

1 JON M. ICHINAGA (#137290)
Chief Counsel
2 MARI MAYEDA (#110947)
Associate Chief Counsel
3 JONI CARRASCO (#287679)
Staff Counsel
4 IRINA TRASOVAN (#290372)
Staff Counsel
5 DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
6 320 W. 4th Street, Suite 1000
Los Angeles, CA 90013
7 Telephone: (213) 439-6799
Facsimile: (888) 382-5293
8 Attorneys for the Department

TERRY E. SANCHEZ (#101318)
HAILYN J. CHEN (#237436)
MUNGER, TOLLES & OLSON LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Telephone: (213) 683-9100
Facsimile: (213) 683-5179

JONATHAN H. BLAVIN (#230269)
JOSHUA PATASHNIK (#295120)
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105
Telephone: (415) 512-4000
Facsimile: (415) 644-6972

Attorneys for Respondent Airbnb, Inc.

11 **BEFORE THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
12 **OF THE STATE OF CALIFORNIA**

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

16 Complainant,)

17 v.)

18 AIRBNB, INC., a Delaware Corporation,)

19 Respondent.)
20)
21)

) Case Nos. 574743-231889
574743-231624

VOLUNTARY AGREEMENT

1 **I. PARTIES**

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

9 Racial discrimination in housing is contrary to public policy and harms not only African
10 Americans and other protected persons denied equal access to housing opportunities, but also the
11 public in general and the State of California. (Gov. Code, § 12920) [“the practice of discrimination
12 because of race ... in housing accommodations is declared to be against public policy”].) Pursuant
13 to its statutory authorization, the DFEH opened an investigation of administrative complaints of
14 race discrimination in housing or public accommodations through the platform operated by
15 Respondent Airbnb, Inc. (Airbnb) in 2016. These administrative complaints (DFEH Nos. 574743-
16 231624; 574743-231889) (Director’s Complaints) were filed as authorized by Government Code,
17 section 12961 by the Director of the DFEH, Kevin Kish, alleging potential harm to a group of
18 persons in the State of California.

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

1 that forbids its users from discrimination on the basis of race and other protected factors.

2 **II. RESPECTIVE POSITIONS OF THE PARTIES**

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

5 **DFEH's Position:**

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

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

21 In the study *Racial Discrimination in the Sharing Economy: Evidence from a Field*
22 *Experiment*, researchers at the Harvard Business School inquired about the availability of roughly
23 6,400 listings on Airbnb across five cities, including Los Angeles, California. The researchers
24 created guest accounts that differed by name, but were otherwise identical. Drawing on the
25 experiment models used for investigating racial discrimination in employment, the study utilized
26 two sets of names for the profiles—one distinctively African American and the other distinctively
27 White.

1 The researchers found statistically significant discrimination by some Hosts using the
2 Airbnb platform against African American Guests, including Guests in California. Specifically,
3 African American Guests received a positive response from hosts roughly 42% of the time,
4 compared to roughly 50% for White Guests. The study’s authors explained that this 8-percentage
5 point differential for African American Guests is statistically significant.

6 Pursuant to section 12955.8 of the Government Code “an act or a failure to act,” which has
7 the intent of discriminating, or which is unintentional but results in discrimination, is a violation of
8 FEHA. FEHA expressly provides for liability for “an act or failure to act” which results in a
9 “discriminatory effect, regardless of intent” under a disparate impact theory based on protected
10 classifications of people. There are no Fair Employment and Housing Commission decisions
11 addressing the “failure to act” language of 12955.8. Earlier decisions regarding prevention of
12 housing discrimination predate the January 1, 1994 effective date of section 12955.8, and to the
13 extent those earlier decisions might be inconsistent, they are superseded and overruled by
14 subsequent amendment of the statute. The DFEH disagrees with Airbnb’s analysis of section
15 12955.8.

16 The Unruh Act provides that “[a]ll persons within the jurisdiction of this state are free and
17 equal, and no matter what their...race...are entitled to the full and equal accommodations,
18 advantages, facilities, privileges, or services in all business establishments of any kind whatsoever.”
19 (Civ. Code, § 51.) Liability for a violation of the Unruh Act attaches to “[w]hoever denies, aids or
20 incites a denial, or makes any discrimination or distinction.” (Civ. Code, § 52.) FEHA makes it
21 unlawful to “deny, aid, incite, or conspire in the denial of rights” protected by the Unruh Act.
22 (Gov. Code, § 12948.) The Unruh Act makes illegal an intentional failure to prevent
23 discrimination. Thus, “an inadequate response to complaints of [discrimination]” can violate the
24 Unruh Act. (*Nicole M. By and Through Jacqueline M. v. Martinez Unified School Dist.* (N.D. Cal.
25 1997) 964 F. Supp. 1369, 1389.) If the facts in the study cited above are taken as true and accurate,
26 Airbnb and some of its Hosts may have violated these statutes and would face liability for
27 violations within the statutory period.

1 **Airbnb's Position:**

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

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

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

20 Airbnb developed this plan to affirmatively address the misuse of its platform by third
21 parties even though, as a hosting platform that provides its services on a neutral basis to third-party
22 users, Airbnb itself cannot be held directly or secondarily liable for the third-party users' allegedly
23 discriminatory conduct. This is true for several reasons. Section 230 of the Communications
24 Decency Act, 47 U.S.C. § 230, immunizes Airbnb against any claim that its publication of rental
25 listings gives rise to liability under the FEHA or the Unruh Act. Moreover, Airbnb has not engaged
26 in any conduct that violates either of those two statutes. It has not acted with discriminatory intent,
27 which is an essential element of a claim under the Unruh Act or a disparate-treatment claim under

1 the FEHA. *See Koebke v. Bernardo Heights Country Club*, 36 Cal.4th 824, 853-54 (2005). Nor
2 have Airbnb's actions resulted in any disparate impact in the provision of Airbnb's services to its
3 users: any discriminatory effects some users may suffer (which, again, Airbnb strongly condemns
4 and is taking voluntary steps to combat) is caused instead by the conduct of certain Hosts.

5 Airbnb also is not liable on the theory that it has unlawfully failed to prevent discrimination.
6 Airbnb has not acted with the requisite discriminatory intent for such a theory, and administrative
7 decisions of the Fair Employment and Housing Commission have recognized that, outside of the
8 employment context, neither the FEHA nor the Unruh Act impose an affirmative obligation to
9 prevent, investigate, and/or remedy discrimination. Unlike in the employment context, *see* Gov't
10 Code §§ 12940(j)(1), (k), the FEHA contains no housing-related provision imposing liability for
11 failure to prevent discrimination by others. *See In re Department v. Franks*, FEHC Dec. No. 93-09,
12 1993 WL 726831, at *6-7 (FEHC Nov. 18, 1993) (FEHA and Unruh Act); *see also In re*
13 *Department v. University of California, Berkeley*, FEHC Dec. No. 93-08, 1993 WL 726830, at *17
14 (FEHC Nov. 18, 1993) (Unruh Act).

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

24 Although Airbnb cannot be held legally liable for the conduct of its third-party users,
25 Airbnb nevertheless is committed to effectively address the existence of discrimination by users of
26 its platform, as such discrimination is wrong and in direct conflict with Airbnb's business mission.

27

1 In that regard, Airbnb and the DFEH share a common purpose, and in furtherance of this common
2 purpose, the Parties enter into this Voluntary Agreement.

3 **III. GENERAL PROVISIONS**

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

- 6 a. Airbnb's cooperation with the DFEH and its investigation;
- 7 b. Airbnb's efforts independently and on its own initiative, consistent with its publicly
8 stated mission to promote belonging across cultures, to fight unlawful discrimination
9 on the Airbnb platform;
- 10 c. The DFEH's role as the state agency charged with enforcing California's civil rights
11 laws, including protecting the people of California from unlawful discrimination in
12 housing and public accommodations;
- 13 d. The Parties' desire to work together cooperatively through their shared mission to
14 address discrimination on the Airbnb platform;
- 15 e. The steps already taken by Airbnb proactively to research and create measures to
16 detect, monitor, and prevent discrimination by third parties using its platform;
- 17 f. The voluntary initial steps that Airbnb has outlined on its own to combat the
18 problem and commitment to working together to solve it.
- 19 g. The methodologically sophisticated and substantial data studied independently and
20 internally by Airbnb and provided cooperatively to the DFEH;
- 21 h. The Parties' recognition of the value and benefit of good cooperation between a
22 governmental agency and the business community to mutually address solutions to
23 discrimination.

24 Thus, the Parties enter into this Voluntary Agreement.

25 2. **Nature of Agreement:** The Parties agree that, for the duration of this agreement,
26 the DFEH will not file a fair housing or Unruh Act complaint against Airbnb based on the facts and
27 allegations giving rise to the Director's Complaints, and Airbnb will abide by the provisions of this

1 agreement. In evaluating Airbnb's compliance with the provisions of this Agreement, Airbnb's
2 actions prior to the execution of this Agreement shall count toward Airbnb's satisfaction of the
3 goals and obligations set forth in this Agreement.

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

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

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

23 6. **Need for Flexibility:** As a general principle, the Parties recognize and agree that
24 there is a need for Respondent to have flexibility in devising and implementing strategies (as
25 Airbnb already has begun doing on its own initiative) to minimize discrimination by users of
26 Airbnb's Platform. Combating discrimination on this Platform may present new and unique
27 challenges and experimentation may help assess which strategies work best. As reflected in the

1 operative provisions of this Agreement, the Parties agree that in order to combat discrimination on
2 Airbnb's platform, the company will commit to achieving certain goals and reporting data sufficient
3 to determine whether those goals are being met.

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

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

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

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

24 11. **Non-Confidentiality:** It is understood that after this Agreement has been approved
25 by the Director or his designee, this Agreement shall become a public document. There is no
26 limitation imposed by this Agreement on the right to publicize, comment on, or disclose the
27 Agreement or its contents.

1 12. **Enforcement by Superior Court:** The Parties agree the Los Angeles County
2 Superior Court shall have jurisdiction to enforce this Agreement and/or resolve any dispute arising
3 out of this Agreement. In the event of a failure by any party to perform in a timely manner any act
4 required by this Agreement, or to comply with the Agreement, any party may move the Court to
5 enforce the Agreement consistent with applicable law.

6 **IV. RELIEF IN THE PUBLIC INTEREST**

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

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

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

17 **A. REVISED DISCRIMINATION POLICY**

18 16. The Parties recognize that Airbnb has recently implemented a revised
19 Nondiscrimination Policy, which was attached as Appendix A to the report entitled "Airbnb's Work
20 to Fight Discrimination and Build Inclusion," dated September 8, 2016 (the "September 2016
21 Report"). Airbnb has provided notice of the revised Nondiscrimination Policy on its website and
22 by attaching it to the September 2016 Report. The Nondiscrimination Policy shall be applied
23 equally to all Guests and Hosts irrespective of sex, race, color, religion, gender, gender identity,
24 gender expression, sexual orientation, ancestry, national origin, disability, medical condition,
25 genetic information, marital status, familial status, source of income, citizenship, primary language,
26 or immigration status, except as permitted by statute. The policy shall be prominently displayed on
27 Airbnb's website and mobile application. Airbnb shall develop policies and procedures requiring

1 users to acknowledge receipt and understanding of the policy with the goal of developing policies
2 and practices, which are measurable and effective to prevent discrimination. A copy of the revised
3 Nondiscrimination Policy is attached as APPENDIX A to this Agreement.

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

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

13 **B. INTERNAL FAIR HOUSING AND DISCRIMINATION TRAINING**

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

26 20. Prior to or within six months of the effective date of this Agreement, all active
27 Airbnb customer support employees (CX), as well as employees of third parties or independent

1 contractors who perform functions akin to Airbnb CX employees who review Airbnb Host and
2 Guest complaints, will receive training on how to recognize a complaint of discrimination and
3 training on proper methods for referring discrimination complaints to the Airbnb Tax & Legal unit
4 which will assume responsibility for investigating and responding to complaints of discrimination
5 (for purposes of this agreement, the “Airbnb anti-discrimination team”). Airbnb has recently added
6 a drop-down menu option for user complaints indicating that they pertain to alleged discrimination,
7 which has made it easier to identify such complaints. However, CX employees still play an
8 important role in ensuring that all such complaints are referred to the Airbnb anti-discrimination
9 team.

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

23 22. The minimum training requirements shall be as follows:

- 24 a. Acceptable modes of delivery include in-person in a classroom, by video, on-
25 line as a live webinar, and/or as a self-teaching on-line module;
- 26 b. Training shall include realistic scenarios or exercises to ensure that the
27 trainees have paid attention, have absorbed the material, and can effectively apply it

1 to real life situations. Perfunctory training in which the policy statement is simply
2 read to the trainees will not suffice; and

3 c. Where a CX employee, including a member of Airbnb's anti-discrimination
4 team, displays unsatisfactory job performance relating to handling complaints of
5 discrimination, Airbnb will take appropriate steps (including, where necessary,
6 additional training or other actions) to ensure that such unsatisfactory job
7 performance does not recur.

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

12 **C. DISCRIMINATION COMPLAINTS – PROCESSING AND INVESTIGATION**

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

18 25. In order to prevent discrimination, to underscore the importance to Respondent of
19 addressing complaints of discrimination, and to ensure accountability, the unit investigating
20 complaints of discrimination will provide a report, at least every six months, to the General Counsel
21 of Airbnb and, subject to redactions based on any applicable privileges and where required by law,
22 to the DFEH. Airbnb will not refuse to provide this report to the DFEH on the ground that it
23 contains information for which a subpoena is required. This report will summarize, in appropriate
24 form, the complaints received by Airbnb regarding alleged discrimination on the basis of race or
25 national origin involving California Hosts by users of Airbnb's platform, as well as the company's
26 response to these complaints. The report will provide updates on the status of the company's
27 efforts to combat discrimination by users of Airbnb's platform, as discussed in this Agreement and

1 in the September 2016 Report. For the duration of this Agreement, a summary of the activities of
2 this program shall be presented at least annually to the Chief Executive Officer.

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

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

9 **D. FAIR HOUSING AND DISCRIMINATION TRAINING FOR USERS**

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

13 **E. INSTANT BOOK AND INCREASING BOOKING PERCENTAGES**

14 29. Airbnb shall study and explore possible changes to increase usage of the “Instant
15 Book” feature, which is anticipated to have the effect of preventing discrimination. Instant Book
16 listings do not require approval from the Host before they can be booked. This shall include an
17 obligation to consider and study revisions to the current Instant Book feature to prevent
18 discrimination prior to or within 60 days of the execution of this Voluntary Agreement. Airbnb has
19 already reached its publicly stated goal of 1 million bookings available through Instant Book by
20 January 2017.

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

25 **F. RECORDKEEPING**

26 31. For the duration of the Agreement, Airbnb shall maintain records pertaining to its
27 obligations under this Agreement. The DFEH shall have the right to review and copy non-

1 privileged records upon request. Airbnb reserves the right to object on the basis that the request
2 poses an unreasonable burden, in which case the Parties will meet and confer in good faith to
3 resolve the dispute. The Parties agree that the Confidentiality Agreement already in place in this
4 matter will be applicable to any documents produced in accordance with this paragraph.

5 **G. PROGRESSIVE DISCIPLINE FOR HOSTS**

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

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

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

26 \\\

27 \\\

1 **H. REJECTION OF GUESTS WHERE HOST UNIT UNAVAILABLE**

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

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

16 **I. PERMANENT FULL TIME PRODUCT TEAM**

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

21 **J. TESTING**

22 38. The Parties agree that the DFEH and/or its contractor may conduct fair housing
23 testing on California Hosts who have been the subject of one or more discrimination complaints
24 and have three or more listings on Airbnb's platform. Airbnb shall not interfere with the creation
25 by the DFEH and/or its contractor of accounts and profiles to be used for testing, and will not
26 intentionally remove any such accounts or profiles from its platform even though such accounts and
27 profiles may not be in compliance with Airbnb's Terms of Service. To the extent the DFEH and/or

1 its contractor may have logistical or technical questions arising from their use of Airbnb's platform
2 for testing purposes, Airbnb will make a good-faith effort to answer such questions.

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

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

18 **K. REPORTING ON DATA**

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

- 20 a. the average acceptance rate for Caucasian, African-American, Hispanic and Asian
21 American Guests (the "Relative Acceptance Rate");
- 22 b. the frequency with which California Hosts reject Guests based on claimed
23 unavailability;
- 24 c. the number of discrimination complaints raised with Airbnb by Guests who were
25 rejected by California Hosts; and
- 26 d. the number of California Hosts who are de-listed from the platform based on the
27 Host's discriminatory or potentially discriminatory conduct.

1 42. Airbnb shall, within 180 days of the execution of this Voluntary Agreement, and
2 every six months thereafter for the duration of this agreement, provide the DFEH with a report
3 containing the data described above, subject to redactions based on any applicable privileges and
4 where required by law. Airbnb will also provide to the DFEH a written report analyzing changes in
5 the Relative Acceptance Rate over the relevant time period. Airbnb will not refuse to provide this
6 report to the DFEH on the ground that it contains information for which a subpoena is required. In
7 response to a lawful subpoena, Airbnb shall provide to the DFEH any complaints of discrimination
8 made by Guests against California Hosts. Upon reasonable request, Airbnb shall provide the DFEH
9 data underlying such reports.

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

15 **L. ALTERNATIVES TO CURRENT USE OF GUEST PHOTOS AND NAMES**

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

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

24 45. No later than 18 months after the date of the Agreement, Airbnb shall conduct
25 studies, similar to internal studies conducted on July 20, 2016 and September 6, 2016, sufficient to
26 provide a measurement to assist the Parties in assessing the efficacy of Airbnb's efforts to prevent
27

1 discrimination. The Parties agree to meet and confer following the studies to explore what steps, if
2 any, might be appropriate to assist in the effort to prevent discrimination.

3 **N. COMPLIANCE RESPONSIBILITY**

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

10 **O. DISPUTE RESOLUTION PROCEDURE**

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

17 **P. ATTORNEYS' FEES AND COSTS**

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

23 \\\

24 \\\

25 \\\

26 \\\

27 \\\

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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.

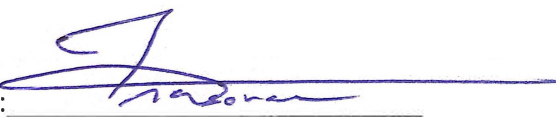
DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
320 West Fourth Street
Suite 1000
Los Angeles, California 90013

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

AGREED:

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

AIRBNB, INC.

By: 

By: 

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

ROB CHESNUT
General Counsel

Date: 4/19/2017

Date: 4/19/2017