

**Uber Eats – Delivery Person Agreement (New Zealand)**

**KEY PRINCIPLES**

- Uber owns the rights to the Uber Driver App. This connects you with Portier NZ so you can elect to provide Delivery Services to Portier NZ as its subcontractor.
- If you enter into this Agreement, you do so as a self-employed contractor who provides Delivery Services to Portier NZ. In doing this, you agree you are conducting or undertaking your own business, and you are not an employee of Portier NZ or Uber.
- As a self-employed contractor, you have certain rights and responsibilities:
  - your rights include the option to choose if, when and where you use the Uber Driver App. You are under no obligation to use the Uber Driver App or provide Delivery Services, including while using the Uber Driver App. You may accept or reject, and in certain circumstances cancel, delivery requests without consequence, and
  - your responsibilities include providing your own equipment (for example, a car and phone), maintaining responsibility for your own Tax and insurance arrangements, carrying the risk of providing Delivery Services and obtaining the licences and approvals required to provide Delivery Services.
- There is no obligation of exclusivity under this Agreement, which means you may work with competing businesses, or engage in any other occupation or business, at any time, including while using the Uber Driver App or providing Delivery Services.
- Please read these terms carefully. They include information about your responsibilities and how you, Uber and Portier NZ may change or end the Agreement. There's also information about insurance and liability.

This Delivery Person Agreement is entered into between you, Uber Portier B.V. (**Uber**) and Portier New Zealand Limited (**Portier NZ**) (together known as the **parties**).

**1. ENTERING INTO AN AGREEMENT**

- (a) Once you agree to these terms, you enter into an agreement with Uber and Portier NZ (the **Agreement**). By clicking “Yes, I agree” you expressly acknowledge that you have read, understood, and taken steps to thoughtfully consider the consequences of this Agreement, that you agree to be bound by the terms and conditions of the Agreement, and that you are legally competent to enter into this Agreement with Portier NZ and Uber.
- (b) The Agreement consists of (a) Supplemental Terms; and (b) these terms. The document that is earlier in the list will apply if there is any conflict between them. The Key Principles referred to above do not form part of this Agreement.

**2. TERM OF THE AGREEMENT**

This Agreement starts on the date that you accept the terms and will continue until terminated in accordance with section 14.

**3. REQUESTS AND LICENCE**

- (a) If you satisfy the requirements to gain access to the Uber Driver App in section 6:
  - (i) Portier NZ may send Requests to you; and
  - (ii) Uber will grant you a licence to use the Uber Driver App during the term of this Agreement.

**4. RELATIONSHIP BETWEEN THE PARTIES**

- (a) By entering into this Agreement, you choose to be a self-employed contractor.
- (b) This Agreement is not an employment agreement, and does not create an employment relationship between you and Uber, Portier NZ or their Affiliates. This Agreement does not create a legal partnership, joint venture or give you the authority to bind us or hold yourself out as our employee, agent, legal partner or authorised representative.
- (c) Except as otherwise provided in this Agreement, Uber, Portier NZ or their Affiliates will not direct or control you generally or in your performance of Delivery Services, including your acts or omissions, or your operation and maintenance of your Transportation Method.

- (d) There is no obligation of exclusivity under this Agreement. That means you:
- (i) retain the complete right to use other applications that connect you with on-demand work and/or to engage in any other occupation or business (including with competitor businesses) at any time, including while using the Uber Driver App or while providing Delivery Services; and
  - (ii) are under no obligation to use the Uber Driver App or provide Delivery Services.

(e) Portier NZ enters into separate agreements with Customers and Delivery Recipients to provide deliveries to the Delivery Recipients. Under this Agreement you agree to provide the Delivery Services as Portier NZ's subcontractor.

(f) This Agreement creates a contractual relationship with Portier NZ and Uber. It does not create any contractual or other relationship between you and Delivery Recipients or Customers.

## 5. YOUR OBLIGATIONS AND RIGHTS

### 5.1 Provision of Delivery Services

- (a) You can log into the Uber Driver App if, when, where, and for how long, you choose.
- (b) You may be sent Requests for the different delivery products that you are signed up for. If you are sent a Request you will be provided with key information about a Request to allow you to decide whether to accept and provide the Delivery Services, which may include:
- (i) the name and location of the place where items are to be collected;
  - (ii) the delivery product to which the Request relates;
  - (iii) the approximate location of the Delivery Recipient; and
  - (iv) a minimum Delivery Fee (described in section 7.1).
- (c) You may opt in to, and then opt out of, receiving Requests for available delivery products at any time at your sole discretion.
- (d) You may accept or reject Requests at your absolute discretion and without consequence.
- (e) You may cancel accepted Requests before the collection of items at your absolute discretion and without consequence.
- (f) You may also cancel accepted Requests after the collection of items at your absolute discretion. While there are generally no consequences for this, repeated cancellations after items have been collected may trigger fraud and/or quality management processes. In addition, for certain deliveries you may be requested to return the item to the place where the item was collected.
- (g) You will not be paid a Delivery Fee for cancelled Requests, unless otherwise agreed with Portier NZ.
- (h) You must not accept a Request where doing so would place you in breach of your right to work, or in breach of a condition on a New Zealand visa that you hold. Where Portier NZ is aware that you have accepted one or more Requests in breach of a condition on your right to work in New Zealand, Portier NZ may take any action reasonably necessary to ensure that you do not continue to be sent Requests. Uber may restrict or deactivate your access to the Uber Driver App.
- (i) If you accept a Request you must provide Delivery Services in accordance with this Agreement, unless you cancel the Request in accordance with section 5.1(e) or (f).
- (j) It is your responsibility to:
- (i) determine the most effective, efficient and safe manner to provide Delivery Services, including the route to be taken to fulfil Requests;
  - (ii) provide all necessary equipment, tools and other materials necessary to provide Delivery Services, at your own cost; and

- (iii) pick up items from relevant locations, to fulfil Requests.
- (k) When you provide Delivery Services, you must at all times do so in a professional manner with due skill, care, courtesy and diligence.
- (l) When performing Delivery Services, you do so as a person conducting a business or undertaking, which means you may have obligations under safety laws. You must promptly notify Portier NZ of any accidents that occur while providing Delivery Services and cooperate and provide information requested by Portier NZ in relation to such accidents.
- (m) You acknowledge that:
  - (i) Portier NZ is not responsible or liable for acts or omissions of any Customer or Delivery Recipient in relation to the Delivery Services or your Transportation Method;
  - (ii) you are responsible for taking reasonable precautions to protect yourself and third parties in relation to the acts or omissions of a Customer, a Delivery Recipient or other third parties;
  - (iii) you are responsible for liabilities to Customers, Delivery Recipients or other third parties that directly arise from your acts or omissions or your Transportation Method; and
  - (iv) you carry out your own trade and business when providing Delivery Services using the Uber Driver App.
- (n) You may appoint a delegate to provide Delivery Services on your behalf for a particular Request, provided the delegate is approved as a delegate by Portier NZ and you agree to any applicable Supplemental Terms. Portier NZ will not unreasonably withhold or delay its approval of your delegate.

## 5.2 Your device, data plan and account

- (a) You must acquire and maintain a mobile device, and an active data plan, that can operate the Uber Driver App at your own cost.
- (b) Your account for the Uber Driver App is personal to you. It cannot be licensed, shared or modified. You must notify Uber if anyone else has or may have accessed your account and you must keep your login details confidential.

## 5.3 How do ratings work?

- (a) You, Customers and Delivery Recipients have the option on the Uber apps to provide feedback (including a rating) about the Delivery Services or, in your case, the Customer or Delivery Recipient. If you do provide a rating or feedback, you must provide it in good faith. Feedback and ratings are Uber Data.
- (b) Uber, Portier and their Affiliates are not required to verify any feedback or ratings. Uber may edit or remove comments if they include obscenities, objectionable content or Personal Data, or if they violate Law or the Community Guidelines.

## 6. LICENCES, PERMITS AND YOUR TRANSPORTATION METHOD

### 6.1 Your licences and visas/work permits

- (a) You must at all times meet Portier NZ's requirements before you provide Delivery Services or accept Requests on the Uber Driver App. These include requirements that you:
  - (i) hold all valid licences, insurances, permits, approvals and authority necessary for you to provide Delivery Services in the Territory and to use your Transportation Method; and
  - (ii) at all times have a right to work in New Zealand as a Delivery Person, including that for non-New Zealand citizens, you must hold a visa which permits you to work in New Zealand as a Delivery Person consistent with the conditions on the visa; and
  - (iii) meet Portier NZ's background check and driving record requirements.
- (b) You must:

- (i) provide Portier NZ with satisfactory evidence of your visa (including any conditions), licences, and work permits on request;
  - (ii) provide Portier NZ with a valid New Zealand Company Number or Business Number (as applicable);
  - (iii) at all times comply with any applicable conditions on your licences, work permits and visa conditions or right to work while performing Delivery Services using the Uber Driver App;
  - (iv) notify Portier NZ immediately of any changes to your licences, work permits, visa conditions, or right to work in New Zealand.
- (c) Ensure that if you appoint a delegate in accordance with section 5.1(i) of this Agreement:
- (i) that the delegate also meets the requirements set out in this section 6.1; and
  - (ii) the delegate does not accept a Request if doing so would place the delegate in breach of their right to work in New Zealand, or in breach of any conditions on their visa.

## 6.2 Requirements for your Transportation Method

The Transportation Method used by you must at all times during the term of this Agreement:

- (a) meet Portier NZ's requirements, be in a clean and sanitary state, be suitable to provide Delivery Services and be authorised by Portier NZ;
- (b) be properly registered and licensed to operate as a delivery vehicle in the Territory, to the extent required by Law; and
- (c) be owned or leased by you, or in your lawful possession.

## 6.3 Compliance with this section

Portier NZ may check your compliance with this section 6 at any time, and you must provide Portier NZ with documentation Portier NZ considers suitable to confirm this. If you breach section 6 at any time, Portier NZ may, without liability, stop sending you Requests. Uber may, without liability, deactivate or restrict your access to the Uber Driver App.

## 6.4 Modern slavery prohibition

You must not engage in any practice which would violate any national or international law regarding slavery or human trafficking. You must notify Uber and Portier NZ as soon as you become aware of any actual or suspected slavery or human trafficking in a supply chain that has a connection with this Agreement.

## 7. FEES AND PAYMENT

### 7.1 Payment of Delivery Fee

- (a) You will be paid a delivery fee for each successfully completed Delivery Service provided to Portier NZ (**Delivery Fee**), which includes any Tolls. You will be provided with the minimum Delivery Fee for each Request upfront and prior to you accepting the Request.
- (b) The Delivery Fee is based on a calculation available on the Uber website for the relevant product and location <https://www.uber.com/nz/en/deliver/earnings/delivery-fares/> (**Delivery Fee Calculation**). Except as otherwise stated in this Agreement, the Delivery Fee is the only payment you will receive for the provision of Delivery Services.
- (c) You have the right to request a higher Delivery Fee with Portier NZ via the Uber Driver App via the Uber Driver App for successfully completed Delivery Services.

### 7.2 Payment of tips and other amounts

- (a) The Delivery Fee does not include any tips. Delivery Recipients may pay tips, either directly to you in cash or through the relevant app. Portier NZ will collect tips made through the relevant app on your behalf and remit the full amount of the tips to you on behalf of the Delivery Recipient. Portier NZ will not apply a fee to any of your tips.

- (b) From time to time, Portier NZ may, at its discretion, offer an incentive to you if you satisfy certain conditions determined by Portier NZ and communicated to you (in promotional materials, via text message, email or another method). You are under no obligation to participate in any incentive offering. Any incentive payment is subject to the applicable conditions and is inclusive of GST (if any).

### 7.3 Adjustments to the Delivery Fee

- (a) Portier NZ is permitted to cancel the Delivery Fee (or if the Delivery Fee has already been paid, require reimbursement of the Delivery Fee from you) for a particular Delivery Service if:
  - (i) the Delivery Services were not completed, unless Portier NZ has agreed with you otherwise;
  - (ii) a Customer or a Delivery Recipient has made a complaint related to your acts or omissions; or
  - (iii) suspected fraudulent activity or misuse has been detected.
- (b) Portier NZ's decision to cancel or require reimbursement of the Delivery Fee under section 7.3(a) must be exercised in a reasonable manner.

### 7.4 Payment

- (a) Portier NZ will pay you for the Delivery Services you successfully complete under this Agreement.
- (b) Portier NZ will pay to you, on at least a weekly basis:
  - (i) the Delivery Fee, including any Tolls;
  - (ii) any incentive payments; and
  - (iii) any tips paid by Delivery Recipients through the relevant Uber app;
  - (iv) less any fees charged by Portier NZ.
- (c) If you have agreed to adjustments, discounts or deductions from the Delivery Fee (such as vehicle finance or lease payments), Portier NZ will make those and determine the order of those adjustments, discounts or deductions.
- (d) If Portier NZ discovers payment errors that result in additional amounts being paid to you, or there is an adjustment required under section 7.3(a), Portier NZ may deduct the amount from future Delivery Fees, debit the amount from your card or bank account or seek reimbursement by other lawful means.

### 7.5 Provision of invoices

- (a) Portier NZ will issue receipts. Provided that you are GST registered and provide Portier NZ your GST registration number in the form required by Portier NZ, you agree with Portier NZ that Portier NZ will issue, on a weekly basis, buyer created tax invoices setting out the amounts you have charged for the Delivery Services you provide under this Agreement, subject to approval from the New Zealand Commissioner of Inland Revenue. Portier NZ will provide you with copies of each receipt and buyer created tax invoice (if any) via email or the Uber Driver App.
- (b) Portier NZ will not be liable for an invoice error or for any incorrect calculation or payment of the Delivery Fee unless you have notified Portier NZ of that error within 3 business days after you have completed the relevant Delivery Services.

### 7.6 GST and other Taxes

- (a) In relation to the Delivery Services, you are responsible for completing all Tax registration obligations and for calculating and remitting all Liabilities for Tax related to your provision of Delivery Services as required by Law, and for providing Uber and Portier NZ with all relevant business and Tax information.
- (b) Portier NZ may, as required by Law, collect and remit any Taxes resulting from your provision of Delivery Services or which Portier NZ is otherwise required to withhold, deduct or collect in relation to you or any payments due to you under this Agreement and provide any information Portier NZ collects directly to Tax or other governmental authorities, if required. If Portier NZ withholds, deducts or collects any such Taxes you will not be entitled to receive any additional amount from Portier NZ on account of such Taxes.

- (c) You must provide Portier NZ with any information reasonably requested by Portier NZ in order to comply with any obligations imposed on Portier NZ under any applicable Law relating to Tax.
- (d) Portier NZ will pay a Delivery Fee in sole consideration of any Delivery Services you complete under this Agreement, which is inclusive of GST (if any). Uber supplies to you a licence to use the Uber Driver App for no fee.
- (e) Except to the extent otherwise specified in this Agreement, any amounts payable by you under this Agreement are exclusive of GST. If GST is payable on any supply by Portier NZ made under this Agreement, for which the consideration is not expressly stated to include GST, you agree to pay Portier NZ an additional amount equal to the GST at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. In this Agreement, GST that is payable by Portier NZ includes GST that is payable by the representative member of Portier NZ's GST group.
- (f) You represent and warrant that you are a resident in New Zealand for New Zealand income tax purposes.

## 8. INTELLECTUAL PROPERTY

### 8.1 Ownership of intellectual property rights

Uber, certain of its Affiliates and their respective licensors own all rights in the Uber Driver App and all Uber Data, including all intellectual property rights associated with them. The only rights granted to you to the Uber Driver App or Uber Data are the rights set out in this Agreement. All rights not granted under this Agreement by Uber, certain of its Affiliates and their respective licensors, are expressly reserved.

### 8.2 Your right to use the Uber Driver App

Subject to you complying with your obligations under this Agreement, Uber grants you a non-exclusive, non-transferable, non-sublicensable, non-assignable licence to use the Uber Driver App for no fee during the term of this Agreement. You may only install and use the Uber Driver App on your mobile device to provide Delivery Services and to track Delivery Fees.

### 8.3 Restrictions on the use of the Uber Driver App or Uber Data

Without limiting any other part of this Agreement, you must not share (or enable sharing of) the Uber Driver App or any Uber Data with a third party. Also, you must not copy, modify, distribute, sell or lease any part of the Uber Driver App or Uber Data, reverse engineer or attempt to extract the source code of any of Uber's software (other than as permitted by Law) or improperly use the Uber Driver App. If this Agreement or the licence granted to you under section 8.2 terminates for any reason, you must promptly delete the Uber Driver App from your mobile device.

### 8.4 Uber Names, Marks or Works

Other than as required by Law, you must not use any of our names, logos, colours, trademarks, service marks, copyrights, slogans or other identifying symbols or indicia (registered or unregistered) of ownership or copyright (**Uber Names, Marks, or Works** as applicable). You must not create or register any (a) business names, (b) URLs, (c) domain names, (d) software application names or titles, or (e) social media handles or profiles that include Uber Names, Marks, or Works or any confusingly or substantially similar mark, name or title. You must not use Uber Names, Marks, or Works as your social media profile picture or wallpaper without Uber's express written permission. You must not use keywords (including Google AdWords) that contain any Uber Names, Marks, or Works and you must not display any Uber Names, Marks or Works on your Transportation Method or wear a uniform or any other clothing displaying any Uber Names, Marks or Works (unless we have agreed otherwise, or if required by Law). Also, you must not register, or attempt to register or otherwise use or claim ownership of any Uber Names, Marks or Works. If Uber grants you any right to use any Uber Marks, the rights of an authorised user under section 102 of the *Trade Marks Act 2002* are expressly excluded from the licences granted under this section 8.4.

## 9. PRIVACY

- (a) The terms and conditions of the Uber privacy notice, currently available at <https://privacy.uber.com/policy/>, will apply to the collection, use and processing of your Personal Data. This includes your location data, which you must provide as a condition of your receipt of the Request.
- (b) You must comply with all applicable Data Protection Laws in connection with the Delivery Services and your activities under this Agreement.
- (c) Without limiting the general obligation under section 9(b):

- (i) you must only use Personal Data for the purpose of providing the Delivery Services and you must not retain any Personal Data for longer than it takes to fulfil the relevant Request;
- (ii) you must maintain appropriate measures to protect the integrity, security and confidentiality of all Personal Data against any anticipated threats or hazards, and/or unauthorised access to or use of such data;
- (iii) you must promptly tell Uber and Portier NZ if you become aware of any actual or reasonably suspected un-authorised access, modification, use, disclosure, loss of or interference with Personal Data (**Data Breach**); and
- (iv) you must promptly provide Uber and Portier NZ with any information or assistance reasonably requested by either of them for the purposes of investigating and responding to any non-compliance with this section 9, any Data Breach, or a request from a Customer or for a party's compliance with Data Protection Laws.

Nothing in this section prevents you separately contacting a Customer or Delivery Recipient using information you have obtained outside of the Uber Driver App and/or providing delivery services directly to a Customer (including while providing Delivery Services), or establishing a separate business relationship with a Customer or Delivery Recipient, outside of this Agreement.

- (d) You are responsible for maintaining the integrity of information relating to your access and use of the Uber Driver App, including any password, login or key information. You represent and warrant at all times that you will not share any such information with any third party.

## 10. REPRESENTATIONS AND WARRANTIES

### 10.1 Your representations and warranties

You represent and warrant throughout the term of this Agreement that:

- (a) you have full power and authority to enter into this Agreement and perform your obligations under this Agreement;
- (b) you have not entered into, and during the term of this Agreement will not enter into any agreement that would prevent you from complying with this Agreement
- (c) you will comply with all applicable Laws in your performance of this Agreement and
- (d) any information that you provide to Portier NZ and/or Uber in connection with this Agreement (which may include your business name, New Zealand Company Number or Business Number and any other information reasonably requested by Uber and Portier NZ) is accurate, complete and up-to-date.

### 10.2 General disclaimer

- (a) This section 10.2 applies only to the maximum extent permitted by applicable Law and does not (and is not intended to) override any rights that you have pursuant to applicable Law, including New Zealand Consumer Law.
- (b) You acknowledge and agree that Portier NZ will from time to time manage marketplace conditions, including supply and demand, with a view to ensuring the efficient operation of the marketplace for all participants. You acknowledge and agree that Portier NZ makes no guarantee in relation to the number of items you will deliver for Portier NZ via the Uber Driver App, or that you will receive Requests from Portier NZ via the Uber Driver App to provide Delivery Services.
- (c) Except as required under New Zealand Consumer Law, we make no representations, and Uber, Portier NZ and their Affiliates expressly disclaim all warranties, express or implied, regarding the Uber Driver App or any portion of them. Uber provides the Uber Driver App 'as is' and 'as available'. Without limitation, Uber does not guarantee the availability or uptime of the Uber Driver App or that access or use of the Uber Driver App will be uninterrupted or error-free. You acknowledge that the Uber Driver App may be unavailable due to scheduled maintenance or network failure or limitations, delays, and other problems inherent in the use of the internet and electronic communications. Uber, Porter Pacific and their Affiliates make no representations, warranties or guarantees as to the actions or inactions of the Customer or of the Delivery Recipients, or the availability of the Uber Driver App or the safety of any items provided to you for Delivery Services.

### 10.3 Contracting out of the Consumer Guarantees Act 1993

You acknowledge that:

- (a) Portier NZ is providing the Portier NZ Services; and
- (b) Uber is providing a licence to use the Uber Driver App during the term of this Agreement,

in each case, for the purposes of a business, and the parties agree that the Consumer Guarantees Act 1993 has no application to this Agreement or the supply of the Portier NZ Services or the licence to use the Uber Driver App. Each party acknowledges and agrees that the terms of this section are fair and reasonable and that they have each been advised by and received separate legal advice in relation to the terms of this Agreement.

### 10.4 Contracting out of the Fair Trading Act 1986

- (a) The parties confirm:
  - (i) that they are:
    - (A) in trade; and
    - (B) acting in trade in relation to the transactions contemplated by this Agreement; and
  - (ii) accordingly, that sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 shall not apply in relation to this Agreement or as between the parties.
- (b) Each party acknowledges and agrees that the terms of this section are fair and reasonable and that they have each been advised by and received separate legal advice in relation to the terms of this Agreement.

## 11. INDEMNIFICATION

### 11.1 General indemnity

- (a) You must indemnify, defend (at Uber's or Portier NZ's option) and hold harmless Uber, Portier NZ, their Affiliates and their respective directors, officers, employees and agents from Liability of any of them arising out of or related to any of the following: (i) your failure to comply with any provisions of this Agreement; (ii) your breach of Law; or (iii) third party claims directly or indirectly related to your provision of Delivery Services or use of the Uber Driver App.
- (b) Your liability under this section 11.1 will be reduced if, and to the extent that, Uber or Portier NZ or their employees or agents directly caused or directly contributed to any of the matters described in section 11.1(a).

### 11.2 Tax Indemnity

- (a) Without limiting section 11.1(a), you must indemnify, defend (at Uber's or Portier NZ's option) and hold harmless Uber, Portier NZ and their Affiliates from any Liability that may be imposed on you or any of them as a result of your failure to comply with any of your Tax or other obligations (including any obligations under this Agreement), including any such Liability arising in the event that the relationship described in this Agreement, contrary to the intention and meaning of the parties, is held or deemed to be an employment agreement between Uber or Portier NZ and you by the Dutch or New Zealand Tax Authority, fiscal or social security authority or the taxation, fiscal or social security authority of any other country. Any amount payable by Portier NZ to you may be reduced by any such amount.
- (b) To the extent that the indemnity at section 11.2(a) relates to a finding by a judicial body or legislative authority of competent jurisdiction that there is an employment relationship between you and Uber, Portier NZ or an Affiliate of Uber or Portier NZ, the indemnity applies only to that proportion of Uber's or Portier NZ's Liability that directly or indirectly relates to or arises from you holding yourself out to be an employee of Uber, Portier NZ or any of their Affiliates, or any other act or omission by you that is not expressly authorised by Uber or Portier NZ and would reasonably suggest to a third party that you are an employee of Uber, Portier NZ or any of their Affiliates.



## 12. **LIMITATION OF LIABILITY**

- (a) In no event will we be liable for any claim for any indirect, wilful, punitive, incidental, exemplary, special or consequential damages or for your or any third party's property damage or loss, or loss or inaccuracy of data, or loss of business, revenue, profits, use or other economic advantage arising out of or related to your use of the Uber Driver App or your provision of Delivery Services, whether based on contract, tort or any other legal theory, even if we have been advised of the possibility of such damages.
- (b) Except for Portier NZ's obligations to pay amounts due to you under section 7.5, in no event will Uber and Portier NZ's combined total cumulative liability of each and every kind to you under this Agreement exceed the aggregate amount of Delivery Fees actually paid by Portier NZ under this Agreement in the six month period immediately preceding the event giving rise to the relevant claim.
- (c) This section 12 applies only to the maximum extent permitted by applicable Law and does not (and is not intended to) override any rights that you have pursuant to applicable Law, including New Zealand Consumer Law.

## 13. **INSURANCE**

- (a) You must, at your cost, take out and maintain motor vehicle insurance, for each motor vehicle used to provide the Delivery Services, for at least the minimum amount required by Law and any other minimum motor vehicle liability insurance cover as requested by Portier NZ.
- (b) You must provide Portier NZ with evidence of your insurance arrangements on request.
- (c) For your motor vehicle insurance, you acknowledge and agree that: (i) motor vehicle insurance policies must name you as the policyholder or individually rated driver; and (ii) certain private motor vehicle insurance policies (including some insurance policies held with vehicle rental or leasing providers) may not provide cover arising from your provision of Delivery Services. It is your responsibility to resolve queries regarding insurance scope and coverage with your insurer.
- (d) If you appoint a delegate in accordance with section 5.1(n) of this Agreement, it is your sole responsibility to ensure that the delegate also has the appropriate insurance arrangements set out in this section 13.
- (e) It is your sole responsibility to inform your insurer of the use of your motor vehicle while providing Delivery Services and to meet other notification requirements under your insurance policy.

## 14. **TERMINATION**

### 14.1 **Termination by you**

You are under no obligation to use the Uber Driver App. If you choose to stop, you may do so without needing to give us any notice, or you may terminate this Agreement without notice.

### 14.2 **Termination by Portier NZ and Uber**

- (a) Subject to any requirements under applicable law, Uber or Portier NZ may, acting reasonably, terminate this Agreement in its entirety by giving you 30 days' prior written notice of termination, for any legitimate business, legal or regulatory reason.
- (b) Uber may also immediately restrict or deactivate your access to the Uber Driver App, and provide you with written notice of the restriction or deactivation, if:
  - (i) you commit a material breach of this Agreement; or
  - (ii) an act or omission by you, in Uber's or Portier NZ's reasonable judgment, is in violation of the Community Guidelines or has the potential to cause issues that could detrimentally impact the reputation, good name or brand of Uber, Portier NZ or any of their Affiliates (including any Uber Names, Marks or Works), including matters of safety.
- (c) Uber may temporarily restrict your access to the Uber Driver App if it or an Affiliate is investigating an alleged breach of section 14.2(b)(i) or (ii). There may be circumstances in which Uber is unable to provide you with information about the alleged breach whilst an investigation is ongoing (either by Uber and/or a third party such as the police).

### 14.3 **Effect of termination**

Outstanding payment obligations and sections 1, 5.2(b), 7.3, 7.4(d), 7.6, 8.1, 8.3, 8.4, 10.2, 11, 12, 13 (to the extent that insurances are required to be maintained after the term), this section 14.3, 15 and 16 shall survive the termination of this Agreement.

## 15. **GENERAL PROVISIONS**

### 15.1 **Notice**

- (a) Notices under this Agreement must be sent to the address specified below, or an updated address provided by a party to the other by notice under this section. Notices to Uber and Portier NZ relating to a breach or termination should be provided by post. Other notices to Uber and Portier NZ can be provided via the Uber Driver App.
- (b) Notices to Portier NZ should be provided to c/ PKF Goldsmith Fox, Level 1, 100 Moorhouse Avenue, Christchurch 8011, New Zealand. Notices to Uber should be provided to Meester. Treublaan 7, 1097 DP Amsterdam, The Netherlands. Notices to you will be provided by email to the email address associated with your account or by posting on the portal available to you on the Uber Driver App and will be considered delivered on actual delivery.

### 15.2 **Modifications to this Agreement**

- (a) Uber and Portier NZ, may, from time to time modify, update or replace the terms and conditions of this Agreement by making the updated version of these terms, Supplemental Terms, the Community Guidelines or other information available to you (including via hyperlinks in this document) via the Uber Driver App or by publishing a new version of that document or information on the Uber website.
- (b) If a modification to the Agreement, any Supplemental Terms or the Community Guidelines will be detrimental to your rights under this Agreement, Uber and Portier NZ will let you know at least 30 days before that modification is effective. During that 30 day period, you have the right to terminate this Agreement in accordance with section 14.1.
- (c) You will have consented to the modifications made under this section if you continue to use the Uber Driver App after the modifications have come into effect.

### 15.3 **Supplemental Terms**

You may agree to supplemental terms to this Agreement, such as addendums or terms related to certain features and functionality, which may be modified by Uber and Portier NZ from time to time (**Supplemental Terms**). Supplemental Terms are in addition to, and form a part of, this Agreement in accordance with section 1.

### 15.4 **Governing law**

This Agreement is governed by and construed in accordance with the laws of New Zealand, excluding its rules on conflicts of laws. The Vienna Convention on the International Sale of Goods of 1980 (CISG) will not apply.

### 15.5 **Assignment**

- (a) Portier NZ and Uber each have the right to assign or transfer this Agreement or any or all of their respective rights or obligations under this Agreement, in whole or in part, without obtaining your prior consent. You may not assign or transfer this Agreement, as the Agreement needs to remain with you.
- (b) Portier NZ and Uber may each subcontract any of their obligations under this Agreement. You may, subject to the terms of this Agreement, appoint a delegate to perform any Delivery Services. If you appoint a delegate to perform any Delivery Services, the terms and conditions in the Delivery Person Delegator Addendum apply to you as Supplemental Terms. If you are appointed as a delegate of another Delivery Person, the terms and conditions in the Delivery Person Delegate Addendum apply to you as Supplemental Terms. You are solely responsible for your employees and contractors used in connection with this Agreement. If you appoint a delegate to perform any Delivery Services under this Agreement, you remain fully liable for any Request the delegate performs under this Agreement.
- (c) Without limiting section 15.5(a), this Agreement binds, and will continue to benefit, each party to this Agreement and that party's respective successors and assignees.

## 15.6 General provisions

- (a) The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this Agreement. Neither a failure to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Agreement.
- (b) If a court of competent jurisdiction determines that a provision of this Agreement is invalid or unenforceable, the remainder of this Agreement (and to the extent practicable, the relevant provision) will remain in full force and effect.
- (c) This Agreement contains the full and complete understanding and agreement between the parties relating to the subject matter of this Agreement, and this Agreement supersedes all prior and contemporary understandings and agreements, whether oral or written, relating to the subject matter of this Agreement.

## 16. DEFINITIONS AND INTERPRETATION

### 16.1 Definitions

**Affiliate** means an entity that, directly or indirectly, Controls, is under the Control of, or is under common Control with a party.

**Community Guidelines** means the policy available at <https://www.uber.com/nz/en/safety/uber-community-guidelines/>.

**Control** means having more than 50% of the voting stock or other ownership interest or the majority of the voting rights of such entity, the ability of such entity to ensure that the activities and business of the other entity are conducted in accordance with the wishes of that entity or the right to receive the majority of the income of that other entity on any distribution by it of all of its income or the majority of its assets on winding up.

**Customer** means a user (an individual or an entity) requesting Delivery Services from Portier NZ.

**Data Protection Law** means all applicable Laws imposing an obligation in relation to the collection, use, disclosure, storage or transmission of Personal Data, including any codes, principles or guidelines contained in or arising out of such Laws, including the *Privacy Act 2020* and the *Privacy Regulations 2020*.

**Delivery Recipient** means the intended recipient of items being delivered by you under a subcontract with Portier NZ entered into pursuant to this Agreement in connection with your Delivery Services, where Portier NZ has entered into a separate contract to deliver such items to the Delivery Recipient.

**Delivery Services** mean services you provide as a self-employed contractor to Portier NZ whereby you deliver items to a Delivery Recipient under this Agreement.

**GST** has the same meaning as in the *Goods and Services Tax Act 1985*.

**Law** means any law (including subordinate or delegated legislation or statutory instruments of any kind) and also any judgment, order, policy, guideline, official directive or request (even if it does not have the force of law) of any government agency or regulatory body, including a stock exchange, applicable to any of the parties.

**Liability** means any claims, damages, losses, fines, superannuation contributions, Taxes, or expenses and includes any wage or payroll tax, social insurance premiums or employee or accident compensation levies, superannuation contributions or superannuation guarantee charges that may be imposed as a result of a failure to comply with Tax or other obligations.

**New Zealand Consumer Law** means the *Consumer Guarantees Act 1993*, *Fair Trading Act 1986* and other applicable Laws relating to consumer protection.

**Personal Data** means any information provided to you by Uber, Portier NZ and its Affiliates (a) relating to an identified or identifiable natural person; (b) that can reasonably be used to identify or authenticate an individual, including name, contact information, precise location information, persistent identifiers; and (c) any information that may otherwise be considered 'personal data' or 'personal information' under applicable Law.

**Request** means any request for Delivery Services you receive from Portier NZ via the Uber Driver App.

**Right to work** means an entitlement to work in New Zealand as a Delivery Partner, and includes any entitlement to work that a person may have by reason of being a New Zealand citizen or by reason of holding a New Zealand visa that permits the visa holder to perform work as a Delivery Partner, consistent with any visa conditions.

**Tax** means all forms of tax including all statutory or governmental taxes, levies, duties and rates, whether imposed in New Zealand or elsewhere, and includes any reassessments of any such tax and all penalties, interest, fines, or the like imposed by any Tax Authority.

**Tax Authority** means an authority responsible for the collection of Tax, whether in New Zealand or elsewhere, and in particular (but without limitation) the New Zealand Inland Revenue Department or any overseas government department or body with similar functions or powers.

**Territory** means the areas within New Zealand where you are permitted under the Uber Driver App to receive Requests.

**Tolls** means such road, bridge and tunnel usage charges imposed by a toll operator as reasonably determined by Portier NZ, based on available information, to the extent they are reasonably incurred between the time you collect an item from a Customer and deliver that item to a Delivery Recipient.

**Transportation Method** means the mode of transportation used by you, or that you propose to use, to provide the Delivery Services.

**Uber Data** means all data related to the access and use of the Uber Driver App or obtained in connect with this Agreement, including all data related to Customers, all data related to Delivery Recipients, all data related to the provision of Delivery Services and the Uber Driver App, all ratings, feedback or comments provided by you, and the identification and password key assigned to you that enables you to use and access the Uber Driver App.

**Uber Driver App** means the mobile application licensed to you by Uber that enables you to access and receive Requests.

## 16.2 Interpretation of this Agreement

In this Agreement, unless the context otherwise requires: (a) headings and information boxes are for convenience only and do not affect interpretation; (b) reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time; and (c) if an example is given of anything, such as by saying it includes something else, the example does not limit the scope of that thing.