

## Affiliate terms and conditions



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E Vehicle Mobility (PTY) Ltd 2017/438939/07

## Affiliate terms and conditions of Vehicle Mobility (PTY)LTD

We are E Vehicle Mobility, a company incorporated in South Africa number 2017/438939/07.

Our address is:  
P.O Box 41  
Groenkloof  
0027

Our Website is at: [www.mobility-online.co.za/](http://www.mobility-online.co.za/)

You are: any person who signs up to be an Affiliate or any person with whom we make an arrangement for payment on sales introduced by you.

These terms and conditions regulate the business relationship between you and us. If you sign up as an Affiliate, you agree to be bound by them.

### These are the agreed terms

## 1. Definitions

“Affiliate”	means a Visitor who joins our Affiliate programme direct from Your Website. It also includes you.
“Affiliate Tools”	means any material in any medium supplied by us for use by you in promoting the Goods or Services or linking to Our Website.
“Commission”	means the money paid by us to you under the terms of this agreement.
“Commission Period”	means the period of time starting on the date a Visitor becomes a Tagged Visitor.
“Confidential Information”	means all information about us. It includes among other things: information about our staff, their personal contact information, our businesses, methods of doing business, future plans, policies, suppliers and customers. It includes information about suppliers agents distributors and customers. It includes information about the Intellectual Property.
“Content”	means the textual, visual or aural content that is encountered as part of your experience on Our

	Website. It may include, among other things: text, images, sounds, videos and animations. It includes Content Posted by you.
“Goods”	means all of the goods offered for sale by us on Our Website.
"Intellectual Property"	means intellectual property owned by us, of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations and inventions, together with all rights which are derived from those rights.
“Level Two Commission”	means the overriding commission calculated as a percentage of the total commission due to your Affiliates.
<i>OR</i>	
“Level Two Commission”	means the overriding commission calculated as a fixed sum for each sale in respect of which commission is due to any of your Affiliates.
“[Member / Customer]”	means a Visitor who pays us for Services or Goods.
“Our Website”	means any website of ours, and includes all web pages controlled by us.
“Pay Day”	means the day each month by which we shall have paid Commission due to you.
"Post"	means place on or into Our Website any Content or material of any sort by any means.
“Reports”	means the reports automatically prepared on Our Website for the purpose of providing to you statistics relating to Tagged Visitors and sales.
“Services”	means all of the services available from Our Website, whether free or charged.
“Tagged Visitor”	means a Visitor who at any time is recorded by us as having reached Our Website directly by way of a link from Your Website and with the intention of

visiting Our Website.

“Visitor”

means anyone who visits Our Website.

“Your Website”

means the site on which you place one or more links to Our Website and through which we tag Visitors from you.

## 2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1. a reference to a person is a reference to one or more individuals, whether or not formally in partnership, or to a corporation, government body, or other association or organisation.
- 2.2. any agreement by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
- 2.3. except where stated otherwise, any obligation of any person arising from this agreement may be performed by any other person.
- 2.4. in this agreement references to a party include references to a person to whom those rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that party.
- 2.5. the headings to the paragraphs to this agreement do not affect the interpretation.
- 2.6. a reference to an act or regulation includes new law of substantially the same intent as that act or regulation.
- 2.7. in any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified party.
- 2.8. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

### **3. Entire agreement**

- 3.1. This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties.
- 3.2. Each party acknowledges that, in entering into this agreement, he does not rely on any representation, warranty, information or document or other term not forming part of this agreement.
- 3.3. As an exception to the last previous sub paragraphs, the parties do rely on information provided in writing as follows:

*Scope of work*

*Content received from customer*

### **4. Relationship of parties**

- 4.1. This agreement does not create a partnership or agency or the relationship of employer and employee, or other relationship between any of the parties, other than the contractual relationship expressly provided for.
- 4.2. Neither party shall have, nor represent that it has, any authority to make any commitment on the other party's behalf.

### **5. Our contract**

- 5.1. You register as an Affiliate by completing the online form. By confirming your registration on that form you agree to be bound by all the terms and conditions set out in this agreement.
- 5.2. This agreement covers only our Affiliate programme. When viewing or using Our Website you are bound by the same terms and conditions as any other Visitor.
- 5.3. Please do not enrol as an Affiliate if Your Website is unsuitable as we will immediately terminate the agreement. See below for a list of some of the types of unsuitable sites.

## **6. Commission calculation and payment**

6.1. Not Applicable

## **7. Merchant tracking and Reports**

7.1. We undertake to set up our Affiliate programme so as to:

7.1.1 tag the identity of all Visitors from Your Website;

7.1.2 record all sales made to Tagged Visitors;

7.1.3 provide the Reports.

7.2. We undertake to provide password protected access to you to the Reports.

## **8. Changes to this agreement**

8.1. We reserve the right to change this agreement at any time and in any way. A change will take effect when we Post it on Our Website. If you continue to send Visitors to Our Website, that will be taken as acceptance of the new terms.

8.2. We reserve the right to change the offer / contract to prospective Members / Customers at any time and without notice to you, even if this affects your earnings. This includes change to prices, operating procedures Our Website layout and organisation.

## **9. Removal of offensive Content**

9.1. For the avoidance of doubt, this paragraph is addressed to any person who comes on Our Website for any purpose.

9.2. We are under no obligation to monitor or record the activity of any customer for any purpose, nor do we assume any responsibility to monitor or police Internet-related activities. However, we may do so without notice to you and without giving you a reason.

9.3. If you are offended by any Content, the following procedure applies:

- 9.3.1 Your claim or complaint must be submitted to us in the form available on Our Website, or contain the same information as that requested in our form. It must be sent to us by post or email;
  - 9.3.2 we shall remove the offending Content as soon as we are reasonably able;
  - 9.3.3 after we receive notice of a claim or complaint, we shall investigate so far as we alone decide;
  - 9.3.4 we may re-instate the Content about which you have complained or not.
- 9.4. In respect of any complaint made by you or any person on your behalf, whether using our form of complaint or not, you now irrevocably grant to us a licence to publish the complaint and all ensuing correspondence and communication, without limit.
- 9.5. You now agree that if any complaint is made by you frivolously or vexatiously you will repay us the cost of our investigation including legal fees, if any.

## **10. Security of Our Website**

If you violate Our Website, we shall take legal action against you.

You now agree that you will not, and will not allow any other person to:

- 10.1. modify, copy, or cause damage or unintended effect to any portion of Our Website, or any software used within it;
- 10.2. link to Our Website in any way that would cause the appearance or presentation of the site to be different from what would be seen by a user who accessed the site by typing the URL into a standard browser;
- 10.3. download any part of Our Website, without our express written consent;
- 10.4. collect or use any product listings, descriptions, or prices;
- 10.5. collect or use any information obtained from or about Our Website or the Content except as intended by this agreement;

- 10.6. aggregate, copy or duplicate in any manner any of the Content or information available from Our Website, other than as permitted by this agreement or as is reasonably necessary for your use of the Services;
- 10.7. share with a third party any login credentials to Our Website;
- 10.8. Despite the above terms, we now grant a licence to you to create a hyper-link to Our Website for the purpose of promoting an interest common to both of us. You can do this without specific permission. This licence is conditional upon your not portraying us or any product or service in a false, misleading, derogatory, or otherwise offensive manner. You may not use any logo or other proprietary graphic or trademark of ours as part of the link without our express written consent.

## **11. We control Visitor data**

- 11.1. We shall be solely responsible for order / Membership Fee / payment processing, renewal payment processing, cancellations and refund processing, and related [Member / Customer services even when the link to Our Website is a co-branded page on Your Website.
- 11.2. All personal information about Members / Customers collected by us is owned solely and exclusively by us.

## **12. Publicity and Affiliate Tools**

- 12.1. You will not create, publish, distribute or permit any written material that makes reference to us without first having obtained our written consent.
- 12.2. You agree that you will not without our prior approval in writing use any written or other means of promoting referrals to us except the material comprising Affiliate Tools.
- 12.3. Affiliate Tools consisting of text may be changed with our permission. Affiliate Tools comprising graphics may not be changed.
- 12.4. We are under no obligation to provide marketing material or assistance to you but if we do so that shall not make us liable in any way to you or to any third party for that or any other content on Your Website.
- 12.5. You are responsible for the correct formatting and presentation of the dynamic links to Our Website through which Commission will be recorded.



## 13. Duration and termination

This agreement shall continue until terminated:

- 13.1. by passing of time 36 months from today; or
- 13.2. by one week's notice in writing by either of us to the other; or
- 13.3. immediately by us if we decide (in our sole discretion) that Your Website is or has become unsuitable. Unsuitable sites may include those that: are aimed at children, promote sexually explicit materials, promote violence, promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age; promote illegal activities, or violate intellectual property rights. If we terminate the agreement under this paragraph we does not have to give you any reason; or
- 13.4. immediately by either of us if the other commits any material breach of any term of this agreement and which in the case of a breach capable of being remedied is not remedied within 30 days of a written request to remedy it.

## 14. At and after termination

When this agreement terminates:

- 14.1. All rights and licences granted to you in this agreement shall immediately terminate.
- 14.2. You will not be entitled to Commission for sales made by us after the date of termination.
- 14.3. You will immediately stop using the Affiliate Tools and (where applicable) will remove them from Your Website.
- 14.4. You will remain entitled to all Commission and Level Two Commission earned on or before the date of termination.
- 14.5. If we continue to receive payments from Tagged Visitors after termination of this agreement, this will not constitute a continuation or renewal of this agreement or a waiver of termination.
- 14.6. You will immediately return to us all copies of all Confidential Information in your possession and will cease to use the Intellectual Property.

- 14.7. We may withhold from you the final payment of Commission for a reasonable time to ensure that the correct amount is paid.
- 14.8. All claims or actions that one party has against the other shall remain intact despite termination.

## **15. Intellectual Property**

You agree that at all times you will:

- 15.1. not to cause or permit anything which may damage or endanger our title to the Intellectual Property.
- 15.2. not during the currency of this agreement or within five years of its expiry, instruct for, create or write software to perform any of the purposes for which the Services are used.
- 15.3. notify us of any suspected infringement of the Intellectual Property;
- 15.4. indemnify us for any loss or expense arising from your misuse of the Intellectual Property;
- 15.5. on the expiry or termination of this agreement immediately stop using the Intellectual Property except as expressly authorised by the Company in writing;
- 15.6. not use any name or mark similar to or capable of being confused with any name or mark of ours;
- 15.7. not use the Intellectual Property except directly in our interest.

## **16. Confidential Information**

- 16.1. You now agree that you will:
  - 16.1.1 keep all records of the Confidential Information in all media separate from other records;
  - 16.1.2 use your best endeavours to keep confidential (and to make sure that your employees and agents shall keep confidential) any Confidential Information which you or they may acquire.
  - 16.1.3 not store, copy, or use the Confidential Information in any place or in any electronic form.

- 16.1.4 not use or disclose Confidential Information except with our consent.
- 16.1.5 from today until the expiry of five years from the termination of this agreement, keep the Confidential Information secret and not divulge or make it known to anyone nor use it for the benefit of yourself or any other person.
- 16.2. This paragraph does not apply to disclosure:
  - 16.2.1 made with the consent of the proper officers of the company or under the authority of the board or by order of the court.
  - 16.2.2 of information or knowledge which comes into the public domain otherwise than by reason of our default.
  - 16.2.3 as may be minimally necessary to give effect to the purposes of this agreement whilst ever the agreement is operational.
- 16.3. The obligations set out in this paragraph shall continue to be fully effective indefinitely even if you have destroyed or returned the Confidential Information.
- 16.4. We hereby grant to you a non-exclusive, non-transferable licence, during the term of this agreement, to use the Intellectual Property solely to promote the Goods and Services.
- 16.5. This licence cannot be sub-licensed, assigned or otherwise transferred by you.
- 16.6. The provisions of this paragraph shall survive for a period of 5 years after termination of this agreement.

## **17. You indemnify us**

You agree to indemnify us against all costs claims and expense arising directly or indirectly from:

- 17.1. any claim representation or warranty made by you in connection with us or the Goods or Services; or
- 17.2. your failure to comply with the law of any country; or
- 17.3. any use of Your Website for a purpose forbidden by this agreement;

- 17.4. legal or other fees we incur in defending a claim or the imposition of a fine or penalty.

## **18. Interruption to the Service**

- 18.1. If we believe in our absolute discretion that it is necessary for us to interrupt the Services we may do so without notice to you.
- 18.2. You acknowledge that the Services may also be interrupted for reasons beyond our control.
- 18.3. You agree that we are not liable to you for any loss whether foreseeable or not, arising as a result of interruption to the Services.

## **19. Disclaimers and limitation of liability**

- 19.1. The law differs from one country to another. This paragraph applies so far as the applicable law allows.
- 19.2. All implied conditions, warranties and terms are excluded from this agreement.
- 19.3. Our Website includes Content Posted by third parties. We are not responsible for any such Posting. If you come across any Content which offends against this document, please contact us via the "Contact us" page on the Site.
- 19.4. You are advised that Content may include technical inaccuracies or typographical errors. This is inevitable in any large website. We would be grateful if you bring to our immediate attention, any that you find.
- 19.5. Our Website contains links to other Internet websites. We have neither power nor control over any such website. You acknowledge and agree that we shall not be liable in any way for the content of any such linked website, nor for any loss or damage arising from your use of any such website or from your buying services or goods via such a website.
- 19.6. The Leisure Mobility Group Website and other trading name Services are provided "as is". We make no representation or warranty that the Service will be:
  - 19.6.1 useful to you;
  - 19.6.2 of satisfactory quality;

- 19.6.3 fit for a particular purpose;
- 19.6.4 available or accessible, without interruption, or without error.
- 19.7. We claim no expert knowledge in any subject. We disclaim any obligation or liability to you arising directly or indirectly from information you take from Our Website.
- 19.8. We accept no responsibility for:
  - 19.8.1 delivery of Content, material or any message;
  - 19.8.2 privacy of any transmission;
  - 19.8.3 third party advertisements which are posted on Our Website or through the Services;
  - 19.8.4 the conduct, whether online or offline, of any user of Our Website or the Services;
  - 19.8.5 failure or malfunction of computer hardware or software or technical equipment or system connected directly or indirectly to your use of the Services.
  - 19.8.6 loss or damage resulting from your attendance at an event organised through Our Website or the Services;
- 19.9. You agree that in any circumstances when we may become liable to you, the limit of our liability is the amount you have paid us in the immediately preceding 12 month period for the Services concerned.
- 19.10. Except in the case of death or personal injury, our total liability under this agreement, however it arises, shall not exceed the sum of R [N/A].
- 19.11. We shall not be liable to you for any loss or expense which is:
  - 19.11.1 indirect or consequential loss; or
  - 19.11.2 economic loss or other loss of turnover, profits, business or goodwill even if such loss was reasonably foreseeable or we knew you might incur it.
- 19.12. This paragraph (and any other paragraph which excludes or restricts our liability) applies to our directors, officers, employees, subcontractors, agents and affiliated companies as well as to ourselves.
- 19.13. Nothing in this agreement shall be construed as limiting or excluding our liability for death or personal injury caused by our negligence.

## 20. Miscellaneous matters

- 20.1. The schedules, if any, to this agreement are part of the agreement and have the same force and effect.
- 20.2. So far as any time, date or period is mentioned in this agreement, time shall be of the essence.
- 20.3. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
- 20.4. The rights and obligations of the parties set out in this agreement shall pass to any permitted successor in title.
- 20.5. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 20.6. Any communication to be served on either party by the other shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;

if sent by post to the correct address: within 72 hours of posting;

If sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender. (*Take care before agreeing to accept service by e-mail. It may be convenient, but you could miss or accidentally delete the message*)

- 20.7. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- 20.8. This agreement does not give any right to any third party.
- 20.9. The validity, construction and performance of this agreement shall be governed by the laws of the Republic of South Africa.