



Employment Court of New Zealand

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Arachchige v Rasier New Zealand Limited [2020] NZEmpC 230 (17 December 2020)

Last Updated: 22 December 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKAURAU

[\[2020\] NZEmpC 230](#)

EMPC 211/2019

IN THE MATTER OF	an application for an employment status declaration
BETWEEN	ATAPATTU ARACHCHIGE Plaintiff
AND	RASIER NEW ZEALAND LIMITED First Defendant
AND	UBER B.V. Second Defendant

Hearing: 14 and 15 July 2020 (Heard at Auckland)
Appearances: G Pollak and M Pollak, counsel for plaintiff
K Dunn and E Peterson, counsel for defendant
Judgment: 17 December 2020

JUDGMENT OF JUDGE J C HOLDEN

[1] Mr Arachchige was an Uber driver in Auckland from 15 May 2015 until 20 June 2019. He now applies for a declaration that he was an employee of the first defendant, Rasier New Zealand Ltd (Rasier NZ) and/or the second defendant Uber B.V. (Uber BV).¹ He makes this application so he can bring a personal grievance for unjustifiable dismissal.

¹ [Employment Relations Act 2000, s 6\(5\)](#).

ATAPATTU ARACHCHIGE v RASIER NEW ZEALAND LIMITED [\[2020\] NZEmpC 230](#) [17 December 2020]

[2] Mr Arachchige’s application must be determined based on the evidence in his case. The inquiry is intensely fact-specific and only deals with Mr Arachchige’s situation. For the reasons explained in this judgment, Mr Arachchige’s application for a declaration fails.

Defendants operate the Uber Apps

[3] Rasier NZ is a New Zealand company and is a member of the Uber group of companies. Rasier NZ’s operations in New Zealand are regulated by the New Zealand Transport Authority (NZTA). Uber BV has its registered office in Amsterdam, the Netherlands, and is also a member of the Uber group of companies. For the purposes of this judgment Rasier NZ and Uber BV are collectively referred to as “UBER”.

[4] UBER operates two smartphone applications (Apps), one for passengers (the Uber App) and one for drivers (the Driver App). It describes itself as a “technology business” with its value being in the lead generation software application it provides and the related “Uber” brand. It says its Uber App “connects people who need transport services with people who provide transport services”. Anyone can download either or both Apps but before a driver can use the Driver App they must enter into a services agreement with UBER. Under the standard services agreement UBER agrees to provide drivers with

lead generation services and related services to enable them to receive on-demand requests for transportation services, and with a licence to use the Driver App.

Mr Arachchige became an Uber driver after being a taxi driver

[5] Prior to Mr Arachchige becoming an Uber driver, he was a taxi driver under an Alert Taxis franchise agreement. He was an Alert Taxi driver for approximately five years.

[6] After UBER set up its rideshare business in New Zealand, Mr Arachchige realised that taxi driving work was reducing. He decided to move to UBER, selling his Alert Taxi business (including his book of clients, his vehicle and his franchise licence) to a friend of his for approximately \$15,000. Mr Arachchige was among the

first batch of drivers to commence with UBER. To become an Uber driver, Mr Arachchige had to satisfy UBER that he:

(a) was over 21 years of age;

(b) held a full New Zealand drivers licence and had done so for at least 12 months;

(c) had third party motor vehicle insurance in relation to the vehicle that he intended to use;

(d) had obtained and held a valid passenger endorsement ((P) endorsement) issued by NZTA;

(e) had obtained (and held) a current Certificate of Fitness (COF) and vehicle registration in relation to the vehicle he intended to use; and

(f) either had his own transport service licence or had downloaded the “Logmate App”, being an App that records driving work times for the purposes of compliance with NZTA regulations for logbooks.

[7] Mr Arachchige also had to pass a criminal history check.

[8] Because Mr Arachchige had previously been a taxi driver, these matters were straightforward for him. He already had the licensing required and an insured vehicle with a current COF.

[9] Mr Arachchige attended a short session with UBER in which he was taken through the Apps. He entered into a services agreement with Rasier NZ and Uber BV. The original services agreement, entered into in 2015, was not in evidence. Mr Arachchige accepted a further services agreement on 30 November 2018, which he says was similar to his first one. A full copy of the terms of this services agreement is annexed to this judgment as Appendix 1 (the Services Agreement).

[10] The Services Agreement relevantly included agreement that:

(a) Mr Arachchige was “an independent provider of peer-to-peer passenger transportation services”;²

(b) by providing transportation services to passengers a legal and direct business relationship was created between Mr Arachchige and the passengers;³

(c) Rasier NZ’s provision of the Uber services created a legal and direct business relationship between Rasier NZ and Mr Arachchige and Uber BV’s licence to him of the Driver App created a legal and direct business relationship between Uber BV and him;⁴

(d) neither Rasier NZ nor Uber BV was deemed to direct or control him generally in his performance under the agreement, including in connection with his provision of transportation services.⁵

[11] Between 16 May 2015 and 11 June 2019 Mr Arachchige:

(a) logged into the Driver App at varying times of the day, on different days of the weeks;

(b) logged into the Driver App for varying periods;

(c) logged into the Driver App on multiple occasions on some days and did not log in at all on others;

(d) provided varying numbers of trips when he was logged into the Driver App, including providing no trips on some occasions;

(e) accepted 5,623 of the trip requests sent to him via the Driver App;

2 Services Agreement at [1] “Recitals”.

3 At [3] “Your Relationship with Users”.

4 At [4] “Your Relationship with Uber Group”.

5 At [4].

(f) rejected 448 of the trip requests sent to him;

(g) did not accept a further 242 of the trip requests sent to him;

(h) cancelled 156 of the trip requests that he had received and accepted.

[12] Mr Arachchige's access to the Driver App was deactivated in June 2019 after UBER received a complaint from a passenger. Although UBER said it investigated the complaint, Mr Arachchige says he did not have any knowledge of the details of the complaint, nor was he given any opportunity to provide a response. This deactivation ended Mr Arachchige's association with UBER and is the basis of his claimed personal grievance for unjustifiable dismissal.

Mr Arachchige says driving for UBER was very similar to being a taxi driver, but there were some differences

[13] When Mr Arachchige was an Alert Taxi driver he considered himself to be in business on his own account.

[14] He paid a franchise fee to Alert Taxis monthly for the right to use the Alert brand and had Alert Taxis' signage on his vehicle. Mr Arachchige generally worked full-time, although that was by choice. Usually Mr Arachchige's jobs came through the Alert Taxis dispatch system although, on occasion, he would pick up passengers from a taxi rank.

[15] Mr Arachchige developed a clientele of passengers who would regularly request him for their trips. Some of these were businesspeople who routinely took trips out of town and needed to be taken to the airport, others were people who had trips to appointments paid for, for example, by the Accident Compensation Corporation.

[16] The passengers would pay him direct for his services and that gave him some flexibility in how much he charged them.

[17] To Mr Arachchige, the key difference as an Uber driver was the inability to develop a personal relationship with customers, including to negotiate a fee. The evidence for UBER was that the fare quoted to a passenger is calculated based on time and distance estimations, which are published online. The fare may also reflect dynamic, or "surge" pricing, which effectively adds a premium where there is a demand for trips that is greater than the number of drivers available and using the Driver App in that area and at that time. UBER also said that it was open to drivers to charge a lesser fare than the estimate the passenger had been given on the Uber App and the terms of the Services Agreement reflect this.⁶ However, Mr Arachchige seemed to be unaware of that possibility and logic suggests that a driver picking up a passenger they do not know, who has already accepted a quoted price, would be unlikely to then charge the passenger less.

[18] Another feature of the UBER charging process is there is a cancellation fee that may be payable by a passenger where the passenger cancels a trip request five or more minutes after making the request and after the driver has accepted the request and is on their way to the passenger's location. It also is payable where the driver arrives at the pick-up location and the passenger is a "no-show".

[19] After a passenger takes a trip, the passenger is invited to rate the driver, and the driver also is invited to rate the passenger. UBER operates a five-star rating system and if a driver continually falls below the average city minimum for the city in which they operate, they may lose access to the Driver App. At the relevant time, the average city minimum for Auckland was approximately 4.5, which demonstrates that any rating below a 5 essentially was a fail.

The Uber group is facing challenges to its operating model across the world

[20] The Uber operating model is perhaps the most well-known example of the 'gig' economy. It has been extremely successful across the world with passengers finding the technology user-friendly and the prices generally lower than with traditional personal passenger services, such as taxis.

6 At [8.3].

[21] Since UBER started operating in New Zealand, other ride-share operators have started here, notably Zoomy and Ola.

[22] Concern has been expressed about the rights of Uber drivers in many jurisdictions, and cases have been taken with mixed results.

[23] At the time this case was being heard in New Zealand, a case was proceeding to the United Kingdom Supreme Court, with Uber appealing a finding that Uber drivers in the UK were "workers".

[24] Cases have also proceeded in other jurisdictions, including France, Australia, Canada and the United States of America.

[25] Both parties acknowledge that the legal position in New Zealand is to be determined pursuant to [s 6 of the Employment Relations Act 2000](#) (the Act), which has no equivalent in other common law jurisdictions.

[26] Nevertheless, UBER submits that other common law decisions are useful and refers to several decisions in Australia that found that Uber drivers were not employees.⁷

[27] In *Kaseris* the Fair Work Commission summarised the legal test as requiring consideration of the following factors:⁸

- (a) Whether the worker is the servant of another in that other's business, or whether the worker carries on in trade or business on his own behalf.
- (b) The nature of the work and the manner in which it is performed.
- (c) The terms and terminology of the contract (although the parties cannot alter the true nature of their relationship by putting a different label on it).
- (d) Whether the organisation has the right to exercise control over the manner in which work is performed, place of work, and hours of work.

7. *Kaseris v Rasier Pacific VOF* [2017] FWC 6610; *Pallage v Rasier Pacific Pty Ltd* [2018] FWC 2579; *Suliman v Rasier Pacific Ltd* [2019] FWC 4807; *Gupta v Portier Pacific Pty Ltd* [2019] FWC 5008; *Gupta v Portier Pacific Pty Ltd* [2020] FWCFB 1698.

8 At [53].

- (e) Whether the worker performs work for others (or has a genuine and practical entitlement to do so).
- (f) Whether the worker has a separate place of work and/or advertises his or her services to the world at large.
- (g) Whether the worker provides and maintains significant tools or equipment.
- (h) Whether the work can be delegated or subcontracted.
- (i) Whether the organisation has the right to suspend or dismiss the person engaged.
- (j) Whether the organisation presents the worker to the world at large as an emanation of the business (typically this would arise where the worker is required to wear the livery of the organisation).
- (k) Whether income tax is deducted by the organisation.
- (l) Whether the worker is remunerated by a periodic wage or salary or by reference to the completion of tasks.
- (m) Whether the worker is provided with paid holidays or sick leave.
- (n) Whether the work involves a profession, trade or distinct calling on the part of the person engaged.
- (o) Whether the worker creates goodwill or saleable assets in the course of his or her work.
- (p) Whether the worker spends a significant portion of his remuneration on business expenses.

[28] The Fair Work Commission found that Mr Kaseris was not employed by Uber, noting the absence of any legal obligation to Mr Kaseris except to provide access to the Driver App and to remit to Mr Kaseris the fares and cancellation fees that the passenger pays, finding that the fundamental elements of an employment relationship did not exist between Mr Kaseris and Uber.⁹

[29] Applying the same test in *Pallage*, the Fair Work Commission noted the "relatively weak control" Uber had over Mr Pallage and his freedom to choose his hours and whether to accept trips, summarising the relationship as the driver "sold rides to customers and was paid for them, along the way paying a fee for the services

⁹ *Kaseris*, above n 7, at [51].

rendered by Rasier Pacific Pty Ltd and its associates."¹⁰ The Commission found Mr Pallage was not an employee.

[30] Likewise, in *Suliman*, the Fair Work Commission found that Mr Suliman was not engaged in the work-wages bargain indicative of an employee.¹¹

[31] Finally, in *Gupta*,¹² the full bench of the Fair Work Commission upheld the finding that Ms Gupta was not an employee on the basis that Portier Pacific exercised no control over when and how long Ms Gupta performed her work; there was no exclusivity when work was being performed; and she was not presented as an emanation of the Uber Eats business in the performance of her work.

[32] UBER also points to a two-year investigation undertaken by the Fair Work Commission in which the Ombudsman found that drivers were not employees of Uber, emphasising that drivers are not subject to any obligation to perform work and

have control over whether, when and for how long they perform work.¹³

[33] Both parties also refer to the recent UK jurisprudence, but they agree that the UK legislation is fundamentally different from New Zealand legislation – it includes three categories of status, including the intermediate “limb (b)” workers.¹⁴ These workers are individuals who work under a contract whereby they undertake to do or perform personally any work or services for another party to the contract who is not a client or customer of any profession or business undertaking carried on by the individual. These workers have some of the statutory rights of employees, including under health and safety legislation, and are entitled to the minimum wage, to rest breaks and to annual leave. Their employment is not protected, however, so that, absent discrimination, they cannot challenge the termination of their contract in the same way an employee can.

¹⁰ *Pallage*, above n 7 at [28], [36].

¹¹ *Suliman*, above n 7, at [40].

¹² *Gupta*, above n 7.

¹³ Fair Work Ombudsman “Uber Australia investigation finalised” (press release, 7 June 2019).

¹⁴ [Employment Rights Act 1996](#) (UK), s 230(3)(b).

[34] In *Aslam*, the most recent UK case, the Uber driver was found to be a “worker” by the Employment Tribunal, affirmed by the Court of Appeal. The driver was not found to be an employee.¹⁵

[35] One of the key factors in *Aslam* was that the private hire vehicle licence was held by Uber UK, not the driver. That contrasts with Mr Arachchige, who holds the necessary transport service licence. Nevertheless, Mr Arachchige points to other factors the UK Employment Tribunal considered in finding the driver was a worker, saying those also are present in his situation. These factors include Uber:

- (a) Reserving the power to amend its drivers’ terms unilaterally;
- (b) Requiring drivers to accept trips on Uber’s terms;
- (c) Imposing numerous conditions on drivers instructing them how to do their work and controlling them in the performance of their duties; for example, fixing the fare, setting the default route for each trip, strongly discouraging deviations from the default route and limiting the choice of acceptable vehicles;
- (d) Subjecting its drivers to a rating system, which was effectively a performance management and disciplinary procedure;
- (e) Determining issues about rebates, sometimes without giving notice to the driver whose remuneration is liable to be affected;
- (f) Bearing the losses in circumstances where the driver was not at fault, which would normally fall on them if they were indeed running a business on their own account;
- (g) Handling the complaints of passengers; and
- (h) Controlling key information, in particular, details about the passenger’s identity and intended destination, which it does not share with drivers.

[36] While the cases in Australia and the UK have some similar facts, and identify factors that likewise would be relevant in New Zealand, ultimately Mr Arachchige’s case falls to be determined on the evidence before the Court and pursuant to New Zealand law.

¹⁵ *Aslam v Uber BV* [2016] 10 WLUK 681; *Uber BV v Aslam* [2018] EWCA Civ 2748.

Section 6 has been considered by the New Zealand Supreme Court

[37] Section 6 of the Act defines an employee as:

...any person of any age employed by an employer to do any work for hire or reward under a contract of service.

[38] Section 6 then goes on:

- (2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.
- (3) For the purposes of subsection (2), the court or the Authority—
 - (a) must consider all relevant matters, including any matters that indicate the intention of the persons; and
 - (b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.

[39] The leading decision on s 6 is *Bryson v Three Foot Six Ltd*, in which the Supreme Court held that “all relevant matters” in s 6(3)(a) includes:¹⁶

- (a) the written and oral terms of the contract, which usually contain indications of the parties’ common intention concerning the status of the relationship;
- (b) any divergences from, or supplementation of, those terms and conditions, which were apparent in the way in which the relationship had operated in practice;
- (c) the behaviour of the parties in implementing the agreement between them – how the relationship operated in practice is crucial to a determination of its real nature;

16 *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] ERNZ 372 at [32].

- (d) features of control and integration, and whether the person has been effectively working on his or her own account; and
- (e) industry practice.

[40] The Employment Court has recently considered s 6 in two cases, which the parties both refer to. *Leota* involved a courier driver and *Southern Taxis* four taxi drivers.¹⁷ In both these cases, based on the evidence before the Court, the drivers involved were found to be employees.

Mr Arachchige’s Services Agreement was not, in form, an employment agreement

[41] The Services Agreement entered into between UBER and Mr Arachchige does not suggest an employment relationship.

[42] In the written agreement, the parties expressly agree that it is not an employment agreement and that it does not create an employment relationship.¹⁸

[43] While the Services Agreement is personal to the driver signatory, it did not require exclusivity; drivers are not to display any Uber logo or other signage and Uber drivers are able to undertake other activities, including in competition with UBER.¹⁹

[44] There are some matters in the Services Agreement that one might see in an employment agreement, including qualification requirements and performance expectations.²⁰ However, those are matters that may be present in other agreements, for example franchise agreements, where the performance of the contract may reflect on the reputation of the principal.

[45] Overall, the Services Agreement is not in the form of, and does not operate as an employment agreement. It is consistent with the assertion by UBER that it provides

17. *Leota v Parcel Express Ltd* [2020] NZEmpC 61, [2020] ERNZ 164; *Southern Taxis Ltd and ors v Labour Inspector* [2020] NZEmpC 63, [2020] ERNZ 183.

18 Clause 28.1.

19 Clause 4.

20 Clauses 5–6.

a technology business that connects drivers with UBER’s lead generation service to enable drivers to receive requests for transportation.

[46] While it is a standard form agreement, so Mr Arachchige had no power to negotiate terms, Mr Arachchige was not particularly vulnerable or lacking comprehension of what he had agreed to, as was found to be the case with the driver in *Leota*. He made a considered decision to move from Alert Taxis to UBER. He understood the business model and it was satisfactory to him while his contract was on foot.²¹ It was only after UBER terminated the relationship that Mr Arachchige sought to argue the relationship had been one of employment.

The relationship operated in practice in line with the Services Agreement

[47] Consistent with the Services Agreement, UBER did not direct Mr Arachchige in connection with the provision of the transport services. He determined whether and for how long he undertook services.²² He provided all the necessary equipment and tools to undertake the work, including the vehicle, smart phone, a data plan and insurance.²³ He also was also responsible for his tax obligations.²⁴

[48] Apart from UBER's basic licensing requirements and requirement for a COF, it was for Mr Arachchige to determine what vehicle to use, when he would carry out the services, and where he would do so. None of that is consistent with an employment agreement. It can be contrasted with the situations in *Leota* and *Southern Taxis* where the drivers worked as directed.

[49] There was no evidence that Mr Arachchige undertook other services, including for other transportation services, but that was his choice; as noted, the written agreement expressly allowed for this and there was no suggestion that he had been told that he was not able to do so.

21. The evidence was that Mr Arachchige's income after expenses was likely a little above what it would have been if he had been employed on the minimum wage.

22 Clause 4.

23 Clauses 2, 15.

24 Clause 12.1.

While Mr Arachchige could not build a client base he made other business decisions

[50] Mr Arachchige did not go through an employment recruitment process; there was no 'vacancy' UBER was looking to fill. Indeed, UBER does not place a limit on driver numbers, essentially if a person meets the identified criteria,²⁵ UBER is prepared to enter into a services agreement with them.

[51] The principal argument for Mr Arachchige to be an employee was the lack of control that he had over building a customer base and over determining what fare to charge. The two are inter-related. As noted, there was, in theory, an ability for a driver to charge a passenger less than the quoted price, but without the ability to establish a relationship with passengers, and thereby attract future work, this was of no value to Mr Arachchige. This was the principal difference between the Uber model and the arrangements Mr Arachchige had with Alert Taxis.

[52] Nevertheless, there were other ways Mr Arachchige could improve the profitability of his business – where and when he carried out driving work, so he could choose to make the most of peaks in demand; and what car, phone, data plan, insurance and other business support he might use. Mr Arachchige also could share the vehicle with another person to reduce outgoings.

The work of drivers is integral to UBER's business, but with little control

[53] Notwithstanding UBER's characterisation of its business as a technology business, it would be artificial not to describe UBER as a passenger transport business in the wider sense. The requests from passengers for transportation come to UBER, which then passes those requests on to drivers. The drivers are integral to the way in which UBER's business operates – without the drivers there is no business.

[54] Having said that, however, the way the business has been structured separates out the services that UBER provides, both to passengers and to drivers, from the way in which the work is then undertaken. UBER had very little control over the way in

25 At [6] and [7] above.

which Mr Arachchige carried out his part of the undertaking. Again, this can be contrasted with the situation both in *Leota* and *Southern Taxis* where the drivers had little autonomy over the way in which they carried out their business activities.

Industry practice of little assistance

[55] UBER and other ride-sharing businesses are relatively new. There are, of course, some similarities between the work of Uber drivers and taxi drivers operating under a franchise agreement; it is the differences between them that gives rise to the issues in this case. Ride-sharing businesses use a different operating model and, as the case law overseas demonstrates, there is no established industry practice that assists in determining the status of drivers.

On balance, Mr Arachchige was not employed by UBER

[56] While there are aspects of the relationship between UBER and Mr Arachchige that may point to employment, the intent of the parties throughout their relationship was that Mr Arachchige would operate his own business in the manner and at

the times he wished. His work was not directed or controlled by UBER beyond some matters that might be expected given Mr Arachchige was operating using the Uber 'brand'. The agreement between UBER and Mr Arachchige reflected the parties' intention, and the parties acted in accordance with the agreement.

[57] Mr Arachchige was not employed by Rasier NZ and/or Uber BV.

Costs are reserved

[58] Following discussion, this proceeding was assigned Category 2B for costs purposes under the Practice Direction Guideline Scale.²⁶ If UBER seeks costs and they cannot be agreed, the defendants may apply by memorandum filed and served by 4 pm on Friday 29 January 2021. Any response from Mr Arachchige is to be filed and

26. "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 16.

served within a further 20 working days, with any reply then to be filed and served within another 10 working days.

J C Holden Judge

Judgment signed at 10.45 am on 17 December 2020

Appendix 1

RASIER NEW ZEALAND LIMITED UBER B.V.

SERVICES AGREEMENT

Last update: 1 December 2018

1. **Recitals.** This Services Agreement ("**Agreement**") constitutes a legal agreement between you, an individual ("**you**"), Rasier New Zealand Limited, a company registered in New Zealand with Company Number 7056276 ("**Rasier NZ**") and Uber B.V., a private limited liability company established in the Netherlands, having its offices at Mr. Treublaan 7, 1097 DP Amsterdam, The Netherlands, registered at the Amsterdam Chamber of Commerce under number 56317441 ("**Uber**").

Rasier NZ will procure and facilitate the provision of lead generation services, being on-demand intermediary and related services rendered via a digital technology application that enables transportation providers to seek, receive and fulfil demand requests for transportation services ("**Uber Services**") to you, an independent provider of peer-to-peer passenger transportation services ("**Transportation Services**"). Uber will license you the Uber Driver App ("**Driver App**"), a mobile application provided by Uber that enables you to access and receive the Uber Services, and will facilitate payment of Fares. The Uber Services and Driver App enable you to seek, receive and fulfil requests for Transportation Services from authorised users of the mobile application provided by Uber ("**Uber App**"), ("**Users**"). In order to use the Uber Services and Driver App, you must agree to the terms and conditions that are set forth below. Upon your execution (electronic or otherwise) of this Agreement, you, Rasier NZ and Uber shall be bound by the terms and conditions set forth below. References herein to "Uber Group" shall be taken as a reference to Rasier NZ, Uber and each of their Affiliates (as defined in clause 32).

2. **Provision of Transportation Services.** When the Driver App is active, User requests may appear in the Driver App if you are available and in the vicinity of the User. If you accept a User's request for Transportation Services, you will be provided with the User's first name and pickup location via the Driver App. You acknowledge and agree that the Uber App may provide the User with certain information about you, including your first name, contact information, photo, location, your vehicle make, model and license plate number. You shall not contact any User or otherwise use any of the personal information made available to you by Uber or Rasier NZ, via the Driver App or otherwise, other than for the purposes of fulfilling Transportation Services. You acknowledge and agree that you alone will choose the most effective and safe manner to perform each Instance of Transportation Services, and, except for the provision of the Uber Services and the licence to use the Driver App, you will need to provide (at your own expense) all necessary equipment, tools and other materials to perform Transportation Services.
3. **Your Relationship with Users.** You acknowledge and agree that your provision of Transportation Services to Users creates a legal and direct business relationship

between you and the User. Rasier NZ, Uber and their Affiliates are not responsible or liable for the actions or inactions of a User in relation to you, your activities or your vehicle. You shall have the sole responsibility for any obligations or liabilities to Users or third parties arising from your provision of Transportation Services. You acknowledge and agree that you are solely responsible for taking such precautions as may be reasonable and proper (including maintaining adequate insurance that meets the requirements of all applicable laws) regarding any acts or omissions of a User or third party. You acknowledge and agree that, unless consented to by a User, you may not transport or allow inside your vehicle individuals other than a User and any individuals authorised by such User, during the performance of Transportation Services for such User. You acknowledge and agree that all Users should be transported directly to their specified destination, as directed by the User, without unauthorised interruptions or stops.

4. **Your Relationship with Uber Group.** You acknowledge and agree that Rasier NZ's provision of the Uber Services creates a legal and direct business relationship between Rasier NZ and you. You also acknowledge and agree that Uber's licence to you of the Driver App creates a legal and direct business relationship between Uber and you. Neither Rasier NZ nor Uber shall be deemed to direct or control you generally or in your performance under this Agreement, including in connection with your provision of Transportation Services, your acts or omissions, or your operation and maintenance of your vehicle. Except as expressly set out herein, you retain the sole right to determine when and for how long you will utilise the Driver App or the Uber Services. You alone decide when, where and for how long you want to use the Driver App, and when to try to accept, decline or ignore a User request. A User request can be cancelled, subject to Uber's then-current policies (including the Community Guidelines located at www.uber.com/legal/community-guidelines/rides/anz-en/). You acknowledge and agree that you will not: (a) display Rasier NZ's, Uber's or any of their Affiliates' names, logos or colours on any vehicle(s); or (b) wear a uniform or any other clothing displaying Rasier NZ's, Uber's or any of their Affiliates' names, logos or colours, unless you and Rasier NZ or Uber (as applicable) have agreed otherwise or if so required by law. You retain the complete right to engage in other business or income generating activities, and to use other ridesharing networks and apps in addition to your use of the Uber Services and the Driver App. Rasier NZ retains the right to, at any time at its sole discretion, restrict you from using the Uber Services in the event of a violation of this Agreement or any relevant Uber policy, your disparagement of Rasier NZ, Uber or any of their Affiliates, or your act or omission that causes harm to Rasier NZ's, Uber's or their Affiliates' brand, reputation or business as determined by Rasier NZ in its sole discretion. Rasier NZ also retains the right to restrict you from using the Uber Services for any other reason at the sole and reasonable discretion of Rasier NZ. Uber retains the right to, at any time at its sole discretion, deactivate or otherwise restrict you from accessing the identification and password key assigned to you by Uber ("**Driver ID**") and/or the Driver App, in the event of a violation of this Agreement, any relevant Uber policy, including the Community Guidelines, your disparagement of Rasier NZ, Uber or any of their Affiliates, or your act or omission that causes harm to Rasier NZ's, Uber's or their Affiliates' brand, reputation or business as determined by Uber in its sole discretion. Uber also retains the right to deactivate or otherwise restrict you from accessing the Driver ID and/or Driver App, for any other reason at the sole and reasonable discretion of Uber.
5. **Ratings.** You acknowledge and agree that after receiving Transportation Services, a User will be prompted by the Uber App to rate you and such Transportation Services, and you will be prompted to rate the User. This can also include comments and other feedback, which, along with the rating, you agree to provide in good faith. Rasier NZ, Uber and their Affiliates reserve the right to use, share and display your User ratings and comments in any manner in connection with the business of Rasier NZ, Uber and their Affiliates without attribution to you or your approval. You acknowledge and agree that Rasier NZ, Uber and their Affiliates are distributors (without an obligation to verify) and not publishers of your ratings and comments, and may remove comments in the event that such comments include obscenities or other objectionable content, include an individual's name or other personal information, or violate any privacy laws, other applicable laws or Rasier NZ, Uber, or their Affiliates' content policies. There is no obligation on you or the User to provide ratings or comments nor is there any consequence for not providing a rating.
6. **Requirements.** You acknowledge and agree that you may be subject to certain background, driving record and other checks from time to time. You acknowledge and agree that at all times you shall hold and maintain a valid driver's license and all other required licenses, permits, work entitlements, approvals and authority to provide passenger Transportation Services in the city or metro areas within New Zealand in which you are enabled by the Driver App to receive requests for Transportation Services ("**Territory**"). You acknowledge and agree that you have a citizenship, residency or visa status that allows you the right to work in New Zealand. You acknowledge and agree that you will provide the Transportation Services with due skill, care and diligence and that you will maintain high standards of professionalism, service and courtesy. You acknowledge and agree that your vehicle must meet the then- current Rasier NZ requirements for a vehicle to provide the Transportation Services and must be authorised by Rasier NZ for this use, be properly registered, licensed and generally suitable to operate as a passenger transportation vehicle in your Territory, either owned or leased by you or otherwise in your lawful possession, kept in a clean and sanitary condition, and maintained in good operating condition consistent with industry safety and maintenance standards for a vehicle of its kind and any additional standards or requirements in the applicable Territory. You acknowledge and agree that Rasier NZ reserves the right, at any time in its sole discretion 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 Driver ID and/or Driver App, if you fail to meet the requirements in this Agreement.
7. **Documentation.** To ensure your compliance with all requirements in clause 6 above, you must provide Rasier NZ (or a Rasier NZ Affiliate) with written copies of all such licenses, permits, work entitlements, approvals, authority, registrations and certifications (including renewals) prior to and during your provision of any Transportation Services, and allow Rasier NZ (or a Rasier NZ Affiliate) to review any of this documentation on an ongoing basis (note that Rasier NZ may independently verify your documentation in any way Rasier NZ deems appropriate in its reasonable discretion). You must notify Rasier NZ immediately if you cease to hold any license, permit, work entitlements, approvals, authority, registration or certification or there are changes to the terms of any of those which would alter your ability to provide the

Transportation Services in accordance with applicable laws. Rasier NZ shall, upon request, be entitled to review such licenses, permits, work entitlements, approvals, authority, registrations and certifications from time to time. Your failure to meet any of the requirements in this clause or clause 6 shall constitute a material breach of this Agreement.

8. Fare calculation and Your Payment

8.1 You can charge a fare to Users for each instance of completed Transportation Services that you provide to a User that are obtained via the Uber Services ("**Fare**"). Rasier NZ will calculate a recommendation of the Fare that you can elect to charge Users ("**Fare Calculation**"). As at 1 December 2018, Rasier NZ determines the Fare Calculation as a base fare amount plus distance (as determined by Rasier NZ using location-based services enabled through your mobile device) and/or time amounts, as detailed at www.uber.com/cities for the applicable Territory. You can also charge the User for any applicable road, bridge, ferry, tunnel and airport charges and any other fees (including inner-city congestion, environmental or miscellaneous charges as reasonably determined by the Uber Services) ("**Tolls**"), taxes and/or fees incurred during the provision of Transportation Services, whether charged by a third party or Rasier NZ. Rasier NZ reserves the right to change the Fare Calculation at any time in Rasier NZ's discretion, Rasier NZ will provide you with notice in the event that any such change would result in a change in the recommended Fare. Continued use of the Uber Services after any such change shall constitute your consent to such change.

8.2 To facilitate collection of the Fare, Uber will accept initial payment from a User (and you authorise Uber to do so whether inside or outside New Zealand or via its Affiliates). Uber's role is solely to accept the Fare, applicable Tolls, and, depending on the region and/or if requested by you, applicable taxes and fees from the User. You agree that the User's payment to Uber or any Affiliate shall be considered the same as payment made directly by the User to you. If a User cancels their request for Transportation Services prior to your arrival, Uber or any Affiliate may charge that User a cancellation fee on your behalf, and a Service Fee will be payable to Rasier NZ.

8.3 The parties acknowledge and agree that as between you and Rasier NZ, the Fare Calculation is a recommended amount, and the primary purpose of the Fare Calculation is to act as the default Fare in the event you do not negotiate a different Fare. You shall always have the right to charge a Fare that is less than the pre-arranged Fare Calculation ("**Negotiated Fare**"). Uber or its Affiliate agrees to remit, or cause to be remitted, to you on at least a weekly basis, (a) the Fare less the applicable Service Fee and other fees charged by Rasier NZ; (b) the Tolls (excluding airport charges, if applicable); (c) any incentive payments made under clause 13; and (d) depending on the region, certain taxes and ancillary fees (where applicable). If you have separately agreed to any other amounts being deducted from your Fares (such as vehicle financing, lease payments, government fees and charges, etc), those amounts will be deducted before remittance to you, and Uber, at the direction of Rasier NZ, will determine the order of any such deductions from the Fare (as between you and the parties).

Rasier NZ reserves the right to adjust payment in relation to a particular Fare for reasons such as inefficient routes, failure to properly end a particular instance of Transportation Services in the Driver App, or technical error in the Uber Services. In more serious situations, such as fraud, charges for Transportation Services that were not provided or User complaints, Rasier NZ may cancel a Fare entirely or if the Fare has already been paid, require reimbursement of the Fare from you. Uber reserves the right, in its sole discretion, to seek reimbursement from you if Rasier NZ discovers payment processing errors and authorizes Uber to seek such reimbursement. Uber may obtain reimbursement of any amounts owed by you to Rasier NZ by deducting from future Fares owed to you, debiting your card on file or your bank account on record, or seeking reimbursement from you by any other lawful means. You authorise Uber or any Affiliate to use any or all of the above methods to seek reimbursement.

9. **Receipts.** As part of the Uber Services, Rasier NZ provides you with a system for delivering receipts to Users for Transportation Services rendered. Upon your completion of Transportation Services for a User, Rasier NZ prepares and issues a receipt to the User via email on your behalf. It includes a breakdown of amounts charged to the User for Transportation Services and certain information about you (including your name, contact information, photo and the route taken). Any corrections to a User's receipt for Transportation Services must be submitted to Rasier NZ in writing within 3 days after the completion of such Transportation Services. Absent such a notice, Rasier NZ shall not be liable for any mistakes in or corrections to the receipt or for recalculation or disbursement of the Fare.
10. **Service Fee.** In consideration of Rasier NZ's provision of the Uber Services to you, you agree to pay Rasier NZ a service fee on a per Transportation Services transaction basis, which as at 1 December 2018, is calculated as a percentage of the Fare Calculation ("**Service Fee**") (regardless of any Negotiated Fare). Rasier NZ will provide you with notice via email or via the Driver App, of the Service Fee that applies to each Transportation Service that you provide. You acknowledge that, unless regulations applicable to your Territory require otherwise, and unless otherwise stated, the Fare Calculation is inclusive of taxes (in particular GST), and Rasier NZ shall calculate the Service Fee on an amount equal to the Fare Calculation. You acknowledge and agree that Rasier NZ may, in its sole discretion: (i) adjust the Service Fee; or (ii) introduce a new model to determine the Service Fee payable by you. Rasier NZ will provide you with at least 14 days' notice in the event of an increase to the Service Fee under (i) above or the introduction of a new Service Fee model under (ii) above. If either of these occurs, you have the right to terminate the Agreement immediately, without notice. Continued use of the Uber Services after any such change in the Service Fee calculation shall constitute your consent to such change.
11. **No Additional Amounts.** You acknowledge and agree that, for the mutual benefit of the parties, through advertising and marketing, Rasier NZ, Uber and their Affiliates may seek to attract new Users and to increase existing Users' use of the Uber App. You acknowledge and agree that such advertising or marketing does not entitle you to any additional monetary amounts beyond the amounts expressly set forth in this Agreement.

12 Taxes.

12.1 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 Transportation Services as required by applicable law; and (b) provide Rasier NZ with all relevant tax information requested of you by Rasier NZ, Uber and/or each of their Affiliates (including confirmation of your Goods and Services Tax (GST) registration status, and a valid New Zealand GST registration number under which you provide Transportation Services, if obtaining such a valid 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 Transportation Services, including without limitation, income tax and GST. Notwithstanding anything to the contrary in this Agreement, Rasier NZ 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 Transportation Services and/or provide any of the relevant tax and other information you have provided pursuant to the foregoing requirements in this clause 12.1 directly to the applicable governmental tax authorities on your behalf or otherwise.

12.2 Unless expressly stated otherwise in this Agreement, all amounts payable or consideration to be provided under this Agreement by you to Rasier NZ are exclusive of GST. If GST is payable on any supply by Rasier NZ made under this Agreement, for which the consideration is not expressly stated to include GST, you agree to pay Rasier NZ 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 Rasier NZ includes GST that is payable by the representative member of Rasier NZ's GST group.

12.3 The parties agree that, for the purposes of the GST law, Rasier NZ supplies to you the Uber Services in sole consideration for the Service Fee. In addition, Uber supplies to you a licence to use the Driver App under clause 19 for no consideration.

13. **Incentives.** From time to time, Rasier NZ may make an incentive payment(s) to you as consideration for your satisfaction of certain conditions as determined by Rasier NZ 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 Rasier NZ's sole discretion, subject to the Conditions. Any tax payable on such incentive payment(s) is solely your responsibility.
14. **Other Fees.** You acknowledge and agree that Rasier NZ may, in its sole discretion, charge other fees in addition to the Service Fee. Rasier NZ will provide you with at least 14 days' notice before it implements any such fees. Your use of the Uber Services after the implementation of the new fees shall constitute your consent to Rasier NZ charging such fees. If Rasier NZ imposes or provides notice of an intention to impose a fee under this clause 14, you have the right to terminate the

Agreement immediately, without notice. There are no fees payable to Uber in connection with the Driver App and licence granted under clause 19.

15. **Devices.** You are responsible for the acquisition, cost and maintenance of your mobile device/s and any associated wireless data plans that you use to access the Driver App. Subject to this Agreement, Uber grants you a personal, non-exclusive, non-transferable, non-sublicensable user right to install and use the Driver App on your device solely for the purpose of providing Transportation Services. This license shall immediately terminate in the event that this Agreement terminates, your access to the Driver App is deactivated or you otherwise cease to provide Transportation Services using your mobile device, and you must delete the Driver App from your mobile device. You agree not to give the Driver App or any associated data to anyone else. You agree that using the Uber Services may consume very large amounts of data, and Rasier NZ and Uber recommends that your mobile device should only be used under a data plan with unlimited, or at least very high, data usage limits. Neither Rasier NZ, Uber, nor their Affiliates, shall be responsible or liable for any fees, costs, or overage charges associated with any data plan.
16. **Term & Termination.** This Agreement shall commence on the date that the Agreement is executed by you (electronically or otherwise) and will continue until terminated by you, Rasier NZ or Uber, which any party can do (a) without cause at any time on 30 days' prior written notice to the other parties; (b) immediately, without notice, for any other party's material breach of this Agreement; or (c) immediately, without notice, in the event of the insolvency or bankruptcy of any other party, or upon such other party's filing or submission of request for suspension of payment (or similar action or event) against the terminating party. In addition, Rasier NZ may restrict you from using the Uber Services and/or Uber may deactivate or otherwise restrict you from accessing or using the Driver ID and/or Driver App immediately, without notice, in the event you no longer qualify, under applicable law or the standards and policies of Rasier NZ, Uber and their Affiliates, to provide Transportation Services or to operate the vehicle, or as otherwise set out in this Agreement.
17. **Effect of termination.** Upon termination of the Agreement, you shall immediately delete and fully remove the Driver App from your mobile device(s). Outstanding payment obligations and clauses 3, 4, 5, 11, 12, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29, 32, 33, 34 and 35 shall survive any such termination.
18. **Privacy.** Your personal information will be collected, used and shared in accordance with the Uber Privacy Policy (located at privacy.uber.com/policy).
19. **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 Driver App in connection with the provision of the Uber Services by Rasier NZ solely for the purpose of providing Transportation Services to Users and tracking resulting Fares and fees. Uber, its Affiliates and respective licensors reserve all rights not expressly granted in this Agreement. The Driver App and all data related to the access and use of the Uber Services (including all intellectual property rights in all of the foregoing) are and remain the property of Uber, its Affiliates or respective licensors. You shall not improperly use the Uber Services or Driver 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's or its Affiliates' names, logos or marks. You shall not copy, modify, distribute, sell or lease any part of the Driver App, Uber Services or related data, nor shall you reverse engineer or attempt to extract the source code of Uber software, except if allowed by law.

20. **Confidentiality.** This Agreement and any information provided by Uber, Rasier NZ or their Affiliate to you, which Uber, Rasier NZ or their Affiliate designates as confidential or which you should reasonably know should be treated as confidential, should be treated accordingly.

21. Insurance & Accidents.

21.1 You agree to maintain during the term of this Agreement motor vehicle liability insurance on all vehicles which you operate at insurance levels that satisfy the minimum requirements to operate a private passenger vehicle on public roads within the Territory, as well as any other minimum motor vehicle liability insurance cover which Rasier NZ requests you hold. Where applicable, you agree to provide Rasier NZ 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 21.1 upon request. Furthermore, you must provide Rasier NZ with written notice of cancellation of any insurance policy required by Rasier NZ. Rasier NZ shall have no right to control your selection or maintenance of your policy. You must be a named insured or individually rated driver, for which a premium is charged, on the insurance policy required in this paragraph 21.1 at all times. You understand and acknowledge that your 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 while you provide for any Transportation 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 Rasier NZ's or Uber's, to resolve them with your insurer(s). Rasier NZ may maintain during the term of this Agreement insurance related to your provision of Transportation Services as determined by Rasier NZ in its reasonable discretion, provided that Rasier NZ and its Affiliates are not required to provide you with any specific insurance coverage for any loss to you or your vehicle. Should Rasier NZ procure insurance related to your provision of Transportation Services, Rasier NZ may cancel such coverage at its sole discretion at any time. You are required to promptly notify Rasier NZ and relevant authorities of any accidents that occur while providing Transportation Services and to cooperate and provide all necessary information.

21.2 In relation to the Transportation Services, you agree that you are not an employee, or a worker or a deemed worker for the purposes of any workers compensation laws or occupational accident injury insurance and therefore acknowledge that Rasier NZ and/or Uber do not, and are not required to,

maintain or provide you with workers' compensation insurance or maintain 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 local equivalent) as required by any applicable law in the Territory (provided that the foregoing shall have no impact on the mutual understanding between you and Rasier NZ and Uber that you are a self-employed individual (including from a labour and social security perspective)) and otherwise comply with all 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.

22. **Indemnity.** You shall indemnify, defend (at Rasier NZ's and Uber's option) and hold harmless Rasier NZ, Uber and their Affiliates and each of their respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, losses, costs, 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, regulators and governmental authorities) directly or indirectly related to your provision of Transportation Services or use of the Uber Services ("**Losses**"). Your liability under this clause 22 shall be reduced proportionately if, and to the extent that, Rasier NZ or Uber directly caused or directly contributed to any such Losses.

23. **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 Rasier NZ, Uber and their Affiliates from all tax liabilities, duties, levies, claims and penalties that may be imposed on you or on Rasier NZ, Uber and/or their Affiliates as a result of your failure to comply with any of your tax obligations, or for providing false information requested of you under clause 12.1. 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 intention and meaning of the parties, should be held to be an employment agreement between Rasier NZ or Uber and you by the Dutch or New Zealand taxation or fiscal or social security authority or the taxation, fiscal or social security authority of any other country or labour authority. The indemnity set out in this clause 23, 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 Rasier NZ, Uber or an Affiliate of Rasier NZ or Uber, applies only to that proportion of Rasier NZ's or Uber's liability that directly or indirectly relates to or arises from you holding yourself out to be an employee of Rasier NZ or Uber or any of their Affiliates, or any other act or omission by you that is not expressly authorised by Rasier NZ or Uber and would reasonably suggest to a third party that you are an employee of Rasier NZ, Uber or any of their Affiliates.

24. **Representations and warranties.** 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 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 authorisations necessary to provide Transportation Services under this Agreement, and passenger transportation services to third parties in the Territory generally.

25. **Disclaimer.** This clause 25 applies only 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 New Zealand consumer law. Rasier NZ, Uber and their Affiliates (as applicable) provide, and you accept, the Uber Services and Driver App on an "as is" and "as available" basis, and do not represent, warrant or guarantee that the Uber Services or Driver App will be uninterrupted or error free or will result in any requests for Transportation Services. Rasier NZ, Uber and their Affiliates function as on demand lead generation and related service providers only and Rasier NZ, Uber and their Affiliates make no representations, warranties or guarantees as to the actions or inactions of the Users who may request or receive Transportation Services from you, and Rasier NZ, Uber and their Affiliates do not screen or otherwise evaluate Users. Notwithstanding the Fare collection facilitation provided by Uber (or its Affiliates), Rasier NZ, Uber and each of their Affiliates expressly disclaim all liability for any act or omission of you, any User or other third party.

26. **No Service Guarantee.** This clause 26 applies only 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 New Zealand consumer law. Rasier NZ, Uber and their Affiliates do not guarantee the availability or uptime of the Uber Services or Driver App. You acknowledge and agree that the Uber Services or Driver App may be unavailable at any time and for any reason (e.g., due to scheduled maintenance or network failure). Further, the Uber Services or Driver App may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications and Rasier NZ, Uber and their Affiliates are not responsible for any delays, delivery failures or other damages, liabilities or losses resulting from such problems.

27. **Limitation of Liability.** This clause 27 applies only 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 New Zealand consumer law. Rasier NZ, Uber and each of their Affiliates shall not be liable under or related to this Agreement for any of the following, whether based on contract, tort or otherwise, even if a party has been advised of the possibility of such damages: (i) any incidental, punitive, special, exemplary, consequential, or other indirect damages of any type or kind; or (ii) your or any third party's property damage, or loss or inaccuracy of data, or loss of business, revenue, profits, use or other economic advantage. Except for Rasier NZ's (or an Affiliate of Rasier NZ's) obligation to remit amounts owed to you pursuant to clause 8 above, but subject to any applicable limitations or other provisions contained in [this] Agreement, in no event shall the liability of Rasier NZ, Uber and/or any of their Affiliates under this Agreement exceed the amount of Service Fees actually paid to or due to Rasier NZ in the 6 months immediately prior the event giving rise to such claim. You acknowledge and agree that any and all claims you have or

purport to have against Rasier NZ, Uber and/or their Affiliates should be notified to Rasier NZ, Uber and/or their 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.

28. Relationship.

28.1 Rasier NZ and Uber are providing the limited payment services set out in clause 1 above, 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 or insurance perspective), joint venture, partnership or agency relationship. You have no authority to bind Rasier NZ, Uber and/or their Affiliates, or hold yourself out as an employee, independent contractor, worker, agent or authorized representative of Rasier NZ, Uber and/or their Affiliates. Uber's facilitation of Fare payments from Users to you does not alter this relationship at all.

28.2 Where, by implication of mandatory law or otherwise, you may be deemed an employee, worker, agent or representative of Rasier NZ, Uber or any of their Affiliates, you undertake and agree to indemnify, defend (at Rasier NZ's, Uber's or the applicable Affiliate's option) and hold Rasier NZ, Uber and any of their 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 28.2, 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 Rasier NZ, Uber or any of their Affiliates, applies only to that proportion of Rasier NZ's or Uber's liability that directly or indirectly relates to you holding yourself out to be an employee of Rasier NZ or Uber or any of their Affiliates, or any other act or omission by you that is not expressly authorised by Rasier NZ or Uber and would reasonably suggest to a third party that you are an employee of Rasier NZ or Uber or any of their Affiliates. You expressly agree that where required or implied by applicable

law or otherwise, you may be deemed an employee, agent or representative of Rasier NZ, Uber or an Affiliate of Rasier NZ or Uber, any payments made to you will be taken to be inclusive of (i) superannuation contribution amounts; and (ii) amounts equivalent to all taxes (including but not limited to income taxes) payable by you in respect of those payments, in each case that Rasier NZ or Uber (or any of their Affiliates) may otherwise be required to pay under applicable law.

29. **General.** Invalidity of any provision in this Agreement does not affect the rest of this Agreement. Each of Rasier NZ and Uber may assign or transfer this Agreement or any or all of their respective rights or obligations hereunder, in whole or in part, without your prior consent (you may not, however, as the Agreement needs to remain with you). Should Rasier NZ or Uber do so, you have the right to terminate this Agreement immediately, without prior notice. Each of Rasier NZ and Uber may subcontract its rights and obligations under this Agreement. This Agreement, including the recitals, terms contained in any hyperlinks referenced in this Agreement and all Addenda and 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 on this subject matter. In this Agreement, “including” and “include” mean “including, but not limited to.”

30. **Modification.** Rasier NZ and Uber 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. Rasier NZ and Uber reserve the right to modify any policies or information referenced at hyperlinks from this Agreement from time to time. Rasier NZ or Uber will provide you with at least 14 days’ notice in the event of a material change to any clause of the Agreement, provided that in such event you shall have the right to terminate the Agreement immediately upon receiving notice from Rasier NZ or Uber. You hereby acknowledge and agree that, by using the Uber Services, or the Driver App, you are bound by any future amendments and additions to this Agreement, information referenced at hyperlinks herein, or documents incorporated herein, including with respect to Fare Calculations. Continued use of the Uber Services or Driver App after any such changes shall constitute your consent to such changes.
31. **Supplemental Terms and Addenda.** 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**”), Addenda to this Agreement may also apply, setting forth additional Territory specific and/or service-specific terms, as made available and as updated by Uber or Rasier NZ from time to time (individually “**Addendum**”). You may be presented with certain Supplemental Terms from time to time and/ or Addenda which are in addition to, and shall be deemed a part of, this Agreement. Rasier NZ or Uber will provide you with 14 days’ notice in the event that it adds or modifies Supplemental Terms and Addenda in a manner that it reasonably considers 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 Rasier NZ. Supplemental Terms and Addenda shall prevail over this Agreement in the event of a conflict.
32. **No Third Party Beneficiaries except for Rasier NZ’s and Uber’s Affiliates.** You acknowledge that there are no third party beneficiaries to this Agreement except for Rasier NZ’s and Uber’s Affiliates. Nothing contained in this Agreement is intended to or shall be interpreted to create any third party beneficiary claims and the provisions of [sections 10 to 20 of the Contract and Commercial Law Act 2017](#) shall not apply to this Agreement (to the extent permitted by law), except with respect to Rasier NZ’s and Uber’s Affiliates. For the purposes of this Agreement “Affiliates” 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 all of its income or the majority of its assets on winding up.
33. **Notices.** Any notice delivered by Rasier NZ or Uber to you under this Agreement will be delivered by email to the email address associated with your

account or by posting on the Driver App or the online portal available to you on the Uber Services. Any notice delivered by you to Rasier NZ or Uber under this Agreement must be delivered by contacting Rasier NZ or Uber at t.uber.com/partner-contact. Additional Territory-specific notices may be required from time to time.

34. **Arbitration.** 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: (i) the disclosure to the third party is reasonably required in the context of conducting the mediation or arbitration proceedings; and (ii) 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 New Zealand consumer law, that cannot be lawfully limited or excluded.

35. **Governing Law and Jurisdiction.** Except as otherwise set forth above, this Agreement shall be exclusively governed by and construed in accordance with the laws of New Zealand, excluding its rules on conflicts of laws. The Vienna Convention on the International Sale of Goods of 1980 (CISG) shall not apply.

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 Rasier NZ and Uber.

Your signature: Name:_Date:

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URL: <http://www.nzlii.org/nz/cases/NZEmpC/2020/230.html>