

455 Mountain Village Blvd. Mountain Village, CO 81435  
(970) 369-8235

**TO:** Town Council  
**FROM:** J.D. Wise, Economic Development & Sustainability Director  
David McConaughy, Town Attorney  
**DATE:** June 11, 2024  
**RE:** Consideration of an Agreement Between the Town of Mountain Village and TSG Ski & Golf, LLC for use of the Zipcar Car Share Program.

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**EXECUTIVE SUMMARY**

In November of 2023, TSG Ski and Golf, LLC engaged with Zipcar, Inc. to offer a car share program in Mountain Village. There are currently eight Zipcars in service that are available for public use.

The Town is supporting this program and is providing four parking spaces in the Gondola Parking Garage dedicated to Zipcar vehicles. Additionally, the Town budgeted \$25,000, approximately one third of the total program cost, to support the Zipcar program in 2024, which will allow use by Town employees and Village Court Apartments residents. This use agreement formalizes the Town’s ability to offer Zipcar for Business benefits to these user groups.

Additionally, the Zipcar program is open to the general public, and any interested party can sign up for a Zipcar membership via the app, and once approved, utilize Zipcar vehicles.

**ADDITIONAL BACKGROUND INFORMATION:**

- The Zipcar for Business Agreement was entered into by TSG and Zipcar in November, 2023. The use agreement before you formalizes the Town’s ability to participate in the Zipcar for Business program along with TSG. Zipcar for Business users receive a free Zipcar membership and a reduced hourly rate for Zipcar use. All users must sign up, be approved, and utilize the Zipcar app to rent a vehicle.

**FINANCIAL IMPACT**

- This use agreement formalizes a \$25,000 contribution to the Zipcar program that was included and approved in the 2024 budget.

**STAFF RECOMMENDATION:**

- Staff recommends approval of the Zipcar Use Agreement as presented.

## ZIPCAR USE AGREEMENT

THIS ZIPCAR USE AGREEMENT (this “Agreement”), dated as of \_\_\_\_\_, 2024, is entered into by and between the TOWN OF MOUNTAIN VILLAGE, a Colorado home rule municipality (the “Town”) and TSG SKI & GOLF, LLC, a Delaware limited liability company (“TSG”).

### RECITALS:

- A. TSG and Zipcar, Inc, have executed a Zipcar For Business Agreement (“Business Agreement”), effective November 20, 2023, for ride-sharing services. The Business Agreement is attached as **Exhibit A**.
- B. Pursuant to the Business Agreement, Zipcar, Inc. (Zipcar) has agreed to make eight (8) Better Class vehicles available to TSG for its use for ride sharing services for a monthly fee of \$775 per vehicle.
- C. Pursuant to the Business Agreement, TSG has agreed to make eight (8) parking spaces available exclusively for Zipcar vehicles.
- D. The Town desires to share the use with TSG of the Zipcar vehicles for ride-sharing purposes.
- E. TSG agrees to make vehicles provided by Zipcar available for use by Town employees and residents of Village Court Apartments (“Village Court Residents”) under the terms and conditions set forth below.

### AGREEMENT:

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein as though set forth in full, and in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

#### 1. TSG Obligations:

- a. TSG hereby grants the Town a non-exclusive right, privilege and permission, subject to the terms and provisions of this Agreement and the Business Agreement, to utilize the Zipcars provided to TSG pursuant to the Business Agreement for the purposes set forth below.
- b. TSG agrees to abide by the terms and conditions set forth in the Business Agreement. TSG also represents and warrants that it is authorized to enter into this Agreement pursuant to the Business Agreement and that Zipcar is aware of the Agreement.

- c. TSG agrees to designate four parking spots in the “Big Billies” parking lot exclusively for Zipcar parking and will install signs in the Big Billies parking lot to clearly designate such spaces.
- d. TSG agrees to pay Zipcar for eight vehicles, with payments to be made monthly for twelve months.
- e. TSG agrees to promote and market Zipcar as a benefit for TSG employees with complimentary annual memberships and advertise the Zipcar program on its website: [www.tellurideskiresort.com](http://www.tellurideskiresort.com). Such marketing may also include via TSG social media channels and email newsletters.
- f. TSG agrees to provide the Town with a monthly Member & Vehicle performance Report (“Report”), an example of which is attached as **Exhibit B**. The report may be submitted via email by the 15<sup>th</sup> day of each month to the Town’s Economic Development and Sustainability Director.
- g. TSG agrees to communicate a minimum of twice annually via email with members of the Town of Mountain Village Owner’s Association (“TMVOA”) to provide information about the Zipcar ride sharing program. This communication shall take place once in the Summer season (no later than June 15) and once in the Winter season (no later than December 15).

## 2. Town Obligations

- a. The Town agrees to designate four parking spaces in the Mountain Village Gondola parking (also known as the Gondola Parking Garage) available exclusively for Zipcar parking. The Town will install directional and designated parking signs in the Gondola Parking lot to clearly identify the Town’s Zipcar parking spaces.
- b. The Town agrees to make one payment of \$25,000 to TSG in the first quarter of 2024 for use of the Zipcars provided to TSG under the Business Agreement.
- c. The Town will promote and market Zipcar to its employees and Village Court Residents on its website [www.townofmountainvillage.com](http://www.townofmountainvillage.com) and/or via Town social media channels and email newsletters. The Town.will communicate the availability of complimentary annual memberships to Zipcar, Inc. to its employees and to Village Court residents via email at least twice annually (by June 15 for the Summer Season and December 15 for the winter season).
- d. The Town agrees to advertise the Zipcar ridesharing program on its website: [www.townofmountainvillage.com](http://www.townofmountainvillage.com)

3. Duration of Agreement. The initial term of this Agreement will commence on the Effective date and, unless terminated earlier in accordance herewith, will continue for a period of one (1) year. This Agreement will automatically renew for successive one (1) year periods, if and

only if the Business Agreement is renewed, unless either party gives the other written notice of termination at least thirty (30) days prior to the end of the then current term. The Town agrees to make one payment of \$25,000 to TSG in the first quarter of each successive renewal year.

4. Compliance with Laws. TSG and the Town shall, at all times during the duration of the Agreement, comply (and shall make all efforts to ensure that its members, employees, agents, visitors, licensees, and Event Attendees comply) with all laws, codes, statues, ordinances and regulations applicable to this Agreement and the Business Agreement.

5. Immunity. The Parties hereto understand and agree that the Town neither waives nor intends to waive by this Agreement, or any provision hereof, the monetary limitations and any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.

6. Assignment and Successor and Assigns. The interest of the Town under this Agreement is personal to the Town and may not be assigned or transferred to any other individual or entity without the TSG's prior written consent.

7. Notices. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the following addresses (or to such other address as either party may subsequently designate):

If to the Town:

Paul Wisor, Town Manager  
Town of Mountain Village  
411 Mountain Village Blvd  
Mountain Village, CO 81435

With a copy to:

David McConaughy, Town Attorney  
[dmcconaughey@garfieldhecht.com](mailto:dmcconaughey@garfieldhecht.com)

If to TSG:

Legal Department  
TSG Ski & Golf, LLC  
Attn: Stefanie C. Solomon, Esq.  
565 Mountain Village Blvd.  
Mountain Village, CO 81435  
(970) 728-7318  
[ssolomon@telski.com](mailto:ssolomon@telski.com)

All notices required hereunder shall be deemed received on the date of delivery, or attempted delivery if delivered in person, or if mail, on the date which is two (2) days after the date such notice is deposited in the U.S. mail.

8. Severability. In the event that any provision(s) of this Agreement is (are) determined to be legally invalid, the parties hereto agree that that particular provision shall be null and void, but that the remainder of this Agreement shall remain in full force and effect.

9. No Third-Party Beneficiary. This Agreement is not intended and shall not be construed so as to grant, provide or confer any benefits, rights, privileges, claims, causes of action or remedies to any person or entity as a third party beneficiary under any statutes, laws, codes, ordinances or otherwise.

10. Insurance: Both TSG and the Town shall each keep in full force and effect for the entire Term of this Agreement (and any renewal terms), an automobile general liability insurance policy (the "Policy") with minimum coverage limits of TWO MILLION DOLLARS (\$5,000,000.00) per occurrence and THREE MILLION DOLLARS (\$3,000,000.00) in the aggregate. Said Policy and coverage limits shall cover all types of liability associated with this Agreement and the zip car vehicles. Both TSG and Town shall name each other as an additional insured on the Policy, and each party shall provide to the other party, within seven (7) days of execution of this Agreement, a certificate of insurance naming the other party as an additional insured on the Policy. Both TSG and the Town shall be given fifteen (15) days written notice by certified mail of any cancellation or change in the Policy. The Parties agree that any incident, injury, claim, accident or potential liability resulting events tied to use of the Zipcar vehicles shall first be processed through the Policy of the party whose employee is driving the Zipcar vehicle. In the case of Village Court Residents, any incident, injury, claim, accident or potential liability resulting from use of a Zipcar by such Residents, shall first be processed through the Town's insurance Policy.

11. Indemnity. To the extent permitted by law, and without waiving the Town's immunity as provided in C.R.S. Section 24-10-114, each Party shall indemnify, defend and hold harmless the other party, and its officers, directors, and employees, agents and affiliates from and against any and all claims arising out of or related to any loss, cost, damage or injury (including without limitation, injury or death of any person or damage to property of any kind) arising out of or in connection with, or related to this Agreement and the use of the Zipcars. This indemnity obligation and all other fiscal obligations of the Town under this Agreement are subject to annual budgeting and appropriation by the Mountain Village Town Council as required by the Colorado Constitution and other applicable law. In the event that TSG is subjected to a third party claim arising out of the use of a Zipcar by a Town employee or Village Court Resident, and if neither the Town nor its insurance carrier provides a defense to TSG, or if neither the Town nor its insurance carrier agrees to pay any judgment entered against TSG for such a claim, then TSG shall have the right by written notice to the Town to immediately terminate this Agreement.

12. Non-Appropriation. All direct and indirect financial obligations of the Town under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. No provision of this Agreement shall be construed or interpreted: (a) to directly or

indirectly obligate the Town to make any payment in any year in excess of amounts appropriated for such year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (c) as a donation or grant to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

13. No Waiver. No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof.

14. Entire Agreement and Amendment. The Agreement, including all exhibits and referenced documents, constitutes the entire Agreement of the parties with respect to the matters contained herein. No modification of or amendment to the Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of the Agreement, are of no force or effect.

**IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.**

**TOWN OF MOUNTAIN VILLAGE,  
a Colorado home rule municipality**

**TSG Ski & Golf, LLC**

By:

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

## EXHIBIT A



## ZIPCAR FOR BUSINESS AGREEMENT

**This Zipcar for Business Agreement**, (hereafter the “Agreement”) is made as of the 20th day of November, 2023 (the “Effective Date”), by and between Zipcar, Inc., a Delaware corporation with principal offices at 35 Thomson Place, Boston MA 02210 (hereafter “Zipcar”), and TSG Ski & Golf LLC, a limited liability company with principal offices at 565 Mountain Village Blvd, Telluride, Colorado 81435 (hereafter the “Business”). For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Term of Agreement.** The initial term of this Agreement will commence on the Effective Date and, unless terminated earlier in accordance herewith, will continue for a period of two (2) years. This Agreement will automatically renew for successive one (1) year periods unless either party gives the other written notice of termination at least thirty (30) days prior to the end of the then current term.
2. **Zipcar Membership Offering/Responsibility for Payments.** Each Business employee that is approved by Business for inclusion in Business’s car sharing program (“Services”) shall be eligible to use Zipcar Vehicles (an “Eligible Person”) at the usage rates set forth in the table below and subject to Zipcar’s then current policies and procedures, including without limitation the terms and conditions of Zipcar’s member agreement (“Member Agreement”). To become a Zipcar Member, an employee of Business shall complete Zipcar’s membership application at [www.zipcar.com](http://www.zipcar.com) and, if approved for membership by Zipcar, shall enter into Zipcar’s Member Agreement in the form set forth at [www.zipcar.com](http://www.zipcar.com). If an employee that is approved by Business is currently a Zipcar Member, they must be in good standing prior to participation in Business’s car sharing program. Zipcar may revise the membership application and Member Agreement from time to time at its sole discretion. If the Business has elected during the application process to be a direct bill responsible for all use of the Z4B Services under its account (“Direct Bill Account”) Business will be responsible for and shall pay all annual account, registration and similar fees, driving charges, costs, additional charges, damage fees, fines, tolls or other amounts they may be due (collectively, “Charges”) for its Eligible Members and Business under the member agreement and/or these Terms. For purposes of the member agreement, Business will be deemed the “First Member” and Business’ Eligible Members will be deemed “Associate Members,” as each term is defined in the Member Agreement. If Business has elected during the application process to have its Eligible Members pay and be responsible for all Charges, then Business shall have no liability with respect to any Charges incurred by its Eligible Members (NOTE: *This option is not available for businesses that require sales tax exempt status*).

Vehicle Class	Per hour Weekday / Weekend
Better Class vehicles	\$12.00

Zipcar will make available to Business the following membership option. Membership option details are as follows:

1. Employee discount rate offer
  - a. No application fee
  - b. \$35 annual membership fee
  - c. Employee is responsible for all charges occurred
  - d. Employees must use custom link to receive discount and driving rate
3. **Number of Parking Vehicles.** Business will make available for Zipcar’s exclusive use the following number of parking spaces at Business’ parking facility indicated below. Zipcar will provide to Business the following number of vehicles for Business’s exclusive use.

Vehicles	Parking Spaces	Facility Name and Address	Monthly Committed Fee ***
Eight (8) Better Class (ex: Subaru Crosstrek, or similar 4x4 or all wheel vehicles)	Eight (8)	Telluride Ski and Golf , 565 Mountain Village Blvd Telluride, Colorado 81435	\$775 per vehicle

\*\*\*Monthly Committed Fee. *On or before the first day of each month, Company shall pay Zipcar an amount equal to the Monthly Committed Fee set forth above for each month. The Monthly Committed Fee will remain in effect for the term of this Agreement.*

4. **Revenue Share.** Zipcar shall pay Business a quarterly Revenue Share within sixty (60) days following the end of each calendar quarter during the Term. For purposes hereof, “Revenue Share” means an amount equal to \$2.25 per hour for each completed hourly reservation booked on vehicles assigned to Business as outlined in section 3 during the applicable calendar quarter.



5. **Parking Space Availability and Use.** The location of the parking spaces assigned to Zipcar shall be mutually agreed by the parties. The parking spaces made available to Zipcar will be used by Zipcar for the purpose of providing car sharing services to Zipcar members, and Zipcar and its members shall have right to use the parking spaces, including without limitation the right to park, operate, clean, and otherwise use the Zipcar vehicles. Business shall provide Zipcar, its members, and its third party personnel with 24x7x365 unrestricted access to the parking spaces and shall otherwise provide the same amenities and services it affords to other parking tenants. Zipcar shall have the right to decrease the number of parking spaces at any time and for any reason, including without limitation for seasonal fleet management purposes, without penalty by providing thirty (30) days prior notice to Business.
6. **Signage.** Zipcar shall have the right to place Zipcar signage advertising the Zipcar services in such locations at the Business' parking facilities as Zipcar and Business may mutually agree from time to time. At a minimum, Business agrees that Zipcar may mark off reserved parking spaces assigned to Zipcar by placing a Zipcar sign to indicate such space is reserved for a Zipcar.
7. **Vehicle Operations**
- a. **Maintenance Process**  
Zipcar will schedule appointments for vehicles at either a national vendor (Pep Boys, Firestone or similar) or local Avis supply chain location. These appointments will be communicated to Business single point of contact to coordinate shuttling by Business to and from the repair facility.
- b. **Cleaning Process**  
Zipcar will source a local cleaning vendor using our third-party network of cleaning providers. All cleaning services will be scheduled and managed by Zipcar, relieving Business from any upkeep. Zipcar vendors conduct on-site regularly scheduled cleanings.  
Zipcar vendors will also conduct spot cleans as needed if a dirty car is reported by a driver or Business employees. Zipcar commits to source sustainable cleaners that utilize environmentally friendly cleaning solutions that leave minimal water run-off. The safety of Zipcar drivers is a top priority, so vehicles are regularly cleaned with anti-viral and antimicrobial solutions.
- c. **Damage Repair Process**  
Zipcar will be responsible for vehicles involved in incidents that prevent the vehicle from being driven safely while in reservation. These vehicles will be towed to the closest Zipcar repair facility. For all other damage-related repairs, Business is responsible for the transportation of that Zipcar vehicle to and from the nearest repair facility. Business shall communicate promptly to Zipcar any vehicles that are being towed for repairs. Zipcar will assess at its sole discretion the need for a damage repair to be performed in the vehicle and determine next steps.
- d. **Transportation for maintenance**  
Business is responsible to shuttle Zipcar vehicles for maintenance. Reservations for that purpose would not be charged to Business. Zipcar will provide Business with a Zipcard for specific employees at Business locations, allowing them to move Zipcars at no cost for emergency or maintenance purposes. Business shall be responsible for any losses or damage resulting from or arising during Business' shuttling of vehicles.
8. **Administration; Marketing:** Business will assign an administrator who will be the point of contact for billing (if "Direct Billed Account" option is selected as stated above), approving or denying employees of Business who apply for membership, as well as promptly removing employees who cease to be employees of Business. In addition, Business shall designate a marketing coordinator to coordinate the marketing and promotion of the Zipcar's Services to Business' employees. Business shall promote the Zipcar service as may be mutually agreed by the parties, including but not limited to an email distribution welcoming employees to join Zipcar, inclusion in Business' publications and employee benefits collateral, and link to Zipcar.com on Business' website. Business may create co-branded marketing materials at Business' expense upon mutual written agreement of the parties, subject to Business' compliance with Zipcar's co-branding guidelines and Zipcar's review and approval prior to dissemination.
9. **Relationship of the Parties.** The relationship of the parties is solely that of independent contractors. Neither party will have any authority to contract with third parties on behalf of the other party or to expressly or impliedly represent that it has any





such authority, to any person. Business agrees that Zipcar shall be the only car sharing service promoted and used by Business.

- 10. Payment Terms.** If a Direct Billed Account, all fees payable hereunder are due within 30 days from the date of Zipcar's invoice. If Business fails to pay an invoice in a timely manner, Zipcar will give Business written notice. If Business has a credit card account on file with Zipcar, Business hereby consents to Zipcar's charging any and all fees that become payable hereunder to such credit card upon such fees becoming due. If Business fails to make payment within 10 business days of the Zipcar's notice, then (i) Zipcar will have the right to enter Business' property and remove the Zipcar Vehicle(s) and Business will be liable for all fees, costs and expenses actually incurred by Zipcar in connection with such removal, and (ii) interest will accrue on all amounts due from the original date due to the date paid, at the lesser of 1 and ½% per month or the highest rate permitted by applicable law. Business will pay all taxes or other governmental charges (including import duties) levied in connection with the Services (except taxes on net income of Zipcar).
- 11. Publicity; Use of Zipcar Name; Trademarks.** Zipcar may release a press release announcing the parties' relationship hereunder with the prior consent of Business, which shall not be unreasonably withheld. Unless otherwise expressly permitted in this Agreement, neither party will use the other party's name, logos, trademarks or service marks in any manner without the other party's prior written approval. Business hereby gives Zipcar the right to use Business' name, logos, trademarks and service marks (i) to create marketing and advertising materials for Business to use to promote the Zipcar's Services to Business' employees and (ii) on Zipcar's customer list which may be displayed on Zipcar's website and in other publications.
- 12. Representations and Warranties.** Each party represents and warrants to the other that (i) it has the authority to enter into this Agreement and is not under any obligation to any third party that would conflict with this Agreement and (ii) it will comply with all applicable federal, state and local laws. EXCEPT AS SET FORTH HEREIN, ZIPCAR MAKES NO WARRANTIES WITH RESPECT TO THE SERVICES OR THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NO WARRANTY IS MADE THAT THE SERVICES WILL MEET BUSINESS' REQUIREMENTS.
- 13. Limitation of Liability; Exclusion of Damages.** EXCEPT WITH RESPECT TO BUSINESS' PAYMENT OBLIGATIONS AND EACH PARTY'S CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS, NEITHER PARTY'S LIABILITY HEREUNDER WILL EXCEED THE LESSER OF \$5,000 OR THE FEES PAYABLE FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR INTERRUPTION OF BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. THE FOREGOING LIMITATION OF LIABILITY IS NOT INTENDED TO LIMIT EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. BUSINESS ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION REPRESENTS A REASONABLE ALLOCATION OF RISK THAT IS REFLECTED IN THE FEES PAID BY BUSINESS.
- 14. Confidentiality.** Each party acknowledges that during the term of this Agreement the other party may disclose information, whether orally, visually, or in tangible form, that is proprietary and confidential to the disclosing party and is disclosed or marked as proprietary or confidential (hereafter "Confidential Information") and that the unauthorized disclosure of Confidential Information may cause irreparable harm to the disclosing party. Zipcar acknowledges that Business' employee lists are proprietary to Business and Zipcar will not use them, other than to provide Services hereunder, without Business' permission. Each party shall only use the Confidential Information to perform its obligations hereunder and will take all reasonable measures to safeguard and prevent the unauthorized disclosure of Confidential Information, but no less than a reasonable degree of care and the measures it takes to safeguard its own Confidential Information, including without limitation disclosing Confidential Information only to those of its employees with a need to know such information to perform their obligations hereunder. The parties acknowledge that it will be impossible to measure the damages that would be suffered by one party if the other party fails to comply with the provisions of this Section 14 and that in the event of any such failure, such party will not have an adequate remedy at law and shall, therefore, be entitled, in addition to any other rights and remedies, to obtain specific performance of the receiving party's obligations and to obtain immediate injunctive relief with respect thereto.
- 15. Indemnification.** Each party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other party (the "Indemnified Party") its successors, subsidiaries, affiliates, employees, officers, trustees, agents and assigns from and against any and all third party claims brought against the Indemnified Party by any person or entity (i) for personal injury or property damage and (ii) arising out of the Indemnifying Party's gross negligence or willful misconduct with respect to this

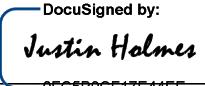


Agreement. The Indemnifying Party will pay all damages agreed to in settlement or awarded by a court of competent jurisdiction; provided, however, that no settlement shall be effective without consent of the Indemnified Party. This indemnification obligation shall be effective only if the Indemnified Party has given prompt written notice of the claim to the Indemnifying Party, permitted the Indemnifying Party an opportunity to defend, and reasonably cooperated in the defense of the claim at the Indemnifying Party's expense.

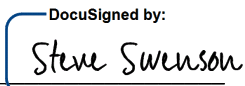
- 16. Termination.** If either party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of notice of that breach, then the other party may terminate this Agreement effective as of the end of that period. The commitment of an act of bankruptcy (such as a giving general assignment for the benefit of creditors) or the filing of a bankruptcy petition will be deemed a breach if not vacated within thirty (30) days of filing. It is recognized that some breaches are not capable of cure, such as a cessation of business. With respect to any such incurable breach by a party, if it remains possible to give notice, then upon such notice by the other party this Agreement will be deemed terminated. If it is not possible then this Agreement will be deemed to terminate automatically upon such breach. No termination for cause will be deemed a waiver of any claim for damages by the terminating party. Upon the termination of this Agreement, each party will promptly destroy or, on the other party's request, return all of the other party's Confidential Information, including all copies thereof. Sections 12, 13, 14, 15, 16 and 17 of this Agreement shall survive any termination or expiration of this Agreement.
- 17. Miscellaneous.** This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous agreements and understandings, oral and written, between the parties with respect to the subject matter hereof. Additional or different terms in any purchase order or similar document will not modify or add to the terms of this Agreement. This Agreement may be amended only by a written agreement between the parties. If one party fails to enforce any provision of this Agreement, such party will not be precluded from enforcing the same provision at another time. This Agreement and the rights granted under it may not be assigned or transferred by either party without the written consent of the other party; provided, however, either party will have the right to assign this Agreement to its successor in the event of a merger, acquisition or other consolidation, including without limitation the sale of all or substantially all of its assets or stock or business to which this Agreement relates. In the event that any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deemed modified to the minimum extent necessary to render the provision enforceable in a manner that most closely represents the original intent of the parties and the remaining terms and conditions of this Agreement will remain in full force and effect. This Agreement shall be governed by and construed in accordance with law of the Commonwealth of Massachusetts without regard to conflicts of laws provisions thereof. The parties agree that the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in Boston, Suffolk County, Massachusetts, and consent to the exclusive jurisdiction of such courts. In the event of any adjudication of any dispute under this Agreement, the prevailing party in such action will be entitled to reimbursement of its reasonable attorneys' fees and related costs by the other party. Except for payment obligations, neither party will be responsible for delays or failures in performance resulting from acts beyond its control. Such acts include but are not be limited to acts of God, labor conflicts, acts of war or civil disruption, governmental regulations imposed after the fact, public utility out failures, industry wide shortages of labor or material, or natural disasters.

**In Witness Whereof** a duly authorized representative of each party has executed this Agreement as of the Effective Date set forth above.

**Zipcar, Inc.**

By:   
DocuSigned by:  
 OFC5B9CF17E44EE...  
 Name: Justin Holmes  
 Title: VP, marketing and public policy

**Business: TSG Ski & Golf, LLC**

By:   
DocuSigned by:  
 49D58FF2D651492...  
 Name: Steve Swenson  
 Title: Manager of Dial a Ride