREED:

AIRBNB, INC.

By:

ROB CHESNUT
General Counsel

Date: 4/19/2017