

AGREEMENT BETWEEN

**TAPTUCK (PTY) LTD
("TAPTUCK")**

and

**MERCHANT DETAILS
("MERCHANT")**

1. Definitions:

- 1.1 this Agreement: This Agreement once signed by the Parties.
- 1.2 Commencement Date: The date of signature of the last signing party to this agreement.
- 1.3 Consumer: An individual who Creates a member profile with TAPTUCK and deposits funds into the TAPTUCK Platform for purposes of utilising the TAPTUCK Platform with the MERCHANT.
- 1.4 Domicilium: *Domicilium citandi et executandi.*
The parties choose domicilium as follows:
- 1.4.1 TAPTUCK: _____
- 1.4.2 MERCHANT: _____
- A Party may change its domicilium by written notice at any time.
- 1.5 TAPTUCK: TAPTUCK (PTY) LTD, registration number 2016/428222/07.
- 1.6 TAPTUCK Platform: The computer application which is supported by a combination of software programmes, incorporating proprietary software owned and operated by TAPTUCK, which enables the Consumer to utilise the TAPTUCK App to load funds and vouchers towards purchasing the PRODUCT.
- 1.7 THE PRODUCT: Food and Beverages sold by the MERCHANT.
- 1.8 MERCHANT: The entity who signs up to use the TAPTUCK Platform at their premises, whose details are more clearly set out in Annexure "A" below, which shall be used to sell the PRODUCT by the MERCHANT using the TAPTUCK Platform.
- 1.9 Parties: TAPTUCK and MERCHANT, and a reference to "Party" will be a reference to one of them as the context dictates.
- 1.10 Regulatory Authority: shall include all regulatory authorities in South Africa including inter alia Companies and Intellectual Property Commission, Competition Commission, Financial Sector Conduct Authority, National Consumer Commission and payments Association of South Africa.

2. Interpretation:

- 2.1 In this Agreement:
- 2.1.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 2.1.2 the use of the singular shall include the plural and vice versa as the context may require.
- 2.1.3 any notice in terms of this Agreement shall be in writing. Where the notice relates to a breach of this Agreement then it shall specify the breach and call for it to be remedied within not less than 7 days of receipt of notice. Any notice shall be addressed to the addressee in at least one of the following ways:
- 2.1.4 by email to the addressee's then current email address in which event the notice shall be considered received on the day of transmission;
- 2.1.5 by hand delivery to the addressee's domicilium;
- 2.1.6 by hand delivery to the addressee's then current place of business;
- 2.1.7 by prepaid registered post to the addressee's domicilium in which event it shall be deemed to have been received 96 hours after the time of its posting.
- 2.1.8 words importing the masculine gender include the feminine and neuter genders and vice versa;
- 2.1.9 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.1.10 references to a "subsidiary" or a "holding company" shall be references to a subsidiary or holding company as defined in the Companies Act No. 71 of 2008;
- 2.1.11 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.1.12 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 2.1.13 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement

or paragraph of any Annexure, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;

- 2.1.14 where reference is made to a "day", it shall be a reference to a business day, which shall be each day of the week except for Saturdays, Sundays and official gazetted public holidays in South Africa;
 - 2.1.15 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which event the last day shall be the next succeeding business day;
 - 2.1.16 where the day upon or by which any act is required to be performed is not a business day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding business day;
 - 2.1.17 references to "date of signature" or "signature date" shall be references to the date upon which this Agreement is signed by the Party signing last in time;
 - 2.1.18 annexures will be referred to in capital letters in bold print and each annexure shall be an integral part of this Agreement;
 - 2.1.19 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. pro non scripto) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
 - 2.1.20 the use of any expression covering a process available under South African law (such as but not limited to a winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
 - 2.1.21 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
 - 2.1.22 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.
- 2.2 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.
- 2.3 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e. the *contra proferentem* rule), shall not apply.
3. **Preamble:**
- 3.1 TAPTUCK and MERCHANT record the terms and conditions under which MERCHANT appoints TAPTUCK to facilitate the sale of THE PRODUCTS to Consumers through the TAPTUCK Platform.
 - 3.2 A Consumer shall be entitled Deposit funds into the TAPTUCK Platform for purposes of purchasing the PRODUCT from the MERCHANT.
 - 3.3 Upon input of funds by a Consumer, which will equate to the total amount of the purchase price of the THE PRODUCT as agreed between the parties from time to time, TAPTUCK will facilitate a payment instruction which may take the shape of including but not limited to a TAPTUCK, Virtual credit card and/or a gift Voucher; which may differ from MERCHANT to MERCHANT.
4. **Appointment:**
- 4.1 MERCHANT appoints TAPTUCK to facilitate the purchase of THE PRODUCTS by Consumers via the TAPTUCK Platform.
5. **Duration:**
- 5.1 The appointment in clause 4 above will commence on the Commencement Date, and will endure for a one year period ("Initial Period") and shall continue thereafter for periods of one year unless terminated by either party upon providing one month's notice to the other party following the expiration of the Initial Period.
- 5.2 On or about the end of each month, Merchant accounts will be automatically cashed out without notice and any money that has not been cashed out will be returned to the Merchant.
6. **Infrastructure:**
- 6.1 TAPTUCK will cause the software programmes constituting the TAPTUCK Platform to the Consumer for use by the Consumer.
 - 6.2 TAPTUCK will at its cost manage and maintain the TAPTUCK Platform so that, save for scheduled maintenance interruptions, glitches and interruptions ordinarily expected to the performance of remotely operated software programmes, the TAPTUCK Platform will function without material interruption or fault.

7. **Indemnity:**

- 7.1 TAPTUCK receives data and services from sources which are not connected to it, nor subject to its control. TAPTUCK and the participants in its supply chain rely on internet connectivity and electronic communications and are susceptible to all vagaries inherent in that form of connectivity and communication. Whilst TAPTUCK will take reasonable steps to create a stable and accessible electronic platform by way of the TAPTUCK Platform, it does not represent that the TAPTUCK Platform or the data aggregated therein will be free of instability or error.
- 7.2 Neither TAPTUCK nor its proprietor or either of their officers or employees will be liable for any interruption or delay in the use of the TAPTUCK Platform, any interception in communications or corruption of data or systems, any transfer of computer viruses, any error or misstatement in relation to any data, any incompleteness in relation to data, any improper or inapplicable use to which any data is put, any loss occasioned by an act of the Consumer or a member of staff of the Merchant, any internal processes of the Merchant, any claim or loss of any nature relating to or arising from the use of the TAPTUCK Platform or any data aggregated within or processed by the TAPTUCK Platform.
- 7.3 Neither TAPTUCK nor its proprietor or either of their officers or employees will be liable for any risks relating to the use of vouchers or coupons once issued by TAPTUCK.
- 7.4 TAPTUCK furthermore will not be held liable for any PRODUCTS incorrectly distributed by MERCHANTS nor for any loss of income sustained by MERCHANTS for any errors regarding the distribution of PRODUCTS.

8. **Intellectual Property:**

- 8.1 All intellectual property relating to the TAPTUCK Platform belongs to TAPTUCK or to such licensor thereof as TAPTUCK has received rights under licence, and that intellectual property will never become owned by MERCHANT.
- 8.2 The MERCHANT acquires no right in the intellectual property owned by TAPTUCK, except for the non-proprietary rights granted to it for use in terms of this Agreement.
- 8.3 All intellectual property relating to any brand or name which TAPTUCK may use to operate the TAPTUCK Platform will be and remain the sole property of TAPTUCK and upon termination of this Agreement MERCHANT will cease to use or display any such intellectual property, or to associate itself with the same.

9. **Consumer Personal Information:**

- 9.1 TAPTUCK shall be responsible for ensuring, insofar as it may be required from time to time, that it complies with all laws and regulations relating to transacting with Consumers by the use of the TAPTUCK Platform or otherwise, such to include, without limitation, the Financial Intelligence Centre Act, 38 of 2001, the Protection of Personal Information Act, 4 of 2013 and the Consumer Protection Act, 68 of 2008.
- 9.2 The obligations of TAPTUCK are more fully set out in the POPI Addendum annexed hereto.

10. **Cession or Transfer:**

- 10.1 Neither party shall cede, assign, transfer or sub-contract any of its rights or obligations in terms of this Agreement without first having obtained the other party's prior written consent.

11. **Confidentiality:**

- 11.1 From time to time during the exercise by the Parties of their rights and obligations in terms of this Agreement, they shall become privy to each other's confidential information.
- 11.2 Confidential information shall include, without limitation, all information disclosed or made available by a disclosing Party to a receiving Party or obtained by the receiving Party from the disclosing Party, whether in oral, written or any other form whatsoever including commercial, financial, technical, scientific and research information, trade secrets, projects, strategies, clients, trends and histories in respect of Consumers, Consumers' preferences, data arising from acquisitions by Consumers, partners, suppliers, customers and business associates, the identities of Consumers, Consumer data, software, firmware, any information, the unauthorised disclosure of which could reasonably be expected to cause harm or risk to the disclosing Party, intellectual property and any other information designated by the disclosing Party as confidential or which is manifestly confidential but excluding:
- 11.2.1 information that is, or becomes freely and publicly available otherwise than pursuant to a breach of any law or undertaking of confidentiality;
- 11.2.2 information which the receiving Party is able to show is or was known to, or is in the possession of, the receiving Party, prior to disclosure thereof by the disclosing Party, otherwise than pursuant to a breach of this Agreement;
- 11.2.3 is disclosed by the disclosing Party to satisfy the Order of a Court of competent jurisdiction or to comply with the provisions of any law or regulations in force from time to time;
- 11.2.4 is acquired by the receiving Party independently of the disclosing Party in circumstances that do not amount to a breach of the provisions of this Agreement; or
- 11.2.5 is received by a third party in circumstances that do not result in a breach of this Agreement.
- 11.2.6 All information disclosed by a disclosing Party to a receiving Party shall be deemed to be included in the definition of

confidential information. Consumer Data will be and remain confidential information which is owned by TAPTUCK, regardless of any circumstances under which the MERCHANT may receive that information.

- 11.3 The receiving Party will not acquire any rights in the disclosing Party's confidential information except as provided in this Agreement.
- 11.4 The receiving Party may not use for its own benefit or disclose confidential information to any third party other than in accordance with this Agreement.
- 11.5 Any disclosure by a person referred to above of confidential information contrary to this Agreement, will constitute an unauthorised disclosure by the receiving Party.
- 11.6 The receiving Party may disclose confidential information in order to comply with the law provided that in these circumstances, the receiving Party will limit the disclosure only to that which is necessary to comply with the law and advise the disclosing Party in writing as soon as reasonably possible and before the intended disclosure, specifying the confidential information will be subject to the disclosure and the reasons for the intended disclosure.
- 11.7 The receiving Party will not directly or indirectly employ, copy, adapt or in any other manner use confidential information for any purpose other than as permitted by the disclosing Party in writing and in accordance with this Agreement.
- 11.8 The receiving Party will receive and use confidential information in such a way so as to limit as far as possible any unauthorised disclosure or access to it.
- 11.9 On the termination of this Agreement for any reason, the receiving Party will at the request of the disclosing Party return, destroy or expunge from any storage device all confidential information.
- 11.10 Notwithstanding anything to the contrary contained in this Agreement, information pertaining to Consumers which TAPTUCK and/or The MERCHANT receives as a result of the use of the TAPTUCK Platform, will belong to TAPTUCK and may be used or disclosed by TAPTUCK as it deems fit.

12. **General Obligations:**

Each Party shall:

- 12.1 Perform its obligations with due care, skill and diligence and in accordance with all applicable laws and the TCP principles [Treating Customers Fairly Roadmap (first issued by the Financial Services Board on 31 March 2011)] and this Agreement;
- 12.2 Adhere to all risk management and risk containment measures that any Regulatory Authority may request;

13. **Warranties:**

Each party warrants that:

- 13.1.1 This Agreement, when executed, be valid and binding;
- 13.1.2 It has full capacity, power and authority to enter into this Agreement and perform its obligations;
- 13.1.3 The performance of its obligations will not cause a breach of any other agreement in terms of which it is a party;
- 13.1.4 It is not aware of anything which might or will adversely affect its ability to perform its obligations;
- 13.1.5 All information supplied is accurate, true and complete;
- 13.1.6 It has never had a similar agreement terminated at the instance of any Regulatory Authority;
- 13.1.7 It has obtained and will continue to obtain all the necessary consents which it is required to hold in terms of this Agreement;
- 13.1.8 The performance of its obligations is in accordance with all applicable laws;

14. **Breach:**

Should a Party breach this Agreement and remain in breach after 7 days' written notice, then the aggrieved Party may:

- 14.1 enforce this Agreement; and/or
- 14.2 terminate this Agreement; and, in either event
- 14.3 in an appropriate case recover damages.

15. **Limitation of liability**

The parties shall not be liable to each other for any indirect or consequential loss, including but not limited to loss of revenue, profit, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

16. **Force Majeure:**

- 16.1 Neither Party will be liable for any breach or delay in performance of its obligations under this Agreement if, and to the extent that, the breach or delay is directly caused by a force majeure event which will constitute one or more of the following events: civil riots, strikes, government or municipal intervention, interruptions in the supply of electricity and/or water, interruptions in internet activity, interruptions in the supply to either Party of any critical resource or raw material, or acts of God, but in each case if, and only to the extent that, the non-performing Party is without fault in causing the breach or delay, the breach or delay could not have been prevented by reasonable precautions and the breach or delay cannot reasonably be circumvented by the non-performing Party.
- 16.2 In the event that a Party is unable to perform its obligations pursuant to a force majeure event, such Party will:

- 16.2.1 immediately notify the other Party of the occurrence of the force majeure event and describe the circumstances causing such delay; and
 - 16.2.2 use its reasonable efforts to perform (or recommence performing) its obligations, and to the extent, possible, including through the use of alternative sources, workarounds and plans.
- 16.3 If force majeure causes delays in or failure or partial failure of performance by a Party of all or any of its obligations, this Agreement, or as the case may be, the affected portion thereof, shall be suspended for the period during which the force majeure prevails, but if they affect any material part of this Agreement, it shall be suspended for a maximum of 30 days after which any affected Party will be entitled on 5 days' written notice to cancel this Agreement.

17. **Dispute Resolution**

- 17.1 Any difference or dispute arising out of this Agreement shall firstly be resolved by the parties themselves at a round table meeting.
- 17.2 In circumstances under which the parties are not able to reach an agreement amongst themselves, the parties shall be obliged to refer the dispute for mediation.
- 17.3 In circumstances under which the parties are not able to come to a joint consensus and resolve a dispute through mediation, the dispute shall be referred to arbitration. The arbitrator shall be a senior counsel with no less than 10 years' experience, appointed by the parties through agreement, failing such agreement, the arbitrator shall be appointed by the Arbitration Foundation of South Africa. The Rules of the Arbitration Foundation of South Africa shall apply to the arbitration and the parties agree that there shall be no right to appeal or review the decision of the arbitrator.
- 17.4 This clause does not preclude any party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.
- 17.5 The parties consent to the non-exclusive jurisdiction of the High Court of South Africa where applicable and this Court will have jurisdiction to enforce any award by an arbitrator.
- 17.6 The arbitration and all matters incidental thereto are considered as confidential information and shall be regulated in terms of the confidentiality clause as contained in this agreement.

18. **Nature of the Relationship**

- 18.1 The conclusion of the Agreement will not result in:
- 18.1.1 Providing authority to a party to enter into contracts or arrangements for the other party, or that a party is bound or liable other than as provided for in this Agreement;
 - 18.1.2 A party being responsible for the debts of the other party;
 - 18.1.3 Any form of partnership, joint venture, arrangement or agency.

19. **Termination**

- 19.1 Either may terminate this Agreement immediately and without notice if:
- 19.1.1 Such right to terminate is set out in this Agreement;
 - 19.1.2 If regulated by any sanctioning body or Regulatory Authority;
 - 19.1.3 Either party is identified as:
 - 19.1.3.1 Being involved in any illegal or unlawful activity;
 - 19.1.3.2 Breaching any law;
 - 19.1.4 Either party may immediately cancel this agreement and claim damages if:
 - 19.1.4.1 If the other party takes steps to place itself in liquidation, whether voluntary or compulsory or under judicial management in either case whether provisionally or finally;
 - 19.1.4.2 Takes steps to deregister itself or is deregistered;
 - 19.1.4.3 Stops or threatens to stop business activities;
 - 19.1.4.4 Commits an act which would be considered an act of insolvency in terms of the Insolvency Act 24 of 1936, if committed by a natural person; or
 - 19.1.4.5 Fails to satisfy a judgment in excess of R1,000,000.00 entered against itself within 21 days after it becomes aware of the judgment.
- 19.2 If either party in its sole discretion determines that the other party:
- 19.2.1 Has acted dishonestly in terms of the Agreement; or
 - 19.2.2 has engaged in any activity which may harm or negatively affect the name and reputation of the other party; or
 - 19.2.3 Is involved in any illegal or unlawful activity; or
 - 19.2.4 Has made any intentional or negligent misrepresentation prior to or during the subsistence of this Agreement,
- Then the aggrieved party shall have the right to immediately terminate this Agreement, without cost or penalty, on written notice to the defaulting party.

19.3 Should the MERCHANT wish to terminate this AGREEMENT unilaterally, one month's prior written notice is required.

19.4 The MERCHANT will be responsible for TAPTUCK'S fees for the entire month of cancellation regardless of the date of cancellation.

20. **Consequences of Termination**

20.1 On termination or expiry of this Agreement:

20.1.1 The parties shall immediately cease holding themselves out as being associated with each other and both parties shall act in the utmost good faith in ensuring that any interested third parties and all Consumers are made aware of that the parties are no longer in association with one another.

20.1.2 Each party will cease using the other party's confidential information and/or intellectual property and return or destroy all copies thereof.

21. **General Provisions:**

21.1 No variation, extension or termination of or addition to this Agreement shall be of any force or effect unless reduced to writing and signed on behalf of the Parties.

21.2 Where a Party is granted a right or remedy under this Agreement it shall be in addition to and not in substitution for any other right or remedy which that Party might have in terms of this Agreement or in law.

21.3 No failure on the part of a Party to exercise, and no delay by a Party in exercising, any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right under this Agreement preclude any further or other exercise of that right nor act to the exclusion of any other right.

21.4 Should any Party fail or decline to enforce the whole or any part of this Agreement or grant any indulgence to any other Party, then the act or omission aforesaid shall not be interpreted as a waiver of rights, nor shall it act as an estoppel against or otherwise prejudice the Party committing the act or omission.

21.5 No provision of this Agreement shall be construed against or interpreted to the disadvantage of a Party to this Agreement by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

21.6 If any provision of this Agreement is found by a court to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.

21.7 This Agreement may be signed in any number of counterparts, each of which shall be an original, but all of which together shall constitute a single indivisible agreement.

21.8 This is the sole agreement between the Parties on this subject. No preceding representation, warranty, offer, invitation, term or condition proposed or settled upon shall be of any effect whatsoever save to the extent that it is recorded in this Agreement.

21.9 This Agreement shall be governed by the Laws of South Africa.

21.10 TAPTUCK cannot guarantee the completion of any purchase on the TAPTUCK Platform, with the MERCHANT accepting that the Consumer may shift their TAPTUCK to another MERCHANT on the TAPTUCK Platform. The MERCHANT agrees that TAPTUCK shall not be held liable for any shift in product by the Consumer from one MERCHANT to another MERCHANT, all risk, loss or any other liability or cost shall vest in the MERCHANT.

Signed by **TAPTUCK (PTY) LTD t/a TAPTUCK**

on this the _____ day of _____ 2024.

As Witnesses:

1. _____

2. _____

Duly authorised

Signed by **MERCHANT [TO INSERT DETAILS]**

on this the _____ day of _____ 2024.

As Witnesses:

1. _____

2. _____

Duly authorised

ANNEXURE "A":

MERCHANT Details

1. Corporate Identity of MERCHANT: _____

2. Physical Trading Address of MERCHANT: _____

3. Domicilium Address of MERCHANT: _____

4. Commencement Date: _____

5. Minimum Specification of hardware and software required by the MERCHANT: _____

6. Consideration Payable By TAPTUCK to the MERCHANT:
a. _____, excluding VAT, of the value of the completed purchase
b. A Payment fee is defined as:
the cost of the payment transaction used by the Consumer to fund the TAPTUCK Wallet, as is more clearly set out in Annexure "B" below.

7. MERCHANT's Bank Account Details: _____

ANNEXURE "B":

COST STRUCTURE DETAILS

- **Document to be provided if this will be an annexure to this Agreement;**