

1 COOLEY LLP
PATRICK E. GIBBS (SBN 183174) (pgibbs@cooley.com)
2 WENDY J. BRENNER (SBN 198608) (brennerwj@cooley.com)
ALLI S. DAVIDSON (SBN 267964) (adavidson@cooley.com)
3 MICHELLE TON (SBN 300942) (mton@cooley.com)
3175 Hanover Street
4 Palo Alto, California 94304-1130
Telephone: (650) 843-5000
5 Facsimile: (650) 849-7400

6 Attorneys for Defendant,
UBER TECHNOLOGIES, INC.

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
08/18/2016
Clerk of the Court
BY:ROMY RISK
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

11 LENZA H. McELRATH III, individually, in
his representative capacity, and on behalf of
12 all others similarly situated,

13 Plaintiffs,

14 v.

15 UBER TECHNOLOGIES, INC., a Delaware
corporation, 1455 Market St., 4th Floor San
16 Francisco, CA 94103,

17 Defendant.

No. CGC-16-551748

**DECLARATION OF WENDY J. BRENNER IN
SUPPORT OF UBER TECHNOLOGIES,
INC.'S DEMURRER TO FIRST AMENDED
COMPLAINT**

EXHIBIT 1

HEARING

DATE: SEPT. 27, 2016

TIME: 9:30 A.M.

DEPT.: 302

RESERVATION NUMBER: 08150927-15

COMPLAINT FILED: MAY 2, 2016

FAC FILED: JULY 13, 2016

EXHIBIT 1

This offer letter supersedes and replaces all previous agreements or offer letters.

Uber Technologies, Inc.
1455 Market Street, 4th Floor
San Francisco, CA 94103

September 3, 2014

Lenza McElrath

Re: **EMPLOYMENT AGREEMENT**

Dear Lenza

On behalf of Uber Technologies, Inc., a Delaware corporation (the “Company”), I am pleased to offer you the position of Senior Software Engineer of the Company. Your employment by the Company shall be governed by the following terms and conditions (this “Agreement”):

1. **Duties and Scope of Employment.**

a. **Position.** For the term of your employment under this Agreement (your “Employment”), the Company agrees to employ you in the position of Senior Software Engineer or in such other position as the Company subsequently may assign to you. You will report to the Company’s Engineering Manager, Jeremy Suurkivi, or to such other person as the Company subsequently may determine. You will be working out of the Company’s office in San Francisco, CA. You will perform the duties and have the responsibilities and authority customarily performed and held by an employee in your position or as otherwise may be assigned or delegated to you by your supervisor.

b. **Obligations to the Company.** During your Employment, you shall devote your full business efforts and time to the Company. During your Employment, without express written permission from the Chief Executive Officer or one of his direct reports, you shall not render services in any capacity to any other person or entity and shall not act as a sole proprietor or partner of any other person or entity or own more than five percent of the stock of any other corporation. Notwithstanding the foregoing, you may serve on corporate, civic or charitable boards or committees, deliver lectures, fulfill speaking engagements, teach at educational institutions, or manage personal investments without such advance written consent, provided that such activities do not individually or in the aggregate interfere with the performance of your duties under this Agreement. You shall comply with the Company’s policies and rules, as they may be in effect from time to time during your Employment.

c. **No Conflicting Obligations.** You represent and warrant to the Company that you are under no obligations or commitments, whether contractual or otherwise, that are inconsistent with your obligations under this Agreement. In connection with your Employment, you shall not use or disclose any trade secrets or other proprietary information or intellectual property in which you or any other person has any right, title or interest and your Employment will not infringe or violate the rights of any other person. You represent and warrant to the

This offer letter supersedes and replaces all previous agreements or offer letters.

Company that you have returned all property and confidential information belonging to any prior employer.

d. **Commencement Date.** You shall commence full-time Employment as soon as reasonably practicable and in no event later than September 29, 2014.

2. **Cash and Incentive Compensation.**

a. **Salary.** The Company shall pay you as compensation for your services an initial base salary at a gross annual rate of \$160,000. Such salary shall be payable in accordance with the Company's standard payroll procedures. The annual compensation specified in this subsection (a), together with any modifications in such compensation that the Company may make from time to time, is referred to in this Agreement as "Base Salary."

b. **Relocation Payment.** In order to assist you to move yourself and your household from current city to San Francisco, CA the Company will reimburse you up to an amount that will not exceed \$10,000 to cover your actual relocation expenses incurred for the following items (if applicable): closing costs on the sale of your home in current city, transportation from current city to San Francisco, CA, storage of household goods and temporary housing in San Francisco, CA (the "Relocation Payment"). The Relocation Payment shall be made to you net of all applicable withholding taxes and other applicable deductions in accordance with the Company's standard payroll practices. In the event you voluntarily terminate your employment with Uber within 12 months of receipt of the relocation payment, you agree to repay the entire relocation payment to Uber and authorize Uber to deduct this amount from any outstanding wages due to you in your final paycheck.

c. **Stock Options.** Subject to the approval of the Company's Board of Directors (the "Board"), the Company shall grant you a stock option covering 20,000 shares of the Company's Common Stock (the "Option"). The Option shall be granted as soon as reasonably practicable after the date of this Agreement or, if later, the date you commence full-time Employment. The exercise price per share will be equal to the fair market value per share on the date the Option is granted, as determined by the Company's Board of Directors in good faith compliance with applicable guidance in order to avoid having the Option be treated as deferred compensation under Section 409A of the Internal Revenue Code of 1986, as amended. There is no guarantee that the Internal Revenue Service will agree with this value. You should consult with your own tax advisor concerning the tax risks associated with accepting an option to purchase the Company's Common Stock. The term of the Option shall be 10 years, subject to earlier expiration in the event of the termination of your services to the Company. The Option shall vest and become exercisable at the rate of 25% of the total number of option shares after the first 12 months of continuous service and the remaining option shares shall become vested and exercisable in equal monthly installments over the next three years of continuous service. The Option will be an incentive stock option to the maximum extent allowed by the tax code and shall be subject to the other terms and conditions set forth in the Company's 2013 Stock Plan (the "Stock Plan") and in the Company's standard form of Stock Option Agreement.

3. **Vacation/PTO and Employee Benefits.** During your Employment, you shall be eligible for paid vacation / paid time off, in accordance with the Company's vacation / paid time off policy, as it may be amended from time to time. During your Employment, you shall be eligible to participate in the employee benefit plans maintained by the Company and generally available to similarly situated employees of the Company, subject in each case to the generally applicable terms and conditions of the plan in question and to the determinations of any person or committee administering such plan.

This offer letter supersedes and replaces all previous agreements or offer letters.

4. **Business Expenses.** The Company will reimburse you for your necessary and reasonable business expenses incurred in connection with your duties hereunder upon presentation of an itemized account and appropriate supporting documentation, all in accordance with the Company's generally applicable policies.

5. **Termination.**

a. **Employment at Will.** Your Employment shall be "at will," meaning that either you or the Company shall be entitled to terminate your Employment at any time and for any reason, with or without Cause. Any contrary representations that may have been made to you shall be superseded by this Agreement. This Agreement shall constitute the full and complete agreement between you and the Company on the "at-will" nature of your Employment, which may only be changed in an express written agreement signed by you and a duly authorized officer of the Company.

b. **Rights Upon Termination.** Except as expressly provided herein, upon the termination of your Employment, you shall only be entitled to the compensation and benefits earned and the reimbursements described in this Agreement for the period preceding the effective date of the termination.

6. **Pre-Employment Conditions.**

a. **Confidentiality Agreement.** Your acceptance of this offer and commencement of employment with the Company is contingent upon the execution, and delivery to an officer of the Company, of the Company's Confidential Information and Invention Assignment Agreement, a copy of which is enclosed for your review and execution (the "Confidentiality Agreement"), prior to or on your Start Date.

b. **Right to Work.** For purposes of federal immigration law, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your Start Date, or our employment relationship with you may be terminated.

7. **Successors.**

a. **Company's Successors.** This Agreement shall be binding upon any successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business or assets that becomes bound by this Agreement.

b. **Your Successors.** This Agreement and all of your rights hereunder shall inure to the benefit of, and be enforceable by, your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

8. **Miscellaneous Provisions.**

a. **Notice.** Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In your case, mailed notices shall be addressed to you at the home address that you most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

b. **Modifications and Waivers.** No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by you and by an authorized officer of the Company (other than you). No

This offer letter supersedes and replaces all previous agreements or offer letters.

waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

c. **Whole Agreement.** No other agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter hereof. This Agreement and the Confidentiality Agreement contain the entire understanding of the parties with respect to the subject matter hereof.

d. **Withholding Taxes.** All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

e. **Choice of Law and Severability.** This Agreement shall be interpreted in accordance with the laws of the State of California without giving effect to provisions governing the choice of law. If any provision of this Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to applicable law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is rendered illegal by any present or future statute, law, ordinance or regulation (collectively, the "Law") then that provision shall be curtailed or limited only to the minimum extent necessary to bring the provision into compliance with the Law. All the other terms and provisions of this Agreement shall continue in full force and effect without impairment or limitation.

f. **Arbitration.** As set forth in more detail in the Alternate Dispute Resolution Agreement (attached hereto as Attachment B), You and the company agree to submit to mandatory binding arbitration any and all claims arising out of or related to your employment with the Company and your termination thereof, including but not limited to, claims for unpaid wages, wrongful terminations, torts, stock or stock options or other ownership interest in the Company and/or discrimination (including harassment) based upon any federal, state or local ordinance, statute, regulation or constitutional provision, except that each party may, at its, his or her option, seek injunctive relief in court related to the improper use, disclosure or misappropriation of a party's proprietary, confidential or trade secret information. All arbitration hearings shall be conducted in San Francisco County, California. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO SUCH CLAIMS. This Agreement does not restrict your right to file administrative claims you may bring before any government agency where, as a matter of law, the parties may not restrict the employee's ability to file such claims (including, but not limited to, the National Labor Relations Board, the Equal Employment Opportunity Commission and the Department of Labor).

g. **No Assignment.** This Agreement and all of your rights and obligations hereunder are personal to you and may not be transferred or assigned by you at any time. The Company may assign its rights under this Agreement to any entity that assumes the Company's obligations hereunder in connection with any sale or transfer of all or a substantial portion of the Company's assets to such entity.

h. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This offer letter supersedes and replaces all previous agreements or offer letters.

[Signature Page Follows]

This offer letter supersedes and replaces all previous agreements or offer letters.

We are all delighted to be able to extend you this offer and look forward to working with you. Please understand that this offer is contingent upon successful completion of your background check investigation. To indicate your acceptance of the Company's offer, please sign and date this letter in the space provided below and return it to me, along with a signed and dated original copy of the Confidentiality Agreement. The Company requests that you begin work in this new position on or before September 29, 2014. This offer must be accepted on or before September 4, 2014. Please indicate the date (either on or before the aforementioned date) on which you expect to begin work in the space provided below (the "Start Date").

Very truly yours,

Uber Technologies, Inc.

By: Jeremy Suurkivi

Name: Jeremy Suurkivi

Title: Engineering Manager

ACCEPTED AND AGREED:

Lenza McElrath

Lenza McElrath

Sep 3, 2014

Date

Anticipated Start Date: September 29, 2014

Attachment A: Confidential Information and Invention Assignment Agreement

Attachment B: Alternate Dispute Resolution Agreement

This offer letter supersedes and replaces all previous agreements or offer letters.

ATTACHMENT A

**CONFIDENTIAL INFORMATION AND
INVENTION ASSIGNMENT AGREEMENT**

(See Attached)

This offer letter supersedes and replaces all previous agreements or offer letters.

ATTACHMENT B

ALTERNATE DISPUTE RESOLUTION AGREEMENT

(See Attached)