

## 1 Definitions and Interpretation

- 1.1 The following terms shall have the meanings assigned to them hereunder:
- 1.1.1 **"Agreement"** means these standard terms and conditions together with any schedules, annexures and attachments hereto;
- 1.1.2 **"Contract"** means a Contract concluded between the Customer and Tyre Aid for the provision by Tyre Aid to the Customer of a Tyre Replacement Plan, through the promotion, sale, and facilitation by the Dealer;
- 1.1.3 **"Contract Price"** means the contract price applicable to a particular Tyre Replacement Plan, as reflected, from time to time, on the Tyre Aid dealer brochure to be furnished to the Dealer annually;
- 1.1.4 **"Customer"** means the Tyre Aid Customer to whom the Dealer sold a Tyre Replacement Plan;
- 1.1.5 **"Dealer"** means the dealer described on the face of this Agreement, who has contracted with Tyre Aid to promote and sell Tyre Aid's Tyre Replacement Plans and facilitate the conclusion of Contracts through the Dealer's F&I in accordance with the terms and conditions of this Agreement;
- 1.1.6 **"F&I"** means the Dealer's finance and insurance agent/ manager, who promotes and sells the Tyre Replacement Plans to purchasers of vehicles and facilitates the conclusion of Contracts with Customers;
- 1.1.7 **"Incentive Fee"** means the incentive fee reflected on the face of this Agreement payable by Tyre Aid to the Dealer in respect of the Tyre Replacement Plans sold and Contracts concluded pursuant thereto by the Dealer for and on behalf of Tyre Aid;
- 1.1.8 **"Parties"** means Tyre Aid and the Dealer and **"Party"** shall bear a corresponding meaning;
- 1.1.9 **"Personal Information"** shall have the meaning set out in the Protection of Personal Information Act, 4 of 2013 (as amended) or such other legislation as may become applicable to the protection of personal information in South Africa;
- 1.1.10 **"Services"** means the promotion and sale of the Tyre Replacement Plans and the conclusion of Contracts on Tyre Aid's behalf;
- 1.1.11 **"Signature Date"** means the date upon which this Agreement is signed by the Party signing last in time; and
- 1.1.12 **"Tyre Replacement Plan(s)"** means the bronze, silver, gold, platinum and diamond tyre replacement plans for the guaranteed replacement of a Customer's vehicle's tyres offered by Tyre Aid as a value-added product on the Customer's motor vehicle purchase and/or finance;
- 1.2 The clause headings contained in this Agreement are for reference purposes only and shall not be used in the interpretation of this Agreement. Words importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons includes juristic entities and vice versa.
- 1.3 The terms and conditions appearing in the schedules and annexures hereto are hereby incorporated into the Agreement and expressions defined in this

Agreement will bear the same meanings in such schedules or annexures, which do not contain their own definitions. In the event of any conflict between the standard terms and conditions of this Agreement and those appearing in any schedules and annexures hereto, these standard terms and conditions shall prevail.

## 2 Appointment

- 2.1 Tyre Aid hereby appoints the Dealer to promote and sell the Tyre Replacement Plans to the purchasers of vehicles and to facilitate the conclusion of Contracts with Customers, which appointment the Dealer accepts on the terms and conditions set out in this Agreement.
- 2.2 Tyre Aid appoints the Dealer and/or the F&I to act as its agent in the conclusion of the Contracts. Save as aforesaid, Tyre Aid appoints the Dealer as an independent contractor and no term or condition contained in this Agreement, whether express or implied, shall constitute any form of partnership or other similar relationship between the Parties. To this end, Tyre Aid shall neither be bound by, nor responsible or liable for any misrepresentations to the Customer of any kind whatsoever (whether fraudulent, intentional, negligent or innocent), by the Dealer, its agents, employees, salespersons or the F&I

## 3 Commencement, Duration and Termination

- 3.1 This Agreement shall commence on the Signature Date and shall continue indefinitely.
- 3.2 This Agreement may be terminated by either party on 6 (six) months' written notice; however, a notice of intended termination may only be given after the 2<sup>nd</sup> anniversary of the Signature Date.

## 4 Promotion and Sale

- 4.1 The Dealer shall, through the F&I, promote and sell the Tyre Replacement Plans to purchasers of vehicles as a value-added product.
- 4.2 The Dealer shall ensure that the F&I promotes and sells a Tyre Replacement Plan that is suitable to cover the full costs of the replacement of tyres for the relevant vehicle purchased by the Customer.

## 5 Contracts

- 5.1 Upon the purchaser of a vehicle indicating that he/she would like to take up a Tyre Replacement Plan as a value-added product to the motor vehicle purchase and/or finance, the F&I shall act as Tyre Aid's agent in the conclusion of a Contract with such Customer.
- 5.2 The Dealer shall attend to load the Contract on the Dealer's system to facilitate the execution thereof by the Customer and the F&I respectively.

## **6 Dealer's Obligations**

- 6.1 The Dealer shall:
- 6.1.1 Promote and sell Tyre Replacement Plans and facilitate the conclusions of transactions contemplated herein (Contracts) via its F&I;
- 6.1.2 Load the Contract Price of the relevant Tyre Replacement Plan onto its invoice to the financier of the vehicle purchased;
- 6.1.3 Collect payment of the Contract Price from the financier;
- 6.1.4 Deduct the Incentive Fee from the payment of the Contract Price collected from the financier and pay over the balance to Tyre Aid within 48 (forty-eight) hours of receipt of such payment from the financier;
- 6.1.5 Conduct its business in a professional manner that reflects positively upon Tyre Aid. It is recorded that it is in the benefit to both parties to maintain an air of professionalism in its dealings with the Customers as such conduct reflects on both the Dealer and Tyre Aid.
- 6.1.6 The Dealer shall not act in a manner so as to place Tyre Aid into disrepute.
- 6.1.7 Respond promptly to all complaints and enquiries from Tyre Aid;
- 6.1.8 Inform Tyre Aid immediately of any dispute or complaint arising in relation to the marketing, promotion, sale and/or provision of the Tyre Replacement Plans and/or Contracts;
- 6.2 The Dealer unconditionally and irrevocably undertakes in favour of Tyre Aid that it shall always:
- 6.2.1 Perform all its duties diligently and with honesty and integrity;
- 6.2.2 Communicate openly and honestly with Tyre Aid and demonstrate a commitment to performing its obligations efficiently and to the required standards; and
- 6.2.3 Endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence.
- 6.3 The Dealer is responsible for ensuring continuous compliance with all legislation and regulations applicable to its obligations in terms hereof. The Dealer shall comply with the applicable statutory provisions and good industry practice and standard.

## **7 Payment**

- 7.1 The selected Tyre Replacement Plan Contract Price shall be added to the vehicle finance and invoiced by the Dealer to the relevant financier. No monthly payments are made to the Dealer or to Tyre Aid. The once off payment of the invoice shall be collected by the Dealer from the relevant financier on the finance of the vehicle as invoiced by the Dealer.
- 7.2 Tyre Aid shall invoice the Dealer in respect of the Contract Price, less the Incentive Fee, upon confirmation and receipt of the Contract by Tyre Aid. The Dealer shall promptly pay to Tyre Aid the amounts collected from the financier and/or the Customer on Tyre Aid's behalf, after deducting the relevant Incentive Fee.

7.3 Payment shall be made to Tyre Aid within 48 (forty-eight) hours of receipt of payment from the financier and/or Customer, as the case may be.

7.4 If the Customer elects to cancel the Contract within the cooling off period as provided for in the Consumer Protection Act, 68 of 2008, the deal will get reversed and Tyre Aid will repay the Dealer and the Dealer will, in turn, refund the relevant financier.

## **8 Incentive Fee**

8.1 In consideration for the Services rendered by the Dealer, the Dealer shall be entitled to the Incentive Fee per Contract concluded.

## **9 Contract Operation**

9.1 The Dealer promotes and sells the Tyre Replacement Plans and facilitates the conclusion of the Contract(s).

9.2 Tyre Aid contract directly with the Customers through the assistance of the F&I.

9.3 All Customer claims are processed through Tyre Aid directly. The Customer deals directly with Tyre Aid in relation to any claims on a Tyre Replacement Plan Contract. Tyre Aid shall direct the Customer to a designated tyre supplier for the replacement of tyres.

9.4 After the Contract is concluded and payment is made to Tyre Aid by the Dealer, the Dealer has no further obligations towards the Customer, save for when the Contract is cancelled within the cooling off period as referred to in clause 7.4 above.

## **10 Breach**

10.1 Should a Party ("the Defaulting Party") commit a breach of any of the provisions of this Agreement and fail to remedy such breach within fourteen (14) days of delivery of a written notice requiring it to do so, or should a Party commit any act of insolvency or be placed in liquidation (whether provisional or final) or under business rescue, then the other Party ("the Aggrieved Party") shall be entitled to: -

- 10.1.1 suspend or terminate the Agreement;
- 10.1.2 claim immediate specific performance from the Defaulting Party; or
- 10.1.3 cancel the Agreement;

in any event without prejudice to the Aggrieved Party's right to claim damages.

10.2 Unless a court of competent jurisdiction or the appointed arbitrator, as the case may be, directs otherwise, the Aggrieved Party shall be entitled to recover from the Defaulting Party all legal fees, costs and disbursements on a scale as between attorney and client (taxed or agreed).

## **11 Force Majeure**

Neither Party shall be liable for non-performance under this Agreement to the extent to which the non-performance is caused by events or conditions beyond the control of the affected Party (strike, war, warlike operations, rebellion, sabotage, riot, civil commotion, lockout, interference by trade unions, suspension of labour, pandemics, flood, storm or

fire), provided that the affected Party makes all reasonable efforts to perform.

## 12 Dispute Resolution and Arbitration

- 12.1 Any dispute which arises relating to or arising out of this Agreement, including the validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, shall be referred to a committee consisting of two (2) members appointed by the Dealer, and two (2) members appointed by Tyre Aid, or alternates appointed by them (one of which shall be a senior manager), who will use their best efforts to resolve the dispute within fourteen (14) calendar days of the dispute having been referred to them.
- 12.2 Should the committee be unable to resolve a dispute, the Parties agree to have the dispute resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator appointed in terms of such Rules.
- 12.3 In the case of litigation, the Parties consent and submit to the jurisdiction of the Gauteng Local Division, Johannesburg of the High Court of South Africa in respect of all proceedings which may arise out of or in connection with this Agreement.

## 13 Protection of Confidential Information

- 13.1 The Parties acknowledge that, in the course of the performance of this Agreement, that either Party may have access to the other Party's information and communications, including proprietary information claimed to be unique, secret or confidential, and which constitutes the exclusive property and trade secrets of the other Party, irrespective of whether such information is marked as confidential or not ("**Confidential Information**").
- 13.2 The Parties agree to maintain the confidentiality of the Confidential Information and to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this Agreement.
- 13.3 Upon request of either Party or on termination or expiration of this Agreement, both Parties shall promptly:
- 13.3.1 return to the disclosing Party all items of Confidential Information (including all copies thereof) of the other Party; and
- 13.3.2 destroy any notes or personal memoranda which include or are based upon such confidential information in accordance with the instructions of the other Party.

## 14 Data Protection

- 14.1 To render the Services or to comply with the obligations imposed in terms of this Agreement, either Party may need to provide, collect, use, store or process Confidential Information and Personal Information of the other Party. Each Party hereby authorises such collection, use, storage and processing where the need arises, subject to compliance with the further provisions of this clause 14.

14.2 Each Party shall only provide, collect, use, store or process Personal Information:

- 14.2.1 In compliance with the applicable South African legislation;
- 14.2.2 As is necessary for the purposes of this Agreement; and
- 14.2.3 In accordance with the lawful and reasonable instructions of the Party providing the Personal Information.
- 14.3 Both Parties shall comply with the security and data protection obligations equivalent to those imposed on them in terms of the applicable South African data protection legislation, and failing such legislation, they shall take, implement and maintain all such technical and organizational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Confidential Information against unauthorized or unlawful disclosure, access or processing, accidental loss, destruction or damage.

## 15 Delivery of Notices

- 15.1 For all purposes, including but not by way of limitation, the giving of any notice, the making of any communication and the serving of any process, the Parties each chooses as its place for delivery of notices ("**domicilium**") at their respective physical addresses appearing on face of this Agreement.
- 15.2 Either Party shall be entitled from time to time to vary its domicilium and shall be obliged to give notice to the other within ten (10) days of the said change. Any notice which either Party may give to the other shall be posted by prepaid registered post or hand delivered to the other Party's domicilium and shall be presumed, unless the contrary is proved by the Party to whom it is addressed, to have been received by that Party on the 10th (tenth) day after the date of posting or on the day of delivery as the case may be.
- 15.3 This clause 15 shall not operate to invalidate the giving or receipt of any written notice which is received by the Party to whom it is addressed. It is specifically agreed and recorded that communications and/or correspondences in connection with the performance of the Services shall be transmitted by way of email to the Parties' respective email addresses set out on the face of this Agreement.

## 16 General

- 16.1 The Dealer is not Tyre Aid's sole dealer.
- 16.2 The Parties shall, at all times, owe each other a duty of good faith and shall, in all dealings with each other and in respect of the Services act according to such standard.
- 16.3 No variation, amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by a duly authorized representative from both Parties.