

EFFECTIVE FROM FEBRUARY 7, 2018

VERSION COMMENCEMENT DATE: 1 FEBRUARY 2019

By clicking on the "I accept" button on this electronic contract, the Parties agree to be bound by these Customer Terms along with the Exhibit attached to these Customer Terms. In particular, You consent to OLA undertaking the following activities in accordance with the Privacy Policy and the Privacy Collection Statement:

obtain personal information about You from third parties (such as payment processors, credit agencies and organisations engaged to perform identification verification and background checks);

sending direct marketing and other similar communications (including commercial electronic communications) to You, until such time as You request Us not to do so (using the opt-out means We provide); and

disclosing Your personal information to Our third party service providers, related entities and other entities to whom We regularly disclose personal information including regulatory authorities, enforcement agencies and marketing agencies and other third parties as contemplated by the Privacy Policy or Privacy Collection Statement. Some recipients of the personal information may be located overseas.

### **CUSTOMER TERMS**

BY CLICKING ON THE "I ACCEPT" BUTTON, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THESE CUSTOMER TERMS INCLUDING ITS EXHIBITS (COLLECTIVELY, THESE "**CUSTOMER TERMS**").

PLEASE ENSURE THAT YOU READ AND UNDERSTAND ALL OF THESE CUSTOMER TERMS BEFORE YOU START USING THE APPLICATION, AS YOU WILL BE BOUND BY THESE CUSTOMER TERMS WHEN YOU CLICK "I ACCEPT".

IF YOU DO NOT AGREE WITH ANY OF THESE CUSTOMER TERMS, YOU MUST IMMEDIATELY CEASE ACCESSING AND/OR USING THE APPLICATION OR THE SERVICES BEING PROVIDED UNDER THESE CUSTOMER TERMS. YOUR ACCEPTANCE OF THESE CUSTOMER TERMS WILL OPERATE AS A BINDING AGREEMENT BETWEEN YOU AND US IN RESPECT OF YOUR USE OF THE APPLICATION AND SERVICES.

### **PARTIES**

These Customer Terms are between **You** and **Ola New Zealand Global Ltd (registered company no. 6702998) ("OLA")**, each a "**Party**" and collectively the "**Parties**".

### **BACKGROUND**

OLA either owns or is a licensed operator of the Application and the Services, which provide an online booking platform facilitating the provision of Rides by Drivers (and associated payment collection). We are therefore an intermediary providing an online platform for You and a Driver to enter into a contract for the Driver's provision of a Ride to You.

These Customer Terms apply to Your access to, and use of, the Application (whether through a computer, mobile phone or other electronic device), and the Services and all information, recommendations and other products and services provided to You on or through the Application.

### **THE PARTIES AGREE AS FOLLOWS:**

#### **1. DEFINITIONS AND INTERPRETATION**

Unless the context requires otherwise, capitalised terms in these Customer Terms have the following meaning:

"**Account**" means the account created by You on the Application for accessing the Services.

"**Additional Fee**" means any toll, duty, taxes, levies or similar fees or charges that are not included in the Fare but are payable by the Customer to any third party (including government agencies and regulatory authorities) under any Applicable Laws in connection with the Services.

"**Applicable Laws**" means (whether in the New Zealand or any other relevant jurisdiction) all laws, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, statutory rules of an industry body, statutory and mandatory codes or guidelines or the like, writs, orders, injunctions, judgments and New Zealand generally accepted accounting principles applicable from time to time.

"**Application**" means such features of the "Olacabs" mobile application or other programs, software, mobile

applications owned (or licensed to and controlled) by OLA, and other URLs as may be specified by OLA from time to time. The Application includes the electronic interface where Your Account is accessible to You, the login credentials (user ID and password) for which will be provided by OLA to You.

"**Booking Confirmation**" has the meaning set out in clause 5.1.

"**Business Day**" means any day excluding a Saturday, Sunday or public holiday in Auckland, Wellington or Christchurch.

"**Cancellation Fee**" means the amount of \$10.00 (inclusive of GST) payable by You as a result of You cancelling a Ride in accordance with clause 7 (as such amount may be amended by Us in accordance with clause 20).

"**Card Details**" has the meaning set out in clause 6.4.

"**Convenience Fee**" means the amount payable by You (inclusive of GST) for accessing the Services, for each booking You make on the Application, as determined by Us and notified to You from time to time through the Application.

"**Device**" has the meaning set out in clause 3.1(iii).

"**Driver**" means the individual driver (or operator that provides taxis, commercial passenger vehicles, ride share vehicles and the like) who is registered with Us and operates the Vehicle.

"**Eligibility Requirements**" has the meaning set out in clause 3.1(i).

"**Fare**" means the amount specified on the Application (inclusive of GST) payable for the specific Ride provided to You by a Driver.

"**Force Majeure**" has the meaning set out in clause 14.1. "**OLA**" has the meaning given in the "Parties" section on the front page of these Customer Terms.

"**OLA IP**" has the meaning set out in clause 11.1.

"**Payment Processor**" has the meaning set out in clause 6.3.

"**Privacy Policy**" means Ola's then current privacy policy available at <https://www.olacabs.com/info/faqs#NZprivacyPolicy> as amended by Us from time to time in accordance with clause 20.

"**Privacy Collection Statement**" means the Annexure to these Customer Terms, as amended by Us from time to time in accordance with clause 20.

"**Registration Data**" means Your name, email address, telephone number and other information (including personal information) You provide to Us for registering on the Application.

"**Ride**" means the travel in the Vehicle by You facilitated through the Application.

"**Services**" means the technology services We provide which facilitate Rides and other products and services accessed through the Application within New Zealand.

"**Total Ride Fee**" means the Fare, the Convenience Fee, the Cancellation Fee and/or any Additional Fee (as applicable) specified on the Application.

"**Vehicle**" means a motor vehicle, owned or operated by the Driver, for the carriage of passengers.

"**We / Us / Our**" means OLA.

"**You / Your**" means you, the customer of OLA and user of the Services. "**Your**

**Content**" has the meaning given in clause 11.4.

## 2. **INTERPRETATION**

Unless the context requires otherwise, in these Customer Terms:

- (i) the singular includes the plural and vice versa;
- (ii) the words 'such as', 'for example', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (iii) a reference to:
  - (a) a person includes an individual, partnership, joint venture, trust, corporation or any other entity or association whether or not it is incorporated or has a separate legal identity; a Party includes that Party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;
  - (b) "dollars" or "\$" is to the lawful currency of New Zealand;
  - (c) anything (including a right, obligation or concept) includes each part of it;
- (iv) in determining the time of day, the relevant time of day is the time in New Zealand;
- (v) if a period of time is calculated from a particular day, act or event (such as the giving of a notice), it is to be calculated exclusive of that day, or the day of that act or event; and
- (vi) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of these Customer Terms or any part of them.

### **3. REGISTRATION AND USAGE**

3.1 In order to use the Services and the Application, You must:

- (i) be competent to enter into a contract under Applicable Laws, and provide Us accurate, complete, current, valid and true Registration Data ("**Eligibility Requirements**");
- (ii) only use open one Account using Your Registration Data, and not use the account of any person;
- (iii) provide Your own electronic device, which must have a functioning mobile number and the ability to read Our text messages (SMS) and push notifications, and meet the minimum device requirements We specify from time to time ("**Device**"). It is Your responsibility to check to ensure that You download the correct version of the Application for Your Device;
- (iv) only use the Application solely in accordance with these Customer Terms and all Applicable Laws, and not use the Application or Services for any illegal or unlawful purposes;
- (v) only use the Application and Services for Your sole, personal use, and not transfer, sell, sub-license or assign it to a third party;
- (vi) not do or try to do anything to interfere with or harm the Application, Services or Our network in any way whatsoever;
- (vii) provide Us with such information and documents which We may reasonably request from time to time, and promptly notify Us of any change to any of Your Registration Data or other information provided to Us; and
- (viii) only use an authorised telephony or internet network to access and use the Application. When using the Application and Services, standard messaging charges, data charges and/or voice charges (as applicable) may be imposed by Your Device provider and are Your responsibility.

3.2 You are solely responsible for maintaining the confidentiality of Your Registration Data and Application login credentials, and will be liable for all activities and transactions, and any other misuse of the Application, that occurs through Your Account (whether initiated by You or any third party), except to the extent caused or contributed by Us.

3.3 If the Device is lost or stolen, You must notify Us immediately and ensure that the Application as accessible through the Device is immediately blocked, suspended or deactivated.

3.4 You must also notify Us immediately if You cannot access Your Account, You know of or suspect any unauthorised access or use of Your Registration Data, login details or Account, or the security of Your Account has been compromised in any way.

3.5 We may immediately suspend the Services and/or Your use of the Application (including Your Account) if We have a reason to believe that:

- (i) the Registration Data or any other information provided by You is false, or You cease to satisfy the Eligibility Requirements;
- (ii) the security of Your Account has been compromised in any way; or
- (iii) You have not complied with any of the requirements in this clause 3.

3.6 We may block, suspend, alter or update the Application or the Services at any time (including without notice):

- (i) to make improvements to the Application and/or the Services (including the security of the Application and/or the Services);
- (ii) as required by Applicable Law; or
- (iii) to protect a legitimate business interest,

however, if You do not agree with what We have done, You may terminate these Customer Terms in accordance with clause 15.1 at any time.

#### **4. BOOKING OUR SERVICES**

- 4.1. The Application allows You to send a request to make a booking for a Ride. Once You have made a request for a Ride:
- (i) You must ensure that Your Device is turned on and configured appropriately (e.g. GPS is active), and the Application is active; and
  - (ii) We will accept or decline Your booking based on the availability of Drivers at Your location at the pickup time, and inform You via an SMS, push notification or confirmation screen in the Application.
- 4.2. While We endeavour to connect You with a Driver, Your request for a Ride is subject to the availability of a Driver around Your location at the time of Your request (and Drivers may accept or reject Your request for a Ride in their sole and absolute discretion).
- 4.3. Once Your request for a Ride has been accepted, We will provide:
- (i) You with a booking confirmation through the Application, and information regarding the Driver (including the Driver's name, Vehicle details (including registration number and model), mobile phone number, a picture of the Driver and any other details We consider appropriate); and
  - (ii) the Driver with Your details necessary to enable the Driver to provide the Ride.
- 4.4. While We require each Driver to use all reasonable efforts to ensure their Vehicle arrives prior to Your requested pick-up time, You must book Your Ride after considering any adverse conditions such as the weather, traffic, roadworks, and other unexpected delays such as traffic accidents. If there is any delay by the Vehicle in reaching Your pick-up location, You should contact the Driver assigned for Your Ride through the Application.
- 4.5. If a Vehicle breaks down or cannot complete a Ride, We will use all reasonable endeavours to arrange for a substitute vehicle to complete the Ride (which will become the "Vehicle" for the Ride) subject to availability of such a substitute vehicle. Any substitute vehicle may not be necessarily of the same type as the original Vehicle.
- 4.6. Except as expressly stated in these Customer Terms, Our obligations are limited to: (a) managing and operating the Application and Services in the manner reasonably determined by Us; (b) being an online booking platform facilitating the provision of Rides by Drivers to You (and Our other customers); and (c) payment collection in respect of the Rides between Driver and You (and Our other customers). Accordingly, We are merely an intermediary providing online marketplace services and the Application and Services are only a platform where a Driver may offer a Ride to You (and Our other customers).
- 4.7. The contract for the Driver's provision, and Your receipt, of the Ride will be a contract solely between the Driver and You. At no time will We have any obligations or liabilities in respect of such contract. Our obligations are limited to raising of invoice on behalf of Driver's and payment collection in respect of the transactions between Driver and Customers.

#### **5. BOOKING CONFIRMATION**

- 5.1. Where Your request for a Ride has been accepted, You must check the booking details on the booking confirmation We provide You, including the pick-up time and location ("**Booking Confirmation**"). If there is any incorrect details on the Booking Confirmation, You must contact Us immediately by correcting Your booking details through the Application or by calling Our call centre.
- 5.2. You are responsible for any delay that may be caused due to Your failure to check the Booking Confirmation or contact Us immediately to correct the booking details.

#### **6. PAYMENT**

- 6.1. You will be charged and must pay the Total Ride Fee for the Service, comprising the Convenience Fee, the Fare, and any Additional Fee. We collect the Total Ride Fee (plus any additional amounts and/or less any deductions agreed between OLA and the Driver) on behalf of the Driver.

- 6.2. Subject to clause 9, You will be charged any reasonable costs required to clean or repair the Vehicle caused or contributed to by You during a Ride (fair wear and tear excepted). We will facilitate payment for such costs on behalf of the Driver.
- 6.3. Payment of the Total Ride Fee will be facilitated by a payment gateway and/or payment processing services provider appointed by Us (the “**Payment Processor**”). The Payment Processor may be OLA, one of Our related bodies corporate or unrelated third party.
- 6.4. You will be required to provide relevant payment details including PayPal or credit/debit card details (“**Payment Details**”) with the Payment Processor in order for Us to process payment of the Total Ride Fee, and You hereby authorise the Payment Processor to do so. Your authorisation:
- (i) permits the Payment Processor to debit or credit the PayPal account, bank account or debit/credit card account associated with Your Payment Details including on an automated process at scheduled times and with alternative methods of payment in the event initial or subsequent attempts fail;
  - (ii) permits the Payment Processor to use Your Payment Details for the processing of transactions initiated by You;
  - (iii) will remain in effect as long as You maintain an Account with Us (and if You delete Your Payment Details or Account, We and the Payment Processor will not be able to process any further transactions initiated by You); and
  - (iv) is subject to any other terms and conditions of the Payment Processor specified through the Application or Services from time to time.
- 6.5. We will be solely responsible for settling any payment related disputes between Drivers and You, and issuing receipts for each Ride to the Driver and You (on behalf of the Driver). In case of any such dispute, any decision taken by Us in good faith will be final and binding on You and the Driver. You may request a copy of any receipts through the Application.
- 6.6. If any amount paid by You is fully or partially refundable for any reason such amounts will be credited to Your Account (so it can be applied against any subsequent Ride(s)) or refunded to You in accordance with and subject to Applicable Law.
- 6.7. Any payment processing-related issue not caused by an error or fault with the Application must be resolved by You and the relevant Payment Processor.
- 6.8. In the event of a default or failure to pay the Total Ride Fee for any reason by You:
- (i) You will be responsible, and must pay, for all costs incurred by Us (including costs for which We may be contingently liable) in any attempt to collect any monies owed by You to Us under these Customer Terms including debt collection agent costs, repossession costs, location search costs, process server costs and solicitor costs on a solicitor/client basis; and
  - (ii) We may charge You, at our discretion, interest on all overdue and reasonably undisputed amounts at an annual rate of two (2) per cent over the Reserve Bank of Australia base rate as at the date payment was due and not made.

## **7. CANCELLATION FEE**

- 7.1. You may cancel Your request for a Ride from a Driver at any time, however (subject to clause 7.3) if You cancel five (5) minutes or more after the Driver is allotted to Your request, You will be charged a Cancellation Fee.
- 7.2. The Driver may cancel Your request for a Ride where that Driver is waiting at Your requested pick-up location for five (5) minutes or more after the pick-up time specified in the Booking Confirmation.
- 7.3. If the Driver does not arrive at Your pick-up location within five (5) minutes after the pick-up time specified in the Booking Confirmation, You will not be charged any Cancellation Fee.
- 7.4. You will be notified of any Cancellation Fee through the Application at the time You attempt to cancel Your request for a Ride, and any Cancellation Fee payable by You will be processed by Us in accordance with clause 6.

## **8. BEHAVIOUR**

- 8.1. You must not smoke or consume any alcohol, tobacco or illicit substances in or near any Vehicle, misbehave in or near any Vehicle, distract a Driver, act in violation of Applicable Laws, or otherwise act in any way which a Driver (acting reasonably) considers will risk the safety of You, the Driver or any other person.
- 8.2. If You breach clause 8.1, We may immediately suspend the Services and/or Your use of the Application (including Your Account).

## **9. FEEDBACK, ISSUES AND COMPLAINTS**

- 9.1. You are required to rate a Ride after its conclusion, and You must be fair, accurate and non-disparaging while leaving complaints, comments, feedback, testimonials or reviews on or about Rides, Drivers or the Services.
- 9.2. All issues, complaints, opinions, suggestions, questions and feedback while accessing the Services should be notified to Us or communicated to Us through the Application.
- 9.3. You must report any issue You have with the Application or Services to Us within 7 days of the relevant issue occurring, otherwise We may not be able to address such issue.
- 9.4. We will endeavour to respond to You within 2 (two) Business Days after You report an issue to Us, and We will endeavour to resolve such issue as soon as reasonably possible. We note issues are generally resolved based on the seriousness of the issue, and as such certain issues may be prioritised over others. We may not be able to resolve all issues, and We will not be liable where You are not satisfied with Our handling or resolution of (or failure to resolve) an issue.
- 9.5. If You forget or lose any luggage or property in a Vehicle during a Ride, You should contact Us as soon as possible (and any event within 24 hours), and We will try to locate the items. If Your luggage or property is found, We will contact You and advise You of how You will be able to collect Your luggage or property. Unless otherwise agreed (in Our sole and absolute discretion), We will not deliver any luggage or property items to You (and if We agree to do so, We may charge You a reasonable fee for doing so). In no event will We be liable for any loss or damage to Your personal effects and luggage.

## **10. PRIVACY**

- 10.1. We collect, store, process and transfer personal information (including sensitive financial information) in compliance with the Privacy Policy, the Privacy Collection Statement and these Customer Terms.
- 10.2. You consent to Our handling (including collection, use, storage and disclosure) of Your personal information in accordance with the Privacy Policy and Privacy Collection Statement, including disclosing Your personal information to third parties. The kinds of persons to whom OLA usually discloses personal information to include Customers, relevant transport authorities, government and regulatory bodies, marketing agencies, and other third parties as contemplated by the Privacy Policy and Privacy Collection Statement. Such personal information may also be transferred or stored in a server outside New Zealand as contemplated by the Privacy Policy and Privacy Collection Statement.
- 10.3. You hereby expressly consent to:
  - (i) receive direct marketing, promotional, referral, incentive and other communications from Us (including in respect of goods and services offered by third parties) through the Application and Your registered phone number and email address; and be contacted by OLA via phone calls, text messages, push notifications and/or through the Application,and to the maximum extent permitted by Applicable Law, You agree that We are not required to include an unsubscribe facility in any communication You receive from Us in relation to Your use of the Application (including communications about fees, rates, referral or incentive programs) . You may opt out of receiving direct marketing communications and should refer to the relevant marketing material as to how to do this.
- 10.4. Notwithstanding the foregoing, We may disclose the Registration Data to all companies within Our group, or any government body as may be required by law or by any official directive or request from such government body or any third party through a court process or other official agency.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1. The Application and all associated intellectual property rights (“**OLA IP**”) remain the property of Us or Our third party licensors. Except as expressly stated, nothing in these Customer Terms grants You any rights in or related to the OLA IP, and all rights not expressly granted to You are reserved by Us.
- 11.2. You must not:
- (i) copy, reproduce, modify, create derivative works of, decompile, reverse engineer, or attempt to derive the composition or underlying information, structure or ideas of, any OLA IP;
  - (ii) breach, disable, tamper with, or develop or use (or attempt) any workaround for any security measure provided in the Application;
  - (iii) use any OLA IP in a way that infringes or misappropriates a third party’s intellectual property rights or moral rights;
  - (iv) distribute, disclose or allow use of any OLA IP by any third party in any format, through any timesharing service, service bureau, network or by any other means;
  - (v) merge or combine any OLA IP with any other technology not provided by Us; or
  - (vi) remove any proprietary notice language on any copies of any OLA IP.
- 11.3. Subject to Your compliance with these Customer Terms, We grant You a limited, non-exclusive, personal, non-transferable licence during the term of these Customer Terms to use and access the Application on any Device that You own or control and to run the Application solely for Your own personal use (including for the processing of payments).
- 11.4. You are solely responsible for any notes, messages, e-mails, billboard postings, photos, drawings, profiles, opinions, ideas, images, videos, audio files or other materials or information posted or transmitted through the Application or Device by or on Your behalf (“**Your Content**”). You must ensure that Your Content is not unlawful and does not infringe any third party’s rights (including intellectual property rights), and You must not:
- (i) publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topic, blasphemous, pornographic, libellous, invasive of another’s privacy, hateful, or racially, ethnically objectionable, disparaging, or otherwise unlawful material or information, or any material relating to or encouraging money laundering or gambling;
  - (ii) upload files that contain software or other material protected by intellectual property laws (or by rights of privacy or publicity) unless You own or control the rights thereto or have received all necessary consents;
  - (iii) upload files that contain viruses, corrupt files, or any other similar software or programs that may damage the operation of another computer or electronic device;
  - (iv) except as expressly permitted by Us, advertise or offer to sell or buy any goods or services for any business purpose;
  - (v) conduct or forward surveys, contests, pyramid schemes or chain letters;
  - (vi) download any file posted by another user that You know, or reasonably should know, cannot be legally distributed in such manner;
  - (vii) falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded;
  - (viii) deceive or mislead the addressee about the origin of a message or communicate any information which is grossly offensive or menacing in nature;
  - (ix) restrict or inhibit any other user (including Drivers and Our other customers) from using and enjoying the Application; or
  - (x) harvest or otherwise collect information about others, including e-mail addresses, without their consent.
- 11.5. We have no obligation to monitor Your access to or use of the Application, or Your Content, but You hereby provide Your consent for Us to do so for the purpose of providing and operating the Application and the Services, to ensure Your compliance with these Customer Terms, and to comply with Applicable Law or the order or requirement of a court, administrative agency or other government body. We may investigate and prosecute (and refer to law enforcement agencies) any actual or suspected breach of clause 11.4 by You to the fullest extent permitted by Applicable Law. We may at any time and without prior notice remove or disable access to any of Your Content which We consider (acting reasonably) to be in violation of these Customer Terms.
- 11.6. You grant Us a worldwide, perpetual, royalty-free, transferable licence to use, copy, modify, adapt and commercially exploit Your Content (including making derivative works of the whole or any part of Your Content) for any purpose, including promotional and advertising purposes that We deem fit. You represent and warrant that You have the necessary rights to Your Content and are permitted to provide Your Content to Us. For clarification, You are not entitled to any payment or other compensation for Our use of Your Content.

- 11.7. Except for the Registration Data or any other data submitted by You during the use of the Service (“**Permitted Information**”), We do not want You to, and You should not, send any confidential or proprietary information to Us (whether on the Application or otherwise), unless required by Applicable Laws. Except for the Permitted Information, and subject to Us handling Your personal information in accordance with the Privacy Policy and Privacy Collection Statement, any of Your Content will not be considered confidential or proprietary.

## 12. **INDEMNITIES**

To the maximum extent permitted by law, You will indemnify and hold harmless OLA and OLA’s related bodies corporate (and their respective directors, officers, employees, agents and representatives) (“**Those Indemnified**”) from and against any losses, damages, liability, claims, costs, penalty and expenses (including, reasonable legal fees) incurred by Those Indemnified arising out of or in connection with any:

- (i) breach by You of any Applicable Law;
- (ii) misrepresentation or fraudulent, dishonest, unlawful or negligent act or omission of You;
- (iii) personal injury (including sickness and death) or property damage caused or contributed to by You in connection with any Ride (including in connection with any motor vehicle accident involving the Vehicles); or
- (iv) claim by a Driver or any other third party caused by any of Your acts or omissions,

**except to the extent caused or contributed to such losses through Our negligence, breach of these terms or unlawful conduct**

## 13. **LIABILITY**

- 13.1. Subject to clause 13.3, all express or implied guarantees, warranties, representations, or other terms and conditions relating to these Customer Terms or their subject matter, not contained in these Customer Terms, are excluded from these Customer Terms to the maximum extent permitted by Applicable Law.

- 13.2. Without limiting clause 13.1 but in all circumstances subject to clause 13.3, to the maximum extent permitted by Applicable Law:

- (i) the Application and Services are provided on an "as is" and "as available" basis and We make no representation, warranty, or guarantee regarding (a) the condition, performance, accuracy, completeness, merchantability, reliability, timeliness, quality, suitability, availability or fitness for a particular purpose of the Services or the Application; (b) that the Services or the Application will be uninterrupted or error-free; (c) the compatibility of the Application with any other technology; or (d) the quality, suitability, safety or ability of the Drivers;
- (ii) the information, recommendations and Services We provide to You (whether on or through the Application or via Our call centre) are for general information purposes only and do not constitute advice;
- (iii) You acknowledge and agree that the Application and Services are merely an electronic platform to facilitate the aggregation of Vehicles to provide Rides, and We do not in any manner provide transportation or logistics services or function as a transportation or logistics carrier; and
- (iv) We do not endorse, advise or recommend any of the Drivers, nor do We guarantee or provide any assurance in respect of the behaviour, actions or data of the Drivers (or other users) posted on the Application,

and You agree that the entire risk arising out of any Ride remains solely with You, to the maximum extent permitted under Applicable Law.

- 13.3. Nothing in these Customer Terms excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited, including the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 and your rights under those Acts remain unchanged to the extent that We are not legally permitted to contract out or limit the application of that legislation. Check out [consumer.org.nz](http://consumer.org.nz) if you want to know more about your rights under the Fair Trading Act and Consumer Guarantees Act.

- 13.4. To the maximum extent permitted by Applicable Law:

- (i) We are not liable for (and no measure of damages will, include) any indirect, special, incidental, exemplary, punitive, or consequential loss or damages of any kind whatsoever, or damages for loss of

- profits, revenue, goodwill, anticipated savings, business or opportunity, or loss or corruption of data, even if advised of the possibility of such damages; and
- (ii) Our maximum total aggregate liability arising out of or in connection with these Customer Terms or their subject matter is limited to \$10,000.

The limitations and exclusions above apply to all liability (including for negligence) regardless of the legal basis of the claim. However, unless you are using the Application and Services in the course of your business, nothing in these Customer Terms takes away from your rights under New Zealand's consumer legislation, including the Fair Trading Act 1986 and Consumer Guarantees Act 1993, which may in certain circumstances entitle you to compensation exceeding what is allowed by these terms. Check out [consumer.org.nz](http://consumer.org.nz) if you want to know more about your rights under the [Fair Trading Act](#) and [Consumer Guarantees Act](#).

- 13.5. Without limiting clause 13.4, and to the maximum extent permitted by Applicable Law, We are not be liable for:
- (i) Your reliance upon the Application or Services or any information provided by Us through the Application or the Services;
  - (ii) You missing or being delayed for a train, flight, event, work or any other circumstance in connection with a Ride (including following any breakdown of a Vehicle);
  - (iii) any loss that You may incur as a result of someone else using Your Account, either with or without Your knowledge, except to the extent caused or contributed by Us; and
  - (iv) any loss or damage that You may incur arising out of or in connection with any Ride, including the conduct of the Driver (and any other person) and any accidents, incidents and issues involving the Vehicle.
- 13.6. The limitations and exclusions of liability in this clause 13 apply regardless of the basis on which such liability arises, whether in contract, breach of warranty, tort (including negligence), in equity, under statute, or on any other basis.

#### **14. FORCE MAJEURE**

- 14.1. Any delay in or failure to perform any obligations by either Party under these Customer Terms will not constitute a breach of these Customer Terms to the extent caused by acts of any government authorities, acts of God, fire, flood, explosion, riots, war, rebellion, insurrection or other event beyond the reasonable control of that Party ("**Force Majeure**").
- 14.2. A Party affected by a Force Majeure must:
- (i) notify the other Party within 7 days after it becomes aware of the Force Majeure; and
  - (ii) use all reasonable efforts to avoid or minimise the effects of such Force Majeure and commence performance of its obligations as soon as such Force Majeure ceases.
- 14.3. If a Force Majeure continues for a continuous period of more than 7 seven days, either Party may terminate these Customer Terms by notifying the other Party.

#### **15. TERMINATION**

- 15.1. These Customer Terms continues until such time as they are terminated in accordance with these Customer Terms.
- 15.2. You may terminate these Customer Terms at any time by closing Your Account or uninstalling the Application. You can close Your Account at any time by following the instructions on the Application.
- 15.3. We may terminate these Customer Terms with immediate effect upon notice to You if:
- (i) necessary to comply with any Applicable Law;
  - (ii) You cease to satisfy the Eligibility Requirements; or
  - (iii) You commit a breach (other than a trivial or inconsequential breach) of these Customer Terms that is not capable of remedy or (if capable of remedy) is not remedied within 4 Business Days after We notify You of the breach.
- 15.4. Upon termination of these Customer Terms for any reason:

- (i) Your rights to use the Application will cease immediately, Your registration with Us and Your Account will cease to apply, and We may block Your access to the Application;
- (ii) We will charge You all amounts due and owing to Us at the date of termination in accordance with clause 6;
- (iii) each Party will promptly return to the other Party all property and materials provided to it by the other Party under these Customer Terms; and
- (iv) the Parties must cease acting in a manner that would imply a continuing relationship between the Parties.

15.5. Clauses 10 (Privacy), 11 (Intellectual Property Rights), 12 (Indemnities), 13 (Liability), 15 (Termination), and 19 (Governing Law and Dispute Resolution) will survive termination of these Customer Terms together with any other terms which by their nature do so.

15.6. Termination of these Customer Terms will not prejudice any rights of the Parties that may have accrued prior to such termination.

## **16. NOTICE**

Any notices, requests and other communications required or permitted under these Customer Terms must be in writing and sent to the recipient Party as follows (as amended to time by the recipient Party by notice to the other Party):

- (i) to Ola by email to: care.nz@olacabs.com; and
- (ii) to You by email or text message (SMS) to the email address or mobile number (as applicable) specified in the Account.

## **17. ENTIRE AGREEMENT**

17.1. Nothing in these Customer Terms limits any liability You or We may have in connection with any representations or other communications (either oral or written) made prior to or during the term of these Customer Terms, where such liability cannot be excluded (including under section 9 of the Fair Trading Act).

17.2. Subject to clause 17.1, these Customer Terms constitute the entire agreement between the Parties in connection with, and will supersede all previous communications (either oral or written) between the Parties with respect to the subject matter of these Customer Terms, and no agreement or understanding varying or extending the same will be binding on either Party unless arising out of the specific provisions of these Customer Terms.

## **18. RELATIONSHIP OF THE PARTIES**

Nothing in these Customer Terms is intended to constitute a fiduciary relationship or an agency, partnership or trust, and neither Party has authority to bind the other Party.

## **19. GOVERNING LAW AND DISPUTE RESOLUTION**

19.1. The parties must attempt to amicably settle any dispute arising out of or relating to these Customer Terms through negotiation at Our offices in Auckland, Wellington or Christchurch, as notified by Us. If the dispute is not resolved between the parties after at least 30 (thirty) days of negotiation, the dispute must be referred to arbitration before a Party may resort to litigation. The arbitration must be:

- (i) held in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law;
- (ii) administered by the Resolution Institute of New Zealand (REINZ);
- (iii) conducted in accordance with the laws of the New Zealand;
- (iv) held in Auckland, Wellington or Christchurch, as notified by Us; and
- (v) conducted by be a single arbitrator agreed between the Parties (or, failing agreement, appointed by the Chair for the time being of REINZ or the Chair's nominee),

and, to the maximum extent permitted by law, the arbitrator's award will be final and binding on the Parties.

19.2. Notwithstanding clause 19.1, either Party may seek appropriate interim or injunctive relief in any court having jurisdiction over the subject matter in accordance with Applicable Law, to enforce and/or prevent breach of its

rights and remedies in and arising out of these Customer Terms.

- 19.3. These Customer Terms will be governed by and construed in accordance with the laws of New Zealand, and the Parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

**20. AMENDMENTS TO THESE CUSTOMER TERMS**

- 21.1. We may amend the terms of these Customer Terms, the Privacy Policy and/or the Privacy Collection Statement by notifying You at least 90 days prior to such amendments coming into effect (or such shorter period of notice as required in order to comply with any change in Applicable Laws or to protect a legitimate business interest).

- 21.2. You will be required to confirm Your acceptance of the amendments referred to in clause 21.1. However, if You do not agree to any such amendments, You may terminate these Customer Terms in accordance with clause 15.1 at any time prior to such amendments coming into effect.

**22. MISCELLANEOUS**

- 21.3. **Assignment:** You may not assign or transfer any of Your rights, interests or obligations under these Customer Terms to any third party without Our prior written consent. We may assign Our rights and interests under these Customer Terms to any person whosoever.

- 21.4. **Joint Ventures:** We will be entitled to enter into any transaction whereby We acquire, merge with or enters into a joint-venture with any other institution engaged in the business of providing services similar to those referred to in these Customer Terms. In such case, You may be provided with the Services by OLA jointly and/or severally with the parties to any such arrangement. These Customer Terms will continue to apply in the event of any such arrangement, however if You do not agree with what We have done, You may terminate these Customer Terms in accordance with clause 15.1 at any time.

- 21.5. **Waiver:** Either Party may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy. No failure or delay on the part of either Party exercising any right, power or privilege under these Customer Terms will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege under these Customer Terms preclude any other or further exercise thereof or the exercise of any other rights, powers or privileges by such Party.

- 21.6. **Severability:** Any provision that is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction.

- 22.1. **Rights cumulative:** Subject to any express provision in these Customer Terms to the contrary, the rights, powers or remedies of a Party under these Customer Terms are cumulative and in addition to, and do not exclude or limit, any right, power or remedy in any other part of these Customer Terms or otherwise provided at law or in equity.

## EXHIBIT

### PRIVACY COLLECTION STATEMENT

#### Introduction

We understand that Your personal information is important, and We take Your privacy seriously. This privacy collection statement as well as Our Privacy Policy contains further details about Our privacy handling practices. This privacy collection statement applies in addition to, and does not replace, Our Privacy Policy. For clarity, where the Privacy Policy sets out a purpose or disclosure which is not outlined in this privacy collection statement, such purpose or disclosure will still apply.

#### Why We collect Your personal information

We collect and use personal information about You to provide the products and services to You in accordance with the Customer Terms and the Privacy Policy, including (but not limited to):

- a. verify Your details including Your identity and other documents provided as part of Your Registration Data;
- b. pre-populate Your details into the Application;
- c. process payments;
- d. facilitate Your interactions with Drivers, including provision of the Service;
- e. contact You in the case of incidents and emergencies and assist in resolving disputes; and
- f. comply with Our legal and regulatory obligations.

We may also use Your personal information:

- a. to develop insights about You or to personalise Your offerings or experience in using Our services or services of Our third party business partners, including Drivers; and
- b. for other purposes as contemplated by the Customer Terms and Privacy Policy.

We may also anonymise, de-identify or aggregate Your personal information. For example, We may do this for the purposes of conducting analytics, including the use and disclosure of anonymised data to determine preferences and patterns and for business improvement.

#### What personal information We collect:

We collect a range of personal information as contemplated by the Privacy Policy. This includes:

- a. Your Registration Data, including information about Your banking details;
- b. ratings, feedback and reviews about You collected from Drivers;
- c. Your location information and other information on Your device You permit Us to access to via the Application, which may include access to messages for the purposes of one time passwords and other device verification;
- d. information regarding Your use of Our Application, which may be collected via "cookies" or other similar technologies.

We may also collect information about Your background and any criminal history from time to time and You consent to Us collecting such information from Our service providers engaged for such purposes and any relevant governmental agency or body. Our service providers (as defined below) and business partners may also disclose to Us information about You.

#### Who We disclose Your personal information to

We may disclose Your personal information to Our third party service providers whom We engage to provide goods or services (**Our service providers**) and Our business partners (including Drivers and Driver Partners) in connection with their relationship with Us. We require Our service providers to agree to appropriate privacy restrictions, and only permit them to access personal information to the extent needed to provide goods or services to Us.

Whilst it is not practicable to list all Our service providers, We disclose personal information to:

- a. Our cloud storage providers, who provide Us with storage and hosting of data, which may be outside New Zealand, and in countries like India, Singapore and the United States of America;
- b. Our messaging platform providers, who amongst other things help Us mask contact details between Drivers and customers; and
- c. Our business intelligence and analytics providers, including for the purpose of Us managing and improving Our services and the Application.

We may also disclose Your personal information to:

- a. third parties as contemplated by Our Privacy Policy;
- b. Our related entities (including ANI Technologies Private Ltd. (company number [U72900KA2010PTC086596]) of Regent Insignia, #414, 3rd Floor, 4th Block, 17th Main, 100 Feet Road, Koramangala, Bangalore – 560034) who may use such personal information in the same manner that We may;

- c. Your family members or emergency contacts in the event of an incident or emergency;
- d. Drivers, which information includes Your name, photograph, current location information (e.g. from GPS on Your device) and Driver review and rating information; and
- e. third parties where permitted or required by law and enforcement and emergency response agencies, such as police, fire, ambulance.

Some recipients of Your personal information or their processing agents may be located overseas, including India, Singapore and the United States of America.

### **Direct marketing**

We may also collect, use and disclose Your personal information to advertise and promote goods and services which may be of interest to You, including through email, SMS, post, phone and also targeted and online marketing and advertising.

This includes the products and services of Our suppliers and other third parties who offer products and services that may be of interest to You.

We may disclose Your personal information to these third parties and their and Our marketing, promotions and advertising service providers for this purpose and You consent to receiving these types of direct marketing and commercial electronic messages. You may opt out of Our direct marketing to You (and Our direct marketing materials and/or the Application will tell You how to do this).

### **If You do not want Us to collect Your personal information**

While You are under no obligation to provide Us with Your personal information, You will, unfortunately, not be able to use the Application and/or the Services in accordance with the Customer Terms if You do not provide Us with the personal information We ask You provide, or You do not consent to Our collection, use and disclosure of personal information in accordance with the Privacy Policy and this privacy collection statement.

### **Our contact details**

Your personal information is collected by Ola New Zealand Global Limited (6702998). You can contact Us at [care.nz@olacabs.com](mailto:care.nz@olacabs.com). You can address your enquiry to Our "Privacy Manager".

### **Our Privacy Policy**

Our Privacy Policy contains more information about Our privacy practices, including:

- a. how You can access any personal information which We hold about You;
- b. how You can seek the correction of such personal information; and
- c. Our complaint-handling practices.

You should read Our Privacy Policy in conjunction with this privacy collection statement.