

STANDARD PAY OUT CUSTOMER TERMS (SOUTH AFRICA)

VERSION EFFECTIVE DATE

1 February 2026

The following is a statement of the current standard terms of business under which Pay At Services (Pty) Ltd provides pay out payment services. We refer to ourselves as “Pay@” in this document. Any person or entity that validly accepts a proposal for pay out payment services made by us that is aimed at assisting such person or entity to make payments to clients (“Payment Services”) will enter into a binding agreement with us that is subject to these terms unless otherwise agreed in writing. Such a person or entity is referred to as a “Customer” in this document and we refer to a validly accepted proposal for our Payment Services as a “Service Schedule”.

1. APPLICATION

1.1 **Application.** These terms shall apply to all Service Schedules for Payment Services concluded between Pay@ and Customer. Each such Service Schedule shall constitute a separate contractual arrangement subject to these terms. These terms shall be valid as from the Version Effective Date specified at the head hereof until replaced with new or amended terms. Unless otherwise agreed with a Customer in writing, these terms will apply to all Service Schedules for Payment Services, irrespective of whether they are concluded prior to or after the Version Effective Date, and will replace any existing terms governing such Payment Services with effect from such Version Effective Date.

1.2 **Conflicts.** Insofar as any term and condition in a Service Schedule conflicts with these terms, the Service Schedule shall prevail. However, save where expressly provided to the contrary, the terms and conditions of any one Service Schedule shall not apply to any other Service Schedule.

2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions.** The following terms shall have the following meanings when used in these terms or in a Service Schedule-

2.1.1 “**Affiliate**” means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity;

2.1.2 “**AFSA**” means the Arbitration Foundation of Southern Africa, or its successors in title;

2.1.3 “**Authorised Participant**” means a person or entity that is enabled by a Network to process Transactions via the systems of such Network;

2.1.4 “**Authority**” means any national, municipal, provincial, other local or administrative government, authority or department, or any agency, tribunal, commission, regulator, self-regulatory body or other similar body having jurisdiction by Law over the assets, resources, activities or operations of any of the parties involved in the Payment Services, which may include, without limitation, the FSCA, SARB and PASA;

2.1.5 “**Business Day**” means any day other than a Saturday, a Sunday or a public holiday in the Territory;

2.1.6 “**Business Hours**” means the hours from 08h00 to 17h00 local time on Business Days;

2.1.7 “**Client**” means the person or entity for whose benefit a payment is made pursuant to a Transaction;

2.1.8 “**Client Data**” means all information pertaining to Clients that is generated or becomes available pursuant to or in connection with the Payment Services;

2.1.9 “**Confidential Information**” means any information of whatever nature, which has been, or may be obtained directly or indirectly by one Party hereto from the other Party hereto, whether in writing or in electronic format, or pursuant to discussions held between the Parties, or which can be obtained by examination, testing, visual inspection or analyses, including, without limitation a Party’s Know-How, all program code (including for Pay@, as may form part of the Pay@ System), product architecture, data file structures, interface and communications protocols, numbering systems and associated material and manuals (including for Pay@, as incorporated in the Release Codes and/or the Transaction Protocols) and the information contained therein, the Client Data and Transaction Data, all information relating to a Party’s past, present and future research and development or to a Party’s business activities, products, services, clients, security measures or disaster recovery

plans, as well as all such Party’s trade secrets and these terms and conditions and as may be contained in a Service Schedule, any information identified as confidential, any information in respect of which a Party is under obligation of confidence and any other material which contain or otherwise reflect, or are generated or derived from any such information as is specified in this definition;

2.1.10 “**Control**” and its derivatives shall mean that an entity holds more than a fifty per cent (50%) equity interest in the other entity in question;

2.1.11 “**CPI**” means the percentage change in the year on year metropolitan areas – core consumer price inflation index published by Statistics South Africa, and if the publication of such index is discontinued, the most similar index as compiled and published monthly by Statistics South Africa in a statistical news release or a body authorised in its stead, in terms of the Statistics Act 1976 as amended (or any statute replacing such Act) will be used;

2.1.12 “**Customer Product**” means the type and nature of the Customer business or product giving rise to the payments to be facilitated via the Payment Services as may be specified in the Service Schedule;

2.1.13 “**Customer Systems**” means the computer systems, devices and communications infrastructure used by Customer to facilitate the Transactions and otherwise fulfil its duties and functions with respect to the Payment Services, comprising all equipment, software and network connections, forming part thereof;

2.1.14 “**Effective Date**” means in respect of each Service Schedule, the effective date stipulated in such Service Schedule, and failing such stipulation the date of signature of such Service Schedule by the last Party signing;

2.1.15 “**Fees**” means the fees agreed to be payable under a Service Schedule by the Customer with respect to the Payment Services provided thereunder, which will be as stipulated in the relevant Service Schedule, and failing such stipulation will be determined with reference to Pay@’s standard prevailing rates;

2.1.16 “**FSCA**” means the South African Financial Sector Conduct Authority;

2.1.17 “**Intellectual Property Rights**” means patents, registered designs, trademarks (whether registered, applied for or otherwise), copyright, trade secret rights, database rights, design rights, service marks and other intellectual property rights and rights to claim something as its confidential information, including in other jurisdictions, that grant similar rights as the foregoing;

2.1.18 “**Know-How**” means any and all concepts, ideas, methods, methodologies, procedures, processes, know-how, formulae, techniques, models (including, without limitation, function, process, system and data models), templates, the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs, payment card designs, communications protocols, numbering systems, business rules, product architecture, data file definitions, utilities and routines; and logic, coherence and methods of operation of computer systems that a Party has created, acquired or otherwise has rights in and may, in connection with the performance of its obligations under a Service Schedule, employ, provide, modify, create or otherwise acquire rights in, including in respect of Pay@, as may be contained in the Transaction Protocols;

2.1.19 “**Law**” means:

- (a) any applicable statute, regulation, by law, ordinance or subordinate legislation in force from time to time to which a Party is subject;
- (b) the common law as applicable to a Party from time to time;
- (c) any binding court order, judgement or decree;
- (d) any applicable industry code, direction, policy, rule or standard enforceable by law on a Party, including criteria as may be stipulated by any Authority;
- 2.1.20 “**Minimum Term**” means, unless otherwise stipulated in a Service Schedule, a period of 3 (three) years from the Effective Date of such Service Schedule;
- 2.1.21 “**Network**” means a payment provider (together with its Authorised Participants) or payment mechanism that is identified in or under a Service Schedule to facilitate Client payments for Customer;
- 2.1.22 “**Parties**” means Pay@ and the Customer and “**Party**” means either one of them;
- 2.1.23 “**Pay@ Trust Account**” means a Pay@ bank account held with a bank in the Territory designated to Customer by Pay@ in writing for the purposes of making payments to Pay@;
- 2.1.24 “**PASA**” means the Payments Association of South Africa;
- 2.1.25 “**Pay@ Materials**” means the proprietary documentation, software and other materials provided or made available by or on behalf of Pay@ in connection with this Agreement, and includes, without limiting the generality thereof, any Release Codes, Transaction Protocols and/or Pay@ System specifications;
- 2.1.26 “**Pay@ System**” means the equipment, software, databases and communications links used by Pay@ in order to facilitate the Payment Services, but excluding all Customer Systems components and Network systems and infrastructure;
- 2.1.27 “**Payment Services**” means the services enabled under a Service Schedule pertaining to the processing of Transactions for Customer;
- 2.1.28 “**Personal Information**” has the meaning ascribed to it in the Protection of Personal Information Act, No 4 of 2013;
- 2.1.29 “**Personnel**” means any director, employee, agent, consultant, contractor, sub-contractor or other authorised representative of an entity;
- 2.1.30 “**Release Code**” means any identification code, authorisation code or other authentication device used to facilitate a Transaction in accordance with the Transaction Protocols;
- 2.1.31 “**SARB**” means the South African Reserve Bank;
- 2.1.32 “**Service Schedule**” means a binding schedule for Payment Services in the standard Pay@ registration form format;
- 2.1.33 “**Settlement Deposit**” means a funding amount pre-paid to Pay@ by Customer in order to settle Pay@ for Transaction Amounts paid and Fees due pursuant to the Payment Services;
- 2.1.34 “**Territory**” means the Republic of South Africa;
- 2.1.35 “**Transaction**” means a request to facilitate a Client payment on behalf of Customer that is submitted to the Pay@ System for processing;
- 2.1.36 “**Transaction Amount**” means the monetary amount involved in a Transaction as confirmed by the Pay@ System;
- 2.1.37 “**Transaction Data**” means all data pertaining to the Transactions that is submitted or generated in the course of processing such Transactions including any Personal Information of the Clients involved;
- 2.1.38 “**Transaction Protocols**” means the functional, technical and business requirements and specifications, procedures, standards, rules and protocols applicable to the identification and authentication of Clients, the processing, communication, authorisation, recording and reconciliation of Transactions and the interoperation between the Pay@ System and Customer Systems, format, composition, contents and/or function of the Release Codes, payment and settlement of Transaction Amounts, the handling of errors, returns and other problems, the recording and keeping of records pertaining to the Transactions and the use of the Payment Services in general, as may be specified by or agreed with Pay@;
- 2.1.39 “**User Documentation**” means the reference manuals and/or user instructions supplied to the Customer by Pay@ for aiding the use of the Payment Services;
- 2.1.40 “**Validation**” and all its derivatives means confirmation that a particular Client payment may be made on behalf of the Customer as requested;
- 2.1.41 “**VAT**” means value added tax payable in terms of the Value-Added Tax Act, No 89 of 1991, as amended;
- 2.2 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of these terms.
- 2.3 **References.** Unless otherwise stated herein, references in these terms to these terms or to a Service Schedule or to any other agreement are references to these terms or to such Service Schedule or such other agreement as varied, supplemented, substituted or replaced from time to time.
- 2.4 **Clause References.** Unless otherwise stated herein, references to clauses, sub-clauses, schedules or paragraphs are references to clauses, sub-clauses, schedules or paragraphs in these terms, as the case may be.
- 2.5 **Enactments.** References to any legislation shall be deemed to include references to such legislation as re-enacted, amended or extended from time to time.
- 2.6 **References to persons.** References to persons shall include natural and juristic persons and references to either Party shall include such Party’s successors or permitted assigns.
- 2.7 **Substantive Provisions.** If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, effect shall be given to it as if it were a substantive provision notwithstanding that it is contained in a definition.
- 2.8 **Other Definitions.** Where any term is defined within the context of any particular clause in these terms, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in these terms and the Service Schedule, notwithstanding that the term has not been defined in this clause.
- 2.9 **Calculation of Days.** Unless expressly otherwise stated, when any number of days is prescribed in these terms or a Service Schedule, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day that is not a Business Day, in which case the last day shall be the next Business Day.
- 2.10 **Consents.** Unless specifically otherwise provided, any consent, approval or agreement to be provided by a Party under these terms or a Service Schedule may not be unreasonably withheld or delayed.
- 2.11 **Counterparts.** Service Schedules may be executed in any number of counterparts (including faxed counterparts) and all of such counterparts taken together shall be deemed to constitute one and the same instrument.
- 2.12 **Interpretation.** No rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall apply to these terms or a Service Schedule.
3. **TERM**
- 3.1 **Term.** A Service Schedule shall commence on its Effective Date and shall continue be of force and effect until terminated in accordance with such Service Schedule or these terms.
- 3.2 **Network Withdrawal.** Payment Services being rendered under a Service Schedule that pertains to any specific Network will be suspended if and to the extent that such Network does not agree to participate in, withdraws from or terminates its involvement with such Payment Services for any reason.
- 3.3 **Termination of Services.** Any Service Schedule and any component of the Payment Services rendered under a Service Schedule (including as it may pertain to a particular Network or Authorised Participant) may be terminated by either Party by giving the other Party at least 3 (three) months prior written notice thereto (provided that Pay@ may give a shortened notice of no less than 30 (thirty) days to Customer if it is or becomes Inactive), which termination will take effect as of the date specified in the notice of termination, provided that such notice by Customer will not be effective before expiry of the Minimum Term of the Service Schedule. For the purposes hereof Customer will be deemed

- “Inactive” if no more than 50 (fifty) Transactions were processed for Customer over the 12 (twelve) months preceding the date of notice of termination.
- 3.4 **No effect on other Services.** The termination of any one Service Schedule will not affect the validity of any other Service Schedule. The termination of any one Payment Service component under a Service Schedule will not affect the validity of any other Payment Service component provided under such Service Schedule.
- 3.5 **Suspension.** Without prejudice to any of its other rights or remedies, Pay@ shall have the right to immediately suspend its processing of Transactions in whole or in part by way of a written notice thereto:
- 3.5.1 if it has reason to believe that the processing of such Transactions or the rendering of the Payment Services is or may be unlawful, including if any of the licences, authorisations, permissions or consents required in Law to permit the Payment Services is not granted or is deemed to be insufficient or terminates without being renewed;
- 3.5.2 if the funds balance of the Settlement Deposit is exhausted or settlement to Pay@ of Transaction Amounts and/or Fees is delayed or overdue for any reason;
- 3.5.3 in the event of material non-compliance with the Transaction Protocols;
- 3.5.4 if it has reason to believe that the Payment Services is being used for unlawful purposes, or an actual or threatened security breach, money laundering or fraud impacting the Transactions or Payment Services;
- 3.5.5 if Customer or a Network or a person related to, acting on behalf of, or involved with such party appears or is included on any sanction list as prescribed by Law; or is linked to any of the restricted countries on any sanction list prescribed by Law or the government agencies of such restricted countries;
- 3.5.6 if it has reason to believe that Customer or a Network or any person related to, acting on behalf of, or involved with such party has contravened any anti-corruption and or anti-money laundering Laws (locally or internationally), or is involved in terrorist activities;
- 3.5.7 if it has reason to believe that continued involvement with Customer will expose it or any of its Networks to reputational and/or market conduct risk;
- 3.5.8 if the actual type of Customer Products involved does not wholly correspond to the types specified in the Service Schedule; or
- 3.5.9 if it is required to do so pursuant to an instruction by a Network or a relevant Authority;
- in each case, until the cause of the suspension has been adequately addressed.
4. **IMPLEMENTATION**
- 4.1 **Systems.** Customer shall be responsible for complying with the Transaction Protocols so as to enable interoperability with the Pay@ System and the proper functioning of the Payment Services and, accordingly, will procure, install and maintain all components of the Customer Systems required to ensure such compliance.
- 4.2 **Implementation.** The Parties will work together and with the relevant Network to implement the Payment Services specified in each Service Schedule so as to be able to commence therewith at the planned commencement date. In this regard, the Customer will be responsible for the timely implementation and configuration of the Customer Systems to interoperate with the Pay@ System, enable the relevant Payment Services and, where applicable, authorise Transactions, all in compliance with the Transaction Protocols and the minimum requirements of the relevant Network(s), including with respect to the format and content of the Transaction Data to be provided to process Transactions.
- 4.3 **Specific Responsibilities.** Customer will be responsible for and undertakes to -
- 4.3.1 obtain all licences, authorisations, permissions and consents as may be required by it under applicable Law to make use of the Payment Services and to ensure the Client payments made on behalf of Customer may validly and lawfully be effected via the Payment Services for all purposes under applicable Law (including, to the extent necessary, from the Authorities and the Clients);
- 4.3.2 ensure that the Transaction Protocols enables compliance with applicable Law insofar as it pertains to the facilitation of the Payment Services specifically for Customer, notify Pay@ upon becoming aware of a change in Law that may impact on the Payment Services, propose suitable updates to the Transaction Protocols to ensure continued compliance with applicable Law and, if required, provide suitable training to Personnel of Pay@ and its Networks so as to enable such compliance;
- 4.3.3 implement and configure in compliance with the Transaction Protocols the components of the Customer Systems (including the necessary secure network links) so as to interoperate with the Pay@ System and enable the processing of Transactions, including the Validation thereof, and to facilitate payment of Transaction Amounts for the benefit of the Clients, all in compliance with the Transaction Protocols; and
- 4.3.4 implement, test and verify, in conjunction with Pay@, the functioning of the implementation of the Payment Services (including the functioning of any Release Codes) to ensure compliance with the Transaction Protocols and informing Pay@ of any problems detected and working with Pay@ to resolve such problems.
5. **PAY@ MATERIALS**
- 5.1 **Usage Rights.** Customer may Use the Pay@ Materials made available to it by Pay@ for the duration of this Agreement to process the Transactions only and shall not allow use of the Pay@ Materials for any other purposes.
- 5.2 **Use.** For the purposes hereof “Use” of the Pay@ Materials under clause 5.1 shall mean: -
- 5.2.1 to use the Transaction Protocols to configure and maintain the Customer Systems and to use the Transaction Protocols and Release Codes (if any) in order to interoperate properly with the Pay@ System;
- 5.2.2 to receive and submit Client Data and Transaction Data from and to the Pay@ System in compliance with the Transaction Protocols; and
- 5.2.3 to use the User Documentation for aiding the aforesaid uses;
- 5.3 **Infringements.** Customer shall ensure that the Pay@ Materials is used by it and its Personnel in strict compliance with the terms of this clause 5 and agrees to notify Pay@ promptly in writing of any transgressing uses of, or any act of infringement involving the Pay@ Materials of which it acquires knowledge and Pay@ shall have the right, at its own option, to proceed against anyone infringing its rights in the Pay@ Materials.
- 5.4 **Withdrawal.** Pay@ may demand that Customer or any of its Personnel wholly or partially cease use of the Pay@ Materials if -
- 5.4.1 it determines that such use or the continued use of such Pay@ Materials may subject Pay@ or any third party to legal liability, or may jeopardise its rights in the Pay@ Materials; or
- 5.4.2 a failure to comply with the terms of this clause occurs as it pertains to the use of such Pay@ Materials and such failure is not remedied promptly following receipt of a written notice thereof; or
- 5.4.3 its rights to have Transactions processed is terminated,
- and the Customer will promptly take such steps as may be required to ensure compliance with such request.
- 5.5 **Retention of Rights.** Pay@ reserves all rights not expressly granted to Customer. Customer acknowledges that the rights in the Pay@ Materials granted to it are limited to the licences granted to it hereunder and that Pay@ and its licensors shall remain solely entitled to all Intellectual Property Rights and other proprietary rights in the Pay@ Materials (notwithstanding that it may have been delivered to Customer), including all Intellectual Property Rights therein and all Know-How represented by or incorporated in the Pay@ Materials.
- 5.6 **Restrictions.** Customer shall not, and shall not permit, whether directly or indirectly, any third party, except as expressly permitted hereunder to-
- 5.6.1 access, use or share the Payment Services made available to it, or sell, assign, sub-license or otherwise transfer any of its rights with respect to the Payment Services made available to it;

- 5.6.2 access, use, modify, adapt, translate, reproduce, distribute, rent, lease, share, sell, assign, sub-license or otherwise transfer its rights of use with respect to any part of the Pay@ Materials made available to it;
- 5.6.3 remove, alter or conceal any proprietary notices or labels on Pay@ Materials made available to it; or
- 5.6.4 reverse assemble, decompile or reverse engineer any software or code forming part of the Pay@ Materials, whether in whole or in part, or otherwise attempt to derive the source code thereof, or
- 5.6.5 use any of the Pay@ Materials to develop a product or render a service that can compete with the Payment Services.
- 5.7 **Representations.** Customer undertakes that it shall not in any manner whatsoever represent that it is the owner or has any interest, other than as licensee in terms hereof, in the Pay@ Materials and shall not take any action to impute any other right, title or interest in and to the Pay@ Materials.
6. **PROMOTION**
- 6.1 **Client Awareness.** Customer agrees to promote the Payment Services to its Clients in the Territory, including by providing and installing suitable Pay@ approved signage to promote the Payment Services at Customer premises regularly attended by its Clients and, if required, by providing similar signage for installation at Networks and Authorised Participants, and by promoting the Payment Services on its web sites, and, finally, by regularly informing its Clients of the contact details of the Customer helpdesk responsible for dealing with Client queries regarding the Payment Services.
- 6.2 **Usage Approval.** A Party will not use or authorise the use of the other Party's trademarks or the trademarks of a Network on any promotional, marketing or advertising materials (whether electronic or printed), without first obtaining the proprietor's prior written approval thereto. The Parties hereby agree that each Party may use the other Party's brand name, domain name, emblems, symbols, slogans and logos in advertising material to promote the Payment Services in the form and manner approved by the other Party and in accordance with the reasonable instructions of the other Party.
- 6.3 **Licences.** All trademark usage rights granted pursuant hereto will only apply in respect of the particular marketing material and particular instance for which an approval is granted and will be non-exclusive and non-transferable. Save for the licences expressly granted in writing pursuant hereto, neither Party is granted any right, title, licence or interest to or in the trademarks of the other Party or of any Network for any purpose and neither Party may sub-license any of its rights to use the other Party's trademarks or of any Network.
- 6.4 **Protection.** Each Party acknowledges and shall not challenge, nor cause any challenge to the other Party's rights in and to its trademarks or do anything that might harm the reputation or goodwill of the other Party or any of its trademarks. A Party shall also not take any action or cause an action to be taken that is inconsistent with the other Party's rights in its trademarks, nor shall it adopt, use or register any name, trade name, trade mark, service mark or other designation confusingly similar to any of the other Party's trademarks or incorporate in any way a such a trademark into one of its own trademarks or cause that or assist a third party in performing any of the above.
- 6.5 **Goodwill.** A Party shall not in any way represent that it has any right of any nature in the other Party's trademarks other than as a licensee and all use of trademarks and the goodwill associated therewith will inure to the benefit of the proprietor of the trademarks.
- 6.6 **Use.** Each Party shall ensure that the other Party's trademarks and the trademarks of the Networks are not used by it in any manner which may diminish or otherwise damage the trademark proprietor's reputation or its goodwill in such trademark, including, but not limited to, uses which would be deemed to be obscene, pornographic, excessively violent, hateful or otherwise in poor taste or unlawful, or which are designed to encourage unlawful activities. If requested thereto a Party shall desist from its use of any brand name, domain name, emblem, symbol, slogan, logo or stickers belonging to the other Party in accordance with the reasonable instructions of the other Party.
- 6.7 **Infringements.** Each Party agrees to notify the other Party in writing of any conflicting uses of, and applications for registration of a conflicting trademark or any act of infringement, unfair competition or passing off involving a trademark of the other Party of which it acquires knowledge and the other Party shall have the right, at its own option, to proceed against any third party infringing its trademark.
- 6.8 **Revocation.** A Party may demand that -
- 6.8.1 the other Party and/or any of the Networks or Authorised Participants wholly or partially cease the use of any of its trademarks if -
- (a) it determines that such use or the continued use of such trademark may subject it or any third party to legal liability, or may jeopardise its rights in the trademark; or
- (b) a failure to comply with the terms of this clause occurs as it pertains to the use of such trademark and such failure is not remedied promptly following receipt of a written notice thereof; or
- (c) the relevant person's rights regarding the Payment Services terminate for whatever reason;
- 6.8.2 the Customer wholly or partially cease the use of any trademark of a Network if the relevant Network demands such cessation of use.
- 6.9 **Effects of Revocation.** Upon revocation by a Party of a person's rights to use a trademark under clause 6.8 -
- 6.9.1 the other Party shall ensure the immediate cessation of further use of the relevant trademark by the relevant person, or any confusing or deceptive simulation thereof; and
- 6.9.2 the other Party shall at the instruction of the proprietor of the trademark ensure the destruction or handover to the proprietor of all materials held by the relevant person including labels, advertising matter, printed matter or the like featuring the relevant trademark, as well as any electronic versions thereof;
- and certify compliance with such requirements in writing to the proprietor upon request.
7. **SERVICES**
- 7.1 **Scope.** The Payment Services will be as described in the Service Schedule.
- 7.2 **Appointment.** Upon conclusion of the Service Schedule, Customer appoints Pay@ and authorises Pay@ to appoint the Networks designated in such Service Schedule for the term of such Service Schedule for all purposes under applicable Law (including, to the extent required, as Customer's agent, representative, service provider and/or intermediary) to process the Transactions arising under such Service Schedule and facilitate payment of the corresponding Transaction Amounts on Customer's behalf via the Payment Services enabled via Pay@ and such Networks, and Pay@ accepts such appointment. Customer will give the necessary notifications (including to relevant Authorities) and procure the necessary approvals, permissions and registrations of such appointment as may be required by Law (including from the relevant Authorities and Clients) and will immediately notify Pay@ if such approval, permission or registration cannot be obtained. The appointment by Customer of Pay@ and, where appropriate for its Networks, include, to the extent relevant and appropriate, authority to make payments on behalf of Customer as its payment agent in compliance with South African Reserve Bank Directive No 1 of 2007 issued under the National Payment Systems Act 78 of 1998.
- 7.3 **Appointment of Networks:** Any Network approved in a Service Schedule (including its Authorised Participants) may be appointed by Pay@ to facilitate Client payments for Customer. Pay@ will not appoint Networks that have not been approved by Customer. Customer shall ensure that it is duly authorised by its Clients to have payments made for their benefit via such approved Networks. Without limitation, it is the sole responsibility of Customer to ensure that each payment made on its behalf via the Payment Services will constitute legally effective payment to the Client involved.
- 7.4 **Transactions.** Customer will be responsible to ensure that the Customer Systems enable the Payment Services in compliance with the Transaction Protocols and that Transactions are processed by the Customer Systems in compliance with the Transaction Protocols. Customer will at all times comply with and ensure that the Customer Systems comply with the Transaction Protocols

- applicable to the Payment Services and shall maintain the Customer Systems so as to ensure proper interoperation with the Pay@ System in compliance with the Transaction Protocols.
- 7.5 **Adjustments.** Pay@ will endeavour to provide the Customer with reasonable advance written notice of any adjustments to be implemented to the Release Codes, Transaction Protocols or Payment Services, which notice will specify the date on which such adjustments are to take effect, it being acknowledged that such notice may not be possible in emergency situations.
- 7.6 **Change Management.** Other than in the event of an emergency, Customer may not make changes to the Customer Systems that may affect the Payment Services without notifying Pay@ well in advance, providing Pay@ with sufficient opportunity to assess and mitigate against the potential impact of such change on the Payment Services, and agreeing the scheduling and process of implementation of such changes with Pay@.
- 7.7 **Product Changes.** Customer will notify Pay@ of any proposed change that materially impacts on the type or nature of the Customer Products specified to be involved in the Payment Services as described in the Service Schedule.
- 7.8 **Support.** Pay@ will provide a helpdesk to support the Customer with problems and queries regarding the Payment Services at least during Business Hours. The Customer will provide helpdesk support for problems and queries regarding the Payment Services and with access to technical Personnel which will be able to deal with issues with the Payment Services raised by Pay@ or the Networks at least during Business Hours and for business-critical technical issues also after hours. The Customer will ensure that the helpdesk is manned by suitably trained and skilled staff that will be responsible for performing the following functions in a timely manner:
- 7.8.1 assist Clients with queries regarding the Payment Services;
- 7.8.2 assist Pay@ and the Networks with issues pertaining to Transactions (including authorisations) including by escalating to appropriate technical Personnel;
- 7.8.3 identify and notify Pay@ of any problems with the Payment Services, including any Customer System downtime;
- 7.8.4 resolve all such problems that are not caused by the Pay@ System or Network systems, including all problems caused by the Customer Systems or the interoperation thereof with the Pay@ System;
- 7.8.5 escalating all problems to Pay@ that it reasonably believes to be caused by the Pay@ System or Network systems and liaising with Pay@ and until such issues are resolved.
- 7.9 **Data.** Customer shall record and maintain up to date records of all Client Data on the Customer Systems and make available such Client Data to Pay@ and the Networks as may be required to facilitate the Transactions. Customer shall be solely responsible to ensure that such Client Data is authentic, accurate and complete and is provided in the correct format as specified in the Transaction Protocols. Each Party will take reasonable precautions and implement reasonable, appropriate organisational and technical security measures to prevent any unauthorised access, use, alteration, processing, destruction, damage or loss of the Client Data or the Transaction Data held by it, including as may be prescribed in the Transaction Protocols.
- 7.10 **Authorisations.** Customer shall ensure that it obtains and maintains all authorisations, permissions and consents as may be required in Law (including, to the extent necessary, from the Authorities and the Clients) to engage Pay@ and the Networks to have the Transactions executed on its behalf via the Payment Services, and to provide any related Transaction Data and/or Client Data to Pay@ and the Networks and to authorise Pay@ and the Networks to collect, process and share such Client Data and Transaction Data on behalf of Customer in the manner as contemplated in this Agreement. Customer will, upon Pay@ request, provide Pay@ with proof to the satisfaction of Pay@ that Customer has the necessary licences, authorisations, permissions or consents and Customer will immediately notify Pay@ in writing of the expiry or termination of any such licence, authorisation, permission or consent.
- 7.11 **Applicable Law.** Customer shall comply with applicable Law insofar as it pertains to its use of the Payment Services and shall take all reasonable steps to procure that the Payment Services is used by its Clients only for lawful purposes and accordingly Customer shall:
- 7.11.1 ensure that the Customer Products provided by it are compliant with applicable Laws and that it holds all required licenses, registrations and authorisations to make available such Customer Products to Clients and to have Pay@ and the Networks make payments hereunder on its behalf with respect to such Customer Products;
- 7.11.2 verify that the Transaction Protocols enable compliance with applicable Law insofar as it pertains to the facilitation of payments for its particular Customer Products and notify Pay@ of any requirement in such applicable Law which requires an amendment of the Transaction Protocols in order for the Customer or for Pay@ or the Networks or Authorised Recipients acting for and on behalf of the Customer to comply with such requirement;
- 7.11.3 be responsible to ensure that appropriate authorisations and consents (including, where necessary, from Clients) are obtained to ensure that each payment made for it via the Networks constitutes proper performance of its underlying payment obligations, including without limitation, where such payments are effected into a bank account or wallet, or by acquiring and providing vouchers or any other benefit or grant of rights that does not constitute legal tender;
- 7.11.4 ensure compliance with Transaction Amount thresholds specified by Law and not authorise Transactions in excess thereof or for Clients prohibited by Law from conducting a Transaction;
- 7.11.5 procure Client identification, sanction screening and fraud detection, and ensure anti-money laundering analysis, keeping of Transaction records and reporting on Transactions to the relevant Authorities, all in compliance with applicable Law;
- 7.11.6 take all reasonable steps to prevent use of the Payment Services to facilitate fraud and other illegal activities, including by monitoring for and not Validating any fraudulent or suspicious Transactions; and
- 7.11.7 be responsible for and shall obtain and maintain appropriate consents from Clients authorising Pay@ and the Networks and collect, share, process and store the Client Data on its behalf as contemplated herein;
- and Customer hereby indemnifies Pay@ and the Networks against any claims, fines or penalties that may be imposed on any of them as a result of a failure to comply with any of the aforesaid.
8. **COOPERATION**
- In order to enable the Payment Services in terms of this Agreement, the Customer agrees to provide ongoing assistance, input, support and co-operation and shall accordingly–
- 8.1 **liaise regularly.** Designate an individual to whom all communications concerning the Payment Services may be addressed and who will be authorised to render all decisions and approvals required in respect of the Payment Services and liaise regularly with Pay@ to ensure that Pay@ is in a position to provide the Payment Services;
- 8.2 **decisions and approvals.** Render all decisions and approvals required as soon as is reasonably possible, so as not to delay or impede the performance of the Payment Services;
- 8.3 **suitable infrastructure.** To the extent necessary, provide a suitable infrastructure for the components, software or deliverables that are to be implemented, including without limitation, the Customer Systems environment and infrastructure, in accordance with any specification requirements issued by Pay@ to the Customer and not make changes to the Customer Systems that may affect the Payment Services without notifying Pay@ well in advance and providing Pay@ with sufficient opportunity to assess and mitigate against the potential impact of such change on the Payment Services;
- 8.4 **notifications.** Notify Pay@ (who may in turn notify the Networks) as soon as reasonably possible of any issues, concerns or disputes of which it becomes aware that materially impact or can reasonably be expected to have a material impact on the Payment Services, including from fraud, security breach or system failure;
- 8.5 **Customer Material.** Ensure that it is lawfully able to make available for its intended use all Transaction Data, Client Data and other Customer materials and information provided to Pay@ for the purposes of providing the Payment Services and ensure that all

- such materials and information is authentic, accurate and complete; and
- 8.6 **dependent functions.** Make available sufficiently qualified and authorised Customer Personnel, with appropriate access rights and permissions, to assist Pay@ if required;
9. **COMPENSATION**
- 9.1 **Fees.** Customer shall be liable for and shall pay all Fees agreed to be payable in respect of the Payment Services supplied by Pay@ pursuant to a Service Schedule on the basis set out herein and at the rates stipulated in the Service Schedule (as adjusted pursuant hereto from time to time) and failing such stipulation, Fees may be charged at Pay@'s standard prevailing rates.
- 9.2 **Adjustments.** Pay@ may adjust all Fee rates in accordance with its annual pricing cycle and practices generally applicable to its customers like Customer and will provide the Customer with prior written notice of any such adjustments. All fixed amount Fee rates pertaining to the Transactions or Payment Services may be adjusted at least once on 1 March annually with reference to the change in CPI.
- 9.3 **Tax.** The Fees shall exclude all taxes, duties, tariffs, rates, levies and other governmental charges payable in respect of the rendering of the Payment Services, which shall be payable by the Customer in addition to the Fees.
- 9.4 **Invoicing.** Pay@ will provide Customer with a consolidated monthly Transaction report, tax invoice and statement for the Transactions processed and the Fees charged on a monthly basis in arrears.
- 9.5 **Transaction Amounts.** All Transaction Amounts are paid out on behalf of Customer. Customer will, accordingly, be liable to reimburse and will procure settlement and transfer to Pay@ of all Transaction Amounts confirmed for payment pursuant to the Transactions.
- 9.6 **Reporting.** Pay@ will provide Customer with a daily report regarding the Transactions duly authorised by the Pay@ System under the various Service Schedules reflecting *inter alia* the aggregate of the Transaction Amounts confirmed by the Pay@ System for payment during such day and the Fees due to Pay@ in respect of the Transactions involved.
- 9.7 **Settlement from Settlement Deposit.** If a Settlement Deposit is specified to apply to the Payment Services rendered under the Service Schedule, Customer will be responsible to deposit into the Pay@ Trust Account and maintain such Settlement Deposit with Pay@ as pre-payment for the settlement of Transaction Amounts and Fees. Pay@ may use the Settlement Deposit to settle any Transaction Amounts and Fees payable to it and/or to the Networks as and when they become payable. Pay@ may suspend the processing of Transactions for Customer if the funds balance in the Settlement Deposit becomes exhausted. It is the responsibility of Customer to maintain adequate funds in the Settlement Deposit and Customer shall make regular (weekly unless otherwise agreed in the Service Schedule) top-up payments to the Pay@ Trust Account to ensure same. In addition, Pay@ may give notice from time to time requiring additional top-up payments be made by Customer into the Pay@ Trust Account to maintain the Settlement Deposit and Customer shall be responsible to comply with such notices. Pay@ may reasonably adjust the amount of funds to be provided for the Settlement Deposit from time to time by giving written notice thereto.
- 9.8 **Arrears Settlement.** If a Settlement Deposit is not specified to apply to the Payment Services rendered under the Service Schedule, Customer will be liable to pay all Transaction Amounts and Fees due for each day to Pay@ by transferring them into the Pay@ Trust Account in the manner specified in the Service Schedule so that full value is received by Pay@ by no later than the first Business Day following the day on which the Transactions occur (or such other day as may be agreed in the Service Schedule), failing which Pay@ may suspend the Transactions until such payment has been duly made. Customer shall notify Pay@ immediately if it becomes aware that such payment may be delayed for any reason whatsoever. If such payment is delayed on one or more occasions, Pay@ may by way of notice require that Customer execute and provide it with a suitable debit order that will entitle Pay@ to debit all Transaction Amounts and Fees directly from the Biller's business bank account and/or commence applying a Settlement Deposit in the amount specified to the Payment Services involved. Furthermore, if settlement of Transaction Amounts or Fees become overdue for any reason, Pay@ may recover such outstanding amounts from any funds held by it for or on behalf of Customer and notify Customer of such recovery. If any error in payment occurs a correction will be promptly made in a subsequent payment to correct such error.
- 9.9 **Mode and method of payment.** All amounts due and payable by hereunder shall be paid in South African Rand without withholding, deduction or set-off for whatever reason by way of direct deposit into the designated South African bank account of the Party entitled to receive the payment unless otherwise agreed in writing.
- 9.10 **Interest.** Where payment of any amount due is not made on due date, the Party entitled to the payment may, without prejudice to any other right or remedy it may have, to charge interest on the outstanding amount at the prime interest rate (percent, per annum) charged by ABSA bank from time to time, as evidenced by any manager of such bank, whose authority it shall not be necessary to prove. Such interest shall be calculated from the due date for payment to the date of actual payment and compounded monthly in arrears.
- 9.11 **Payment Disputes.** Customer shall be responsible to review promptly and raise any dispute it may have regarding the contents of Pay@ payment reports and invoices as soon as practically possible after receipt thereof and in any event within no more than 3 (three) months of such report or invoice being delivered to it, failing which the content of such documents shall be deemed true and accurate in all material respects and no further claims or disputes shall be permitted in respect of the contents thereof. If there is any dispute about the amounts due to any Party, the Parties shall appoint an independent registered public accountant to act as an expert. If the Parties are unable to reach agreement as to the appointment of such independent registered public accountant, an independent registered public accountant shall be appointed at the request of either Party by the President for the time being of the South African Institute of Chartered Accountants (or the successor body thereto). The independent registered public accountant shall act as an expert and not as an arbitrator and the Parties shall provide each other and any such expert with any and all information that it may reasonably require in order to determine the correct amount payable. Such expert's decision shall be final and binding on the Parties. The cost of the aforesaid determination shall be borne by the Parties in equal shares unless a Party is found to be materially in default, whereupon the defaulting Party shall bear the costs of such expert. A correcting payment in the amount as determined by the expert shall be paid to the non-defaulting Party within 14 (fourteen) days of the determination, together with applicable interest calculated in accordance with clause 9.10.
10. **WARRANTIES**
- 10.1 **Warranty of Authority.** Each Party warrants that it has the legal right and full power and authority to execute each Service Schedule.
- 10.2 **Warranty of Authority.** Customer warrants and represents that:
- 10.2.1 it is duly authorised and has and shall maintain all such licences, authorisations, permissions and consents as may be required under Law for each Customer Product to appoint Pay@ and authorise Pay@ to appoint the Networks to process the Transactions and facilitate the payments of the Transaction Amounts on its behalf as contemplated under the Service Schedule, including from all relevant Authorities and Clients; and
- 10.2.2 the information as provided by it in the Service Schedule is complete, true and accurate, including as it may pertain to the type and nature of the Customer Products specified to be involved.
- 10.3 **Disclaimer of warranties.** Each Party hereby excludes and disclaims all warranties, whether expressed or implied, statutory or otherwise, except those warranties expressly made in these terms.
- 10.4 **No representations.** Each Party acknowledges that it has not been induced to enter into the Service Schedule by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in these terms.
11. **CONFIDENTIAL INFORMATION**
- 11.1 **Confidentiality obligation.** Each Party ("**Receiving Party**") must treat and hold as confidential all Confidential Information which they may receive from the other Party ("**Disclosing Party**") or which becomes known to them.

11.2 **The Receiving Party's obligations.** The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in the Disclosing Party's Confidential Information, unless the Disclosing Party has expressly agreed otherwise in writing –

11.2.1 the Receiving Party will only make the Confidential Information available to those of the Receiving Party's Personnel who are actively involved in the execution of the Receiving Party's rights or obligations and then only on a "need to know" basis;

11.2.2 the Receiving Party will only use and will ensure that its Personnel only uses the Confidential Information for the purposes of executing its rights or obligations;

11.2.3 the Receiving Party will not and will ensure that its Personnel does not at any time either use any Confidential Information of the Disclosing Party or directly or indirectly disclose any Confidential Information of the Disclosing Party to any third party other than as allowed in terms hereof;

11.2.4 the Receiving Party will initiate internal security procedures at least as strict as it uses for its own information of a similar nature to prevent unauthorised use and disclosure and will take all practical steps to impress upon those Personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;

11.2.5 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the Confidential Information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Personnel, will be and will at all times remain the sole and absolute property of the Disclosing Party and shall promptly be handed over to such Disclosing Party upon request; and

11.2.6 the Receiving Party shall promptly notify the Disclosing Party if it becomes aware of any breach of confidence in respect of the Confidential Information of the Disclosing Party by any person within it or by any person to whom it has divulged such Confidential Information and shall give the Disclosing Party all reasonable assistance in connection with any proceedings which it may institute as a result.

11.3 **Exceptions.** The foregoing obligations shall not apply to any information which –

11.3.1 is lawfully in the public domain at the time of disclosure;

11.3.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;

11.3.3 is already lawfully known to the Receiving Party prior to the time of disclosure;

11.3.4 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such information; or

11.3.5 is disclosed pursuant to a requirement or request by an Authority or by operation of Law.

12. LIMITATION OF LIABILITY

12.1 **Direct damages limited.** Except to the extent that such limitation is not permitted by applicable Law and without limiting a Party's obligations with respect to the payment of Transaction Amounts or Fees, either Party's maximum aggregate liability to the other Party for all amounts whatsoever claimed from it in connection with a Service Schedule during any 12 (twelve) month period shall be limited to the total of the Fees paid or payable to Pay@ in respect of such period under such Service Schedule, irrespective of the form (whether in contract, delict (including negligence), statute or otherwise) of such legal action.

12.2 **Indirect damages excluded.** In no event shall a Party or its Personnel be liable for any indirect, incidental, extrinsic or special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including, without limitation, any loss of profits, loss of revenue, loss of goodwill, loss or corruption of data, business interruption, third party claims or other pecuniary loss arising out of a the unavailability, delay in delivery or reliance on the systems, services, payments or data to be provided in connection with a Service Schedule) arising in connection with any Service Schedule, whether based on contract, delict, statute or otherwise, except to the extent that the limitation of liability contained herein is not permitted by applicable Law.

13. BREACH AND TERMINATION

13.1 **Termination for Cause.** Should either Party ("**Defaulting Party**") –

13.1.1 commit a material breach of the Service Schedule or of these terms as they apply to such Service Schedule, and fail to remedy such breach within 30 (thirty) calendar days of having been called upon in writing by the other Party to do so; or

13.1.2 fail to pay any amount due that is more than 60 (sixty) calendar days outstanding; or

13.1.3 commence with business rescue proceedings; or

13.1.4 defer or suspend payment of all or substantially all of its debts or is unable to pay its debts as and when they fall due; or

13.1.5 effect or attempt to effect a compromise or composition with the Defaulting Party's creditors; or

13.1.6 take steps for its voluntary winding up or be provisionally or finally liquidated or be placed in judicial management, whether provisionally or final or ceases to conduct business;

then, without prejudice to any other rights or remedies it may have in Law, the other Party ("**Innocent Party**") may, in its discretion, terminate the Service Schedule or Service component to which the event relates on written notice to the Defaulting Party, such termination to take effect on the date specified in the notice.

14. EFFECT OF TERMINATION

14.1 **Effect of termination of Service Schedules.** The termination or expiry of any one Service Schedule will not affect the validity of any other Service Schedule.

14.2 **Amounts due.** On termination of any Service Schedule or Payment Service for any reason, all amounts already due in respect of such terminated Payment Services shall become payable immediately.

14.3 **Duties upon termination.** Upon termination, cancellation or expiry of any Service Schedule or any Payment Service -

14.3.1 Customer shall cease using all the affected Payment Services and Pay@ will be entitled to take any steps required to prevent any further access or use by Customer of such Payment Services; and

14.3.2 each Party shall deliver, or at the other Party's option destroy, and procure the delivery of or destruction by its Personnel, of all originals and copies of the other Party's Confidential Information and proprietary materials in its or their possession or under its or their control that is relevant to the affected Payment Services (including the relevant Transaction Protocols) and will certify its compliance herewith promptly upon request by the other Party, provided that both Parties may retain their records of the Transaction Data and any such other records of Confidential Information as may be required by them to comply with applicable Law; and

14.3.3 each Party shall immediately cease to use, whether by advertising or in any other manner whatsoever, any of the other Party's trademarks in connection with the affected Payment Services and discontinue immediately all advertising of the affected Payment Services and refrain from doing anything that would indicate that it is still offering such Payment Services.

14.4 **Accrued Rights.** The expiry or termination of a Service Schedule or Service shall be without prejudice to any rights of the Parties accrued thereunder as at the date of such expiry or termination.

14.5 **Survival.** Termination of a Service or a Service Schedule shall not affect the enforceability of the provisions herein which have been specified or are by their nature required to operate after such expiry or termination, including without limitation, the following provisions: Clause 1 (Application), clause 2 (Definitions), clause 11 (Confidential Information), clause 12 (Limitation of Liability), clause 14 (Effect of Termination), clause 16 (Dispute Resolution), clause 17 (Assignment), clause 18 (Non-Solicitation), clause 19 (Severability), clause 20 (Notices and Domicilia), clause 21 (Relationship) and clause 22 (General).

15. FORCE MAJEURE

15.1 **Parties not liable for force majeure.** Neither Party shall be liable for any failure to fulfil its obligations under a Service Schedule if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, earthquakes, fire, explosions, floods, hurricanes, extreme weather, riots, wars, (whether declared or not), hostilities, revolutions, civil disturbance or usurped authority, accidents, embargo or requisition, unforeseeable acts (including

failure to act) of any governmental authority (*de jure* or *de facto*), sabotage, nuclear incidents, epidemics/pandemics, general power failures, general communications failures, strikes over which the affected Party have no control, or the failure of any institution whose consent is required for the performance of any obligation hereunder to provide such consent, or delays in the performance of its sub-contractor caused by any such circumstances as referred to in this clause. The right of relief shall apply irrespective of whether the cause of prevention or delay occurs before or after the agreed due time for such obligations.

16. DISPUTE RESOLUTION

16.1 **Informal Resolution.** Should any dispute arise between the Parties in relation to a Service Schedule or these terms or any issue arising therefrom:

16.1.1 The authorised representatives, as appointed by each Party, shall meet as soon as reasonably practicable (but no less than 5 days of such meeting being requested in writing by either Party) to try to resolve the dispute and shall, if required by either Party, continue to negotiate for at least five (5) consecutive days (or such other period as may be agreed by the Parties in writing);

16.1.2 If the dispute had not been resolved at the meeting pursuant to Clause 16.1.1, the dispute shall be referred to an urgent meeting of the Chief Executive Officers of the Parties or such representatives as may be appointed by their Chief Executive Officers. This meeting is to take place within five (5) days of the matter being referred to them or such other period as may be agreed by the Parties in writing;

16.1.3 If the dispute has not been resolved within 5 days of the meeting contemplated in Clause 16.1.2 (or such other period as may be agreed by the Parties in writing), either Party may refer the dispute to arbitration in accordance with the terms of Clause 16.2.

16.2 **Arbitration.** In the event of there being a dispute relating to or arising out of a Service Schedule, including regarding the scope, effect, validity, implementation, execution, interpretation, rectification, termination or cancellation thereof or of these terms, which is not resolved in accordance with Clause 16.1 then, save where otherwise provided in these terms, such dispute shall be finally resolved on the terms as provided for below:

16.2.1 In the event of any such dispute or difference arising between the Parties the said dispute or difference shall on written demand by any Party to the dispute be submitted to arbitration in Cape Town in the English language in accordance with the rules of AFSA.

16.2.2 The arbitrator shall be, if the matter in dispute is principally:

- (a) a technical matter, an independent technical expert of not less than 10 years experience in the relevant technical area;
- (b) an accounting matter, an impartial chartered accountant of not less than ten (10) years standing;
- (c) a legal matter, an impartial practising advocate of not less than ten (10) years standing;

16.2.3 If the parties fail to agree whether the matter in dispute is of a legal, accounting or technical nature within seven (7) days after the arbitration has been demanded, it shall be considered to be a legal matter referred to in Clause 16.2.2(c) above.

16.2.4 Should the Parties fail to agree in writing on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated at the request of either Party by the Chairman of the Western Cape Bar Council.

16.2.5 Each of the Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:

- (a) shall be final and binding on each of them; and
- (b) will be carried into effect; and
- (c) can be made an order of any competent Court to whose jurisdiction the parties are subject.

16.2.6 Each Party expressly consents to any arbitration in terms hereof being conducted as a matter of urgency; and irrevocably authorises the other Party to the dispute to apply, on behalf of all Parties to the dispute, in writing, to the secretariat of AFSA, in terms of the AFSA rules, for the arbitration to be conducted on an urgent basis.

16.2.7 Any arbitration in terms of this clause 16.2 shall be conducted in camera and the Parties shall treat as confidential and not disclose to any third party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of the other Party.

16.2.8 This clause 16.2 shall constitute each Party's irrevocable consent to the arbitration proceedings described herein, and no Party shall be entitled to withdraw from such proceedings or to claim at such proceedings that it is not bound by this clause.

16.3 **Urgent Relief.** Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to any appropriate Court for an interdict, urgent relief, enforcement of Intellectual Property Rights or for judgment in relation to a liquidated claim.

16.4 **Severability.** The provisions of this clause 16 are severable and will continue to be binding on the Parties notwithstanding any termination or cancellation of the Service Schedule or any part thereof.

17. ASSIGNMENT

Neither Party shall be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under a Service Schedule without the prior written consent of the other Party. By giving the other prior written notice, either Party may cede its rights and delegate its obligations under a Service Schedule to any entity which acquires all or substantially all of its assets or business or to any successor entity in a merger or acquisition.

18. NON-SOLICITATION

For the duration of a Service Schedule and for a period of 12 (twelve) months after its termination (for whatsoever reason) and save to the extent otherwise agreed in writing, neither Party shall, directly or indirectly, solicit for employment any employee of the other Party involved in the supply of the Payment Services, nor shall it solicit, entice, encourage or persuade any such employee to terminate his/her employment with the other Party. General advertisements by a Party will not be considered direct or indirect solicitation and the appointment of a person pursuant to an unsolicited response to such advertisement will not be prohibited hereunder.

19. SEVERABILITY

19.1 **Reading Down.** If a provision in these terms is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.

19.2 **Severability.** If the whole or any part of a provision of these terms is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of these terms shall have full force and effect.

20. NOTICES AND DOMICILIA

20.1 **Addresses.** The Parties hereby choose domicilium citandi et executandi ("**Domicilium**") for all purposes under the Service Schedule the physical addresses set out in the Service Schedule.

20.2 **Change of Address.** Either Party may give written notice to the other, change its Domicilium to any other physical address in the Territory, provided that such change shall take effect 14 (fourteen) calendar days after delivery of such written notice.

20.3 **Deemed Delivery.** Notice will be deemed given –

20.3.1 if delivered by hand to a responsible person during Business Hours to the designated physical address, on the date of delivery; and

20.3.2 if sent by an express courier with a system for tracking delivery, when received.

20.4 **Notice actually received.** Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.

21. RELATIONSHIP

21.1 **Independent Contractors.** The Service Schedule does not create a fiduciary relationship between the Parties. The Parties act as independent contractors and, save for clause 7.2, nothing is intended to make either Party a general or special agent, joint

- venture, partner, or employee of the other for any purpose and neither Party shall have any authority to bind, make any express or implied agreements, warranties, guarantees or representations or incur any debt or liability in the name of or on behalf of the other.
- 21.2 **Anti-Circumvention.** Customer shall not circumvent or attempt to circumvent Pay@ in respect of the Payment Services and, accordingly, shall not enter or attempt to enter into any other arrangement to appoint a Network to facilitate payments for the Customer Products for which payments are enabled via the Payment Services and Customer shall notify Pay@ immediately if it is approached for the purposes of making such an arrangement.
22. **GENERAL**
- 22.1 **Entire Agreement.** The Service Schedule, these terms and any documents expressly incorporated into either by reference constitute the entire agreement between the Customer and Pay@ in respect of its subject matter and supersede and replace all other agreements, representations or warranties between the Parties pertaining to the subject matter contained in the Service Schedule, which will no longer be binding on the Parties as from the Effective Date thereof.
- 22.2 **Variation.** No amendment or modification to a Service Schedule or these terms shall be effective unless in writing and signed by authorised signatories of both the Customer and Pay@.
- 22.3 **Waiver.** No latitude, granting of time or forbearance of a Party hereto regarding the performance of the other Party shall be or be deemed to be a waiver of any term or condition and no waiver of any breach shall operate a waiver of any continuing or subsequent breach. No waiver shall be effective unless it is expressly stated in writing and signed by the Party giving it.
- 22.4 **Governing Law and jurisdiction.** The Service Schedule and these terms shall be governed and construed according to the laws of the Territory and, subject to clause 9.11 and clause 16, the Parties agree to submit to the exclusive jurisdiction of the Western Cape High Court, Cape Town regarding any and all disputes arising in connection with the Service Schedule.
- 22.5 **Publicity.** Neither Party will make or issue any formal or informal announcement or statement to the press in connection with a Service Schedule without the prior written consent of the other Party, provided that either Party may name the other of them as a client or supplier as appropriate and disclose the general nature of the overall arrangement between them.