

## AGREEMENT INCORPORATING TERMS AND CONDITIONS

**WHEREAS**, TMG has obtained the rights to install Digital Touch Screen(s) into various vehicles operating on the Uber platform for advertising purposes; **AND WHEREAS** the Advertiser wishes to advertise on TMG's Digital Touch Screens for an agreed period of time and subject to TMG's conditions as contained herein; **AND WHEREAS** the parties wish to record their agreement in writing; **NOW THEREFORE** the parties hereto agree as follows:

### DEFINITIONS

In this Agreement unless the context otherwise requires:

<b>"Advertisement(s)"</b>	shall mean any digital text, video, graphics, image, content or any other marketing or promotional material provided by the Advertiser to Taxi Media Group for advertising on Taxi Media Group's Digital Touch Screens;
<b>"Agreement"</b>	shall mean this agreement as well as any schedules and annexures attached hereto;
<b>"Business Day"</b>	shall mean any day other than a Saturday, Sunday or public holiday in South Africa;
<b>"Digital Touch Screen(s)"</b>	shall mean the digital touch screen(s) installed by TMG in certain vehicles operating on the Uber platform;
<b>"Intellectual Property"</b>	means all intellectual property of any nature whatsoever owned by TMG, including, without limiting the generality of the aforementioned, technology, source codes, domain names, websites, trade secrets, concepts, logos, systems, methods, marks, trade names, styles, insignia, designs, patents, copyright, systems, social media accounts and pages, software and trademarks (whether registered or not);
<b>"Parties"</b>	shall mean TMG and the Advertiser collectively and "Party" means any one of them as the context may require;
<b>"Advertising Fee"</b>	shall mean the amount payable by the Advertiser to TMG as set out in the Schedule
<b>"Schedule"</b>	shall mean the schedule attached hereto;
<b>"TMG"</b>	shall mean TAXI MEDIA GROUP, with details as per the Schedule;
<b>"the Advertiser"</b>	shall mean the Advertiser as set out in the Schedule;

### **1. OFFICIAL STATUS**

TMG hereby grants to the Advertiser the right to advertise on its Digital Touch Screen(s) for an agreed period of time as set out in the Schedule.

### **2. TERM AND RENEWAL**

2.1 The term of this Agreement is as per the Schedule.

### **3. CONSIDERATION AND PAYMENT**

3.1 The Advertising Fee is to be paid by the Advertiser directly to TMG monthly in advance into TMG's bank account as set out in the Schedule.

3.2 Interest on all overdue payments under this Agreement shall accrue from the date when payment becomes due until the date of final payment at a rate of 3% above the rate that First National Bank charges on its prime overdraft facilities from time to time, which interest shall be calculated daily, compounded monthly and payable by the Advertiser to TMG on demand.

### **4. WARRANTIES AND LIMITATIONS**

4.1 The Advertiser represents and warrants that it has the right and authority to enter into and perform in terms of this Agreement and in accordance with its terms and conditions without violating the rights of any other person or entity.

4.2 The Advertiser warrants that the Advertisements are authorized, licensed (where applicable) and that it has all the necessary permissions to furnish TMG with the Advertisements.

4.3 The Advertiser shall have no claims against TMG of whatsoever nature, including without limitation, claims in respect of damages incurred (directly or indirectly) pursuant to the Digital Touch Screens being stolen, non-operational or offline for whatever reason, or pursuant to the vehicle in which the Digital Touch Screen is installed ceasing to operate as envisaged by the Advertiser.

### **5. INDEMNITY**

The Advertiser hereby indemnifies TMG, and its present and future officers, directors, employees, agents, successors, assigns and shareholders against all losses, damages, actions, causes of actions, claims, demands, suits, liability, judgments, disbursements, attorney's fees and all other costs arising out of or incidental to:

5.1 The failure by the Advertiser to perform its duties under this Agreement and/or observe the terms and conditions contained herein related to it; and

5.2 Any and all claims alleging damage to persons (including without limitation death) or property arising from or in any way resulting from the acts or omissions of the Advertiser's employees or any other person or entity engaged by the Advertiser as well as any and all claims alleging damage to persons or property arising from or in any way resulting from the negligence or willful actions of the Advertiser.

5.3 Any claims relating to the Advertisements, whether direct or indirect, and in relation to intellectual property or otherwise.

## **6. INTELLECTUAL PROPERTY**

6.1 The parties acknowledge that any and all Intellectual property relating to the Advertisements is owned by the Advertiser subject to clause 7.2 below.

6.2 Any new Intellectual Property created solely by TMG during the duration of this agreement will be owned by TMG.

6.3 Any and all use of TMG's Intellectual Property by the Advertiser, must first be approved by TMG.

## **7. CANCELLATION**

7.1 Irrespective of anything else contained in this Agreement, if this Agreement is cancelled for any reason whatsoever, TMG shall be entitled to retain the Advertising Fee paid by the Advertiser; and be entitled to be paid the remaining monies due for the term of the agreement forthwith.

7.2 In the event that for whatever reason TMG is no longer able to place the Digital Touch Screens in vehicles suitable for purposes of this agreement (in TMG's sole discretion), TMG shall be entitled to cancel this agreement forthwith, without incurring any liability towards the Advertiser whatsoever.

## **8. DOMICILIUM**

8.1 The parties choose as their domicilia citandi et executandi for all purposes under the Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the addresses set out in the schedule to this agreement.

8.2 Any notice or communication required or permitted to be given in terms of the Agreement shall be valid and effective only if in writing (which includes email).

8.3 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

## **9. JURISDICTION**

9.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

9.2 The parties hereby consent in terms of Section 45 of the Magistrates' Court Act 32 of 1944, as amended, to the jurisdiction of the Magistrates' Court having jurisdiction over their respective persons under Section 28 of the Magistrates' Court Act 32 of 1944, to determine any action or other legal proceedings arising out of the agreement.

9.3 Notwithstanding the aforesaid in 8.2 above, each party shall have the right, at its sole discretion, to institute proceedings in any other competent South African court for urgent relief.

## **10. BREACH**

Without prejudice to any other rights to which a Party shall be entitled, should a Party:

10.1 commit a material breach of any of the terms or conditions of this Agreement and fail to remedy such breach within 10 (ten) Business Days after receiving written notice from either of the other Parties to do so; or

10.2 commit an act of insolvency; or

10.3 take steps to place itself or be placed in liquidation whether voluntary or compulsory or in judicial management (in either case whether provisionally or finally) or under business rescue; or

10.4 take steps to de-register or dissolve itself, other than for purposes of restructuring, then that Party shall be in default ("the Defaulting Party") and the other Party shall be entitled without prejudice to any other rights or remedies available to them at law (including but not limited to the right to claim damages), either to cancel this Agreement or to enforce the performance by the Defaulting Party of the terms of this Agreement. It is agreed that if a material breach is committed which breach is not capable of remedy, this Agreement may be terminated immediately as a result thereof by a Party which is not the Defaulting Party by giving written notice thereof to the Defaulting Party.

## **11. ASSIGNMENT**

The Advertiser shall not have the right to assign any portion of its rights, obligations and benefits under this Agreement, without first receiving written permission from the other party. Any purported assignment contrary to the foregoing shall be deemed null and void and without force or effect.

## **12. NO VARIATION**

12.1 The agreement constitutes the whole agreement between the Parties and variation or alteration of the Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized agents, including this clause.

12.2 Any representations, warranties, or undertakings made or given by a party or its agents other than those contained in the agreement shall not be of any force or effect whatsoever.

**13. WAIVER**

No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or enforcement of any right arising from the Agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from the Agreement or stop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or terms of the Agreement.

**14. SEVERABILITY**

Should any one or more of the provisions of the Agreement be unenforceable then such provision(s) shall be severed from the Agreement and the remaining provisions shall be of full force and affect.

**15. CONFIDENTIALITY**

15.1 The Parties acknowledge that during the Agreement each may come into contact with confidential information and trade secrets belonging to each other and undertake that, both during the duration of this Agreement and at all times thereafter, each will refrain from disclosing any such information to any third party in any manner, whether directly or indirectly, for any purpose other than to fulfill its obligations under this Agreement.

15.2 Without the prior written consent of each other, the Parties will keep confidential and will not disclose to any person:

15.2.1 the details of this Agreement, as well as the details of all the transactions or agreements contemplated in this Agreement; and

15.2.2 all information relating to the business or the operations and affairs of the Parties, (Together, "Confidential Information").

15.3 The Parties agree to keep all Confidential Information confidential and to disclose it only to their officers, directors, employees, consultants and professional advisers who:

15.3.1 have a need to know (and then only to the extent that each such person requires the Confidential information in order to fulfil his or her functions properly);

15.3.2 are aware that the Confidential Information should be kept confidential;

15.3.3 are aware of the disclosing party's undertaking in relation to such Confidential Information in terms of this Agreement; and

15.3.4 have been directed by the disclosing party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.

**16. BINDING AGREEMENT**

16.1 This Agreement shall be binding on the parties, their successors, and assigns.

16.2 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

**17. DISPUTE RESOLUTION**

17.1 Should any dispute, disagreement or claim arise between the Parties concerning this Agreement (the "Dispute"), the parties shall endeavor to resolve the Dispute by negotiation. This entails one of the parties inviting the others in writing to meet and to attempt to resolve the Dispute within 5 (five) Business Days from date of written invitation.

17.2 If the Dispute has not been timeously resolved, then either Party may by written notice to the other Party refer the Dispute to the Arbitration Foundation of Southern Africa ("AFSA") for final resolution by way of arbitration in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

17.3 Each Party irrevocably consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency and authorises the other to apply in writing, on behalf of both Parties to such Dispute, to the secretariat of AFSA in terms of the aforesaid rules for any such arbitration to be conducted as a matter of urgency, provided that the Party which intends so applying first notifies the other Party in writing of its intention to do so.

17.4 Unless otherwise agreed in writing by the Parties, any such negotiation or arbitration shall be held in Cape Town.

17.5 The provisions of this clause 17 shall not preclude a Party from seeking urgent interim relief from the appropriate court of law.

17.6 For the purpose of clause 17.5 above and for the purpose of having any award made by the arbitrator(s) being made an order of court, each of the Parties hereby submits itself to the High Court of South Africa (Western Cape High Court, Cape Town).