

GENERAL TERMS AND CONDITIONS

PART A: PRELIMINARY PROVISIONS

The Merchant acknowledges that NuPay has given the Merchant an adequate opportunity to read and understand this Agreement and the Merchant is aware of all the terms printed in bold. This Agreement is subject to the Consumer Protection Act and all other applicable law from time to time and the Visa Card and Mastercard Merchant Terms and conditions for South Africa ("Merchant Rules"). If there is a conflict between this Agreement and the Merchant Rules then the Merchant Rules will apply.

The Merchant qualifies as a "consumer" in terms of the Consumer Protection Act 68 of 2008 ("CPA") if it is a company, a close corporation, a partnership, an association or a trust whose asset value or annual turnover is less than R2 million or if he or she is a natural person (a human being) who is a sole trader or proprietor, irrespective of his or her asset value or annual turnover. In what follows "section" refers to a section of the CPA.

1. DEFINITIONS AND INTERPRETATIONS

The headings of the clauses in the Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of the Agreement nor any clause hereof. Unless a contrary intention clearly appears–

- 1.1. words importing–
 - 1.1.1. any one gender include the other genders;
 - 1.1.2. the singular include the plural and vice versa (or the other way around); and
 - 1.1.3. natural persons include created entities (corporate or unincorporated) and the State and vice versa.
- 1.2. the following terms shall have the meanings assigned to them hereunder and similar expressions shall have corresponding meanings, namely –
 - 1.2.1. **"Account holder"** or **"Payer"** is a natural person, who holds an account at the Paying Bank.
 - 1.2.2. **"AEDO"** means the Authenticated Early Debit Order product, which is described in more detail in the User Manual;
 - 1.2.3. **"AFSA"** means the Arbitration Foundation of Southern Africa or its successor;
 - 1.2.4. **"Agreement"** means this Services agreement between the parties, consisting of the Resolution, Services Agreement, Product Specification Schedules and all other annexures and schedules attached to this Agreement, and any other document(s) expressly deemed to form part of this Agreement, added from time to time;
 - 1.2.5. **"Application form"** means the form that the Merchant completes to apply for the use of the NuPay Products;
 - 1.2.6. **"ATM"** means an Automated Teller Machine;
 - 1.2.7. **"AVSR"** means the realtime Account Verification System.
 - 1.2.8. **"Bank"** means a public company duly registered as a bank under the laws of the Republic of South Africa and which processes and issues Cards;
 - 1.2.9. **"Business day"** means a day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa;
 - 1.2.10. **"Business Rescue"** means proceedings to facilitate the rehabilitation of a company or close corporation that is financially distressed, as contemplated in the Companies Act, 71 of 2008, as amended;
 - 1.2.11. **"Card Association"** means a network of Issuing and Acquiring Banks that processes Cards of a specific brand;
 - 1.2.12. **"Card Issuer"** means any entity which issues a Card;
 - 1.2.13. **"Card User Terms and Conditions"** means the terms and conditions which govern the Card User's use of the NuCard Card, and which are available in the User Manual;
 - 1.2.14. **"Card User"**, **"Customer"**, **"Payer"**, **"Consumer"** or **"Card Holder"** means the end-user cardholder and customer of the User;
 - 1.2.15. **"Card"** means a debit, credit, or prepaid card, which
 - 1.2.15.1. is issued by a Bank;
 - 1.2.15.2. is a MasterCard or VISA card; and
 - 1.2.15.3. includes a Chip Card;
 - 1.2.16. **"Chip Card"** means a Card with an electronic processor embedded in the Card that complies with the EMV integrated circuit card specifications;
 - 1.2.17. **"Clearing Rules"** means the rules created by the Payment Clearing House which govern the conduct of users processing EDO Transactions, which rules have been incorporated in the User Manual;
 - 1.2.18. **"Credit Provider"** means the party who supplies goods or services (in terms of an instalment sale agreement, for example), or who lends money out (in terms, for example, a secured or unsecured money loan, overdraft facility, pawn transaction or mortgage loan);
 - 1.2.19. **"Creditor Bank"**, **"Sponsoring Bank"** or **"Acquiring Bank"** is the participant that sponsors the User's Payment Instructions.
 - 1.2.20. **"DebiCheck"** means a type of debit order used by Banks in South Africa, which the Payer has to confirm electronically at the start of his agreement with the Merchant or when he wants to change any of the debit order details on his existing agreement with the Merchant;
 - 1.2.21. **"Debtor Bank"**, **"Paying Bank"** or **"Issuing Bank"** is the Bank having the relationship with the Payer and making the payment pursuant to the receipt of a Payment Instruction;
 - 1.2.22. **"Disbursement Cycle"** means the cycle whereby funds successfully debited by NuPay from the Customer's nominated bank account are paid over by NuPay to the Merchant;
 - 1.2.23. **"Disclose"** means the direct or indirect use, dissemination, publication, or transmission of Information in any manner or form whatsoever, and **"Disclosure"** has a corresponding meaning;
 - 1.2.24. **"Dispute Action"** is a reversal of funds from the User to the Payer, via the Sponsoring Bank and Paying Bank.
 - 1.2.25. **"Dispute Notice"** means written notice provided by a party to this Agreement wishing a Dispute to be resolved;
 - 1.2.26. **"Dispute Request"** is a request by the Payer to dispute the validity of a successful Payment Instruction against their account;
 - 1.2.27. **"Dispute Resolution Process"** means the process set forth in clause 32 of this Agreement;
 - 1.2.28. **"Dispute"** means any dispute, controversy, or claim between the parties in respect of this Agreement, including without limitation any question regarding its existence, validity, or termination;
 - 1.2.29. **"EDC Terminal"** or **"Terminal"** means an electronic data capture terminal utilised to supply connectivity to the NuPay System;
 - 1.2.30. **"EDO"** means the Early Debit Order payment stream, which is described in more detail in the User Manual;
 - 1.2.31. **"Electronic Prepaid Voucher"** means the tangible prepaid voucher purchased by the Merchant from NuPay, which is subsequently sold by the Merchant to the Customer and initiated by the Merchant using the EDC Terminal;
 - 1.2.32. **"EMV"** means the standard for interoperability between a Card, EDC Terminal, and ATM which allows for the authentication of Card payments;
 - 1.2.33. **"EPV Token Card"** means a closed-loop card issued by NuPay, linked to the Merchant's Funding Account, and used by the Merchant when purchasing Electronic Prepaid Vouchers;
 - 1.2.34. **"EPV(s)"** the Electronic Prepaid Voucher product described in more detail in the User Manual;
 - 1.2.35. **"Equipment and Rental Particulars"** means the particulars of equipment and rental which NuPay as set out in the relevant Schedules to this Agreement, which may be updated or replaced by agreement between the Merchant and NuPay from time to time. If this happens, each updated or replaced Schedule containing the Equipment and Rental Particulars will be signed by both parties and attached to this Agreement as Annexure A, superseding and replacing all previous versions of such Schedule;
 - 1.2.36. **"Funding Account"** means the non-interest-bearing virtual account that will be created by NuPay for and on behalf of the Merchant, which will be:
 - 1.2.36.1. increased with deposits received from the Merchant (money paid into the Trust Account); and
 - 1.2.36.2. decreased with the face value of all Electronic Prepaid Voucher sales made; and
 - 1.2.36.3. this account will hold the available balance from which the Merchant can purchase Electronic Prepaid Vouchers;
 - 1.2.37. **"Information"** means all data and information whether historical, current, or future irrespective of whether such data is stored, recorded, or embodied in a hand-written, printed, visual, electronic, audible or other format or medium, and belonging to, created by, in the possession or under the control of the parties individually. For the purpose of the Agreement, **"information"** shall include, without limitation, business data and information, data, codes, letters,

- telefaxes, telegrams, faxes, agreements, specifications, financial histories, any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier, other particular assignment and strategic plans;
- 1.2.38. **"Limit Notification Letter"** means the notifications sent to the Merchant when the Merchant's limit was increased;
- 1.2.39. **"Mandate Database"** – shall contain at a minimum data elements maintained by User (or their appointed System Operators or Third Party Payment Providers) on behalf of their clients (as intermediaries) in order to generate and submit payment instructions. The current AEDO system provides such a mandate database;
- 1.2.40. **"Mandate Management"** is defined as the process of initiating or amending a mandate;
- 1.2.41. **"Mandate Register"** – shall contain as a minimum, the essential data elements required for the mandate authentication, payment validation processes and Payer mandate queries, excluding any other application including credit risk management as well cross sales and marketing actions and initiatives;
- 1.2.42. **"Mandate"** is the written, verbal, or electronic authority given by the Payer to the Ultimate Creditor, allowing the User to debit the Payer's account;
- 1.2.43. **"Merchant Function"** means the use of a Terminal by the Merchant in accordance with NuPay's requirements (as set out in this Agreement or otherwise);
- 1.2.44. **"Merchant Terms and conditions"** means the terms and conditions which are made available from time to time by NuPay to which the Merchant is subject, and which are available at www.nucard.co.za, the applicable version at the Signature Date being annexed to this Agreement as clause 1 of Schedule 5 including the terms and conditions specified by the Banks from time to time. The Merchant can access the rules for MasterCard at www.mastercard.com and VISA at www.visa.com, or from any other websites which NuPay will inform the Merchant about from time to time;
- 1.2.45. **"Merchant" or "User"** means the Party to whom NuPay will provide the Services in terms of this Agreement;
- 1.2.46. **"Mobile Terminal"** a portable Terminal;
- 1.2.47. **"MPS"** means the two-day debit product and/or the same day value product (SSV) (including the Batchlink/debit order to credit card product), both of which are described in more detail in the User Manual;
- 1.2.48. **"NAEDO NAC"** means the NAEDO NuPay Aggregated Code;
- 1.2.49. **"NAEDO NDS"** means the NAEDO Next Day Settlement;
- 1.2.50. **"NAEDO"** means the Non-Authenticated Early Debit Order product, incorporating the NAEDO NAC product and/or the NAEDO NDS product both of which are described in more detail in the User Manual and the NuPay Aggregate Limit Acceptance Letter;
- 1.2.51. **"Network Operator(s)"** means telecommunications network operators that offer voice or data services and in respect of which NuPay provides Electronic Prepaid Vouchers to the Merchant;
- 1.2.52. **"Non-Authenticated"** means the product incorporating MPS and PAAF, described in more detail in the User Manual;
- 1.2.53. **"Notice Period"** means the period of 90 (ninety) days given by a party to this Agreement that wishes to terminate this Agreement;
- 1.2.54. **"NuCard Card" or "NCC"** means a prepaid card, which
- 1.2.54.1. is issued by a Bank;
 - 1.2.54.2. is a MasterCard; and
 - 1.2.54.3. is provided by NuPay to the Merchant and thereafter by the Merchant to the Card User;
- 1.2.55. **"NuCard Merchant"** means a Merchant who subscribes to the NuCard Product and agrees to the terms and conditions set out in Schedule 6A below;
- 1.2.56. **"NuCard"** means the electronic product, described in more detail in Schedule 6 annexed to this Agreement;
- 1.2.57. **"NuPay Call Centre"** means the centralised office used for the purpose to administer incoming product support or information inquiries from consumers by telephone, contactable on +2711-617-1750.
- 1.2.58. **"NuPay System"** means the supply, installation, training, and administration of the connectivity of a Terminal, which allows for the processing, storing, and reporting of Transaction information and documentation, as well as maintenance and Terminal insurance associated therewith;
- 1.2.59. **"PAAF"** means the Payment Against Available Funds product, which product is described in more detail in the User Manual;
- 1.2.60. **"Parties"** means NuPay and the Merchant.
- 1.2.61. **"Party"** means NuPay or the Merchant.
- 1.2.62. **"Payment Clearing House"** means the governing body which regulates Transactions by Users;
- 1.2.63. **"Payment Information"** means the details relating to the repayment of credit, goods, or services extended, sold or provided by the Merchant;
- 1.2.64. **"Payment Instruction" or "Payment Request"** is deemed to be the transaction or request from the user to debit the payer's account.;
- 1.2.65. **"PIN"** means:
- 1.2.65.1. the Personal Identification Number issued to the customer by the Bank; or
 - 1.2.65.2. the Personal Identification Number which the customer chooses from time to time;
 - 1.2.65.3. the pin number generated by a Network Operator which allows a customer to access pre-paid electronic airtime on the Network Operator's network, which is either provided in electronic form or which is printed on a paper receipt, and which is then referred to as an Electronic Prepaid Voucher;
- 1.2.66. **"POS service"** means the POS Service which NuPay provides to the Merchant and which enables the Merchant to capture and send electronic data to NuPay;
- 1.2.67. **"POS"** mean Point Of Sale;
- 1.2.68. **"Prime Rate"** means the nominal, annual, and monthly compounded prime overdraft rate of interest from time to time publically quoted by ABSA Bank Limited and certified by any manager of that bank, which manager's appointment as such shall not be necessary to prove and the contents of which certificate shall be prima facie (at face value) proof of the contents thereof;
- 1.2.69. **"Product(s)" or "NuPay Product(s)"** means any one or more of the following products offered by NuPay:
- 1.2.69.1. AEDO;
 - 1.2.69.2. POS;
 - 1.2.69.3. EPV;
 - 1.2.69.4. NAEDO;
 - 1.2.69.5. Non-Authenticated (MPS and PAAF);
 - 1.2.69.6. NuCard;
 - 1.2.69.7. DebiCheck; and
 - 1.2.69.8. any other products that NuPay may introduce from time to time;
- 1.2.70. **"PSO"** means a PCH System Operator participant;
- 1.2.71. **"Registration Information"** means the Merchant's Login ID and password, together with any other identification and contact information provided to NuPay;
- 1.2.72. **"Resolution(s)"** means the resolution(s) as signed by the Merchant applicable in respect of each of the Products contained in the Schedules;
- 1.2.73. **"Schedule(s)"** means the schedules attached to this Agreement as amended, novated or replaced from time to time;
- 1.2.74. **"Service Level Agreement" or "SLA"** means the NuPay service level agreement between the Parties regulating the Service(s) provided by NuPay to the Merchant;
- 1.2.75. **"Service Provider"** means any legal entity conducting the business of providing network services and which has a contract with one or more Network Operators to acquire blocks of electronic pre-paid airtime, or that entity's service providers for that purpose;
- 1.2.76. **"Service(s)"** means:
- 1.2.76.1. the following services performed by NuPay in relation to any one or more of the Products:
 - 1.2.60.1.1 connectivity from the Terminal to the NuPaySystem;
 - 1.2.60.1.2 maintenance of the Terminal;
 - 1.2.60.1.3 insurance for the Terminal;
 - 1.2.60.1.4 rental of the Terminal;
 - 1.2.60.1.5 access to the relevant NuPay websites, as defined in the User Manual;
 - 1.2.60.1.6 processing and management of Transactions;
 - 1.2.60.1.7 Value Added Services; and
 - 1.2.76.2. any other Service(s) agreed to by the Parties in writing;
- 1.2.77. **"Signature Date"** means the date of signature of the Agreement by the party signing last in time;
- 1.2.78. **"Terminal"** means the electronic equipment or device used to authenticate debit order instructions electronically and perform credit card payments using the consumer card and PIN.
- 1.2.79. **"TPF"** means Transaction Processing Fee as charged by NuPay;
- 1.2.80. **"Transaction"** means the electronic debit or credit of the amount due (in terms of the Payment Information) against the bank account of the Merchant's customer and the corresponding credit or debit- to the Merchant's bank account;

- 1.2.81. **"Trust Account"** means the account into which the Merchant will deposit funds as set out in the User Manuals;
- 1.2.82. **"User Manual"** means the Merchant information booklet and CD compiled by NuPay and distributed to the Merchant subsequent to the Signature Date;
- 1.2.83. **"Value Added Services" or "VAS"** means the Service(s) as reflected in annexure D of the product specification schedule to the Service Level Agreement;
- 1.2.84. **"VAT"** means Value-Added Tax payable in terms of the Value-Added Tax Act, No 89 of 1991;
- 1.2.85. **"Website"** means any of www.altechnupay.co.za, www.nupay.co.za, www.mynupay.co.za, www.nucard.co.za, www.nupaytsp.co.za, or www.nupayments.co.za where applicable or such other websites that may be utilised by NuPay from time to time.

- 1.3. any reference to a statute is to that statute in operation at the time of the Signature Date, as amended or re-enacted from time to time, including any subordinate legislation made from time to time under such statute;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on either party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5. any number of days prescribed in the Agreement shall be interpreted exclusively of the first day and inclusively of the last day unless the last day falls on a Saturday, Sunday, or public holiday, in which case the last day shall be the next day which is not a Saturday, Sunday or public holiday;
- 1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in the Agreement shall bear the same meanings in the Schedules or annexures to the Agreement unless those Schedules or annexures contain their own conflicting definitions;
- 1.8. reference to day/s, month/s, or year/s shall be construed as Gregorian calendar day/s, month/s, or year/s;
- 1.9. the use of any expression in the Agreement covering a process available under South African law such as a winding up (without limitation uisdem generis (of the same kind)) shall, if any of the parties to the Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 1.10. if any term is defined within the context of any particular clause in the Agreement, 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, and, despite that term having been defined in this interpretation clause, shall bear the meaning ascribed to it for all purposes in terms of the Agreement;
- 1.11. the expiration or termination of the Agreement shall not affect those provisions of the Agreement which expressly provide that they will operate after expiration or termination or which necessarily must continue to have effect after expiration or termination, notwithstanding that the clauses themselves may not expressly provide for this;
- 1.12. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract shall not apply;
- 1.13. any reference in the Agreement to a party shall include a reference to that party's assigns expressly permitted under the Agreement and, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee, as the case may be;
- 1.14. the words **"include"**, **"including"** and **"in particular"** shall be construed as being by way of example or emphasis only and shall not be construed as, or have the effect of, limiting the generality of any preceding word/s;
- 1.15. any reference in the Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented;
- 1.16. the words **"other"** and **"otherwise"** shall not be construed uisdem generis (of the same kind) with any preceding words where a wider construction is possible; and a law or regulation is a reference to that law or regulation on the date the Merchant signs this Agreement.

2. SUSPENSIVE CONDITION

- 2.1 The Agreement, save for the provisions of this clause 2 and clauses 18, 23, 26, 27 and 30 to 42 (inclusive) which shall be of immediate force and effect, is subject to the fulfilment of the suspensive condition that the Merchant enters into an agreement with the relevant bank(s) which will regulate his business relationship with such Bank(s), as well as NuPay and that the Merchant will solicit a surety to the satisfaction of NuPay in terms of clause 37 of this Agreement which details are stipulated in the Company Resolution signed by the Merchant's duly authorized signatories (**"suspensive condition"**).
- 2.2 The Merchant will use its best endeavours to procure the fulfilment of the Suspensive Condition as soon as reasonably possible.
- 2.3 If the Suspensive Condition is not fulfilled, this clause 2 and clauses 18, 23, 26, 27 and 30 to 42 (inclusive), shall continue to be of force and effect notwithstanding the failure of the Suspensive Condition, but the remainder of this Agreement shall not become effective.

3. TERM

- 3.1 Subject to the provisions of the below Schedules:
- 3.1.1 this Agreement shall commence on the Signature Date and shall endure indefinitely, unless terminated earlier in accordance with its provisions; and
- 3.1.2 either party shall be entitled to terminate the Agreement by giving the other party written notice within the Notice Period, provided that the Merchant shall remain liable to NuPay for any tariffs, fees, costs, levies, disbursements, and taxes, or the pro rata (proportionate) portion thereof, owed to NuPay on the termination of the Agreement.
- 3.1.3 each Schedule shall commence on the Schedule Signature Date, notwithstanding commencement of this Agreement.
- 3.2 Should the Merchant give notice to terminate the Agreement as contemplated in clause 3.1.2 of this Agreement, then the provisions of clause 31 of this Agreement shall apply.
- 3.3 Should the Merchant require that NuPay carry on processing Transactions after the expiration of the Notice Period, the parties may enter into a separate agreement requiring NuPay to continue to process such Transactions. Such agreement shall be reduced to writing and signed by both parties prior to the expiration of the Notice Period.

4. SERVICES

NuPay hereby agrees to provide the Product/Services to the Merchant, which the Merchant hereby accepts, in exchange for the fees and tariffs contemplated in this Agreement, including, but not limited to the specifically selected NuPay Product Specification Schedules.

PART B: GENERAL TERMS AND CONDITIONS

5. USE OF PRODUCT/SERVICES

- 5.1 The implementation of the Service/Product takes place in accordance with the User Manual.
- 5.2 Despite any provision to the contrary in this Agreement, NuPay shall be entitled to suspend temporarily and/or terminate the Service/Product at any time and without prior notice when circumstances beyond the control of NuPay prevent it from providing the Service/Product to the Merchant.

6. PROMOTION OF THE SERVICES

- 6.1 The Merchant undertakes to diligently promote and maximise the distribution of the Product in accordance with the procedures agreed between the parties from time to time.
- 6.2 The Merchant agrees that it shall not be entitled to bind or give undertakings on behalf of NuPay in whatsoever manner.

7. FEES AND TARIFFS

- 7.1 NuPay undertakes to provide the Services to and for the benefit of the Merchant at the fees and tariffs set out in the Schedules for specific Products to this Agreement, which fee structure may change at NuPay's sole discretion by written notice issued by NuPay to the Merchant.
- 7.2 The tariffs and fees set out in the Schedules do not include any levies, disbursements, or taxes unless expressly specified therein. Such levies, disbursements, or taxes, as well as monies payable to external service providers, shall be for the account of the Merchant.
- 7.3 VAT will be payable on all fees and to the extent applicable and prescribed.
- 7.4 NuPay reserves the right to enforce clause 28 of this Agreement if any debit referred to in the Agreement is returned unpaid by the Merchant's Bank.
- 7.5 All interest earned, if any, by NuPay on any funds held by NuPay in terms of this Agreement (including, without limitation, funds held by NuPay in terms of clause 3 of Schedule 3 below) shall accrue to NuPay's benefit, and neither the Merchant nor any other party shall have any claim to such interest.
- 7.6 Amounts due by the Merchant to NuPay which are not paid by the Merchant when due and payable shall attract interest at Prime Rate plus 2% (two per cent) from due date to date of payment in full.

8. RENTAL

- 8.1. NuPay hereby lets, and the Merchant hereby hires, the Terminal, for the Merchant's own use.
- 8.2. The Merchant shall complete and sign the Rental Particulars document as per the attached schedules and return such document to the address specified in clause 34.4 of the Agreement within 7 (seven) Business Days of the Signature Date.
- 8.3. Upon delivery of the Terminal to the Merchant, the Merchant shall promptly inspect the Terminal and deliver to NuPay such evidence of acceptance as NuPay may reasonably require. Unless the Merchant advises NuPay in writing to the contrary within 7 (seven) Business Days of the date of delivery of the Terminal to the Merchant, the Terminal shall be deemed to be accepted in good order by the Merchant at the end of such 7 (seven) Business Day period.

9. OWNERSHIP AND RISK

- 9.1. All Terminals supplied by NuPay to the Merchant in terms of the Agreement shall remain the property of NuPay, and ownership in such Terminals shall at no time vest in the Merchant. Notwithstanding the foregoing, with effect from the delivery of the Terminal to the Merchant, all risk in and to the Terminal shall be borne by the Merchant.
- 9.2. The Merchant shall (if applicable) give written notice to any lessor of the premises on which the Merchant is trading of the fact that NuPay is the owner of such Terminals, and shall procure the lessor's waiver of any rights which it may have in law in respect of the Terminal, including, without limitation, the landlord's tacit hypothec (real right claim a lessor has to the property of a lessee).
- 9.3. The Merchant shall acquire the use and enjoyment of the Terminals for the duration of the Agreement and shall, upon termination of the Agreement for any reason, return the Terminals to NuPay.
- 9.4. In order for the Merchant to gain access to and utilize the NuPay System effectively, the Merchant shall only use Terminals and the related Terminal software supplied or approved by NuPay from time to time in accordance with the User Manual.
- 9.5. The Merchant shall not permit or allow any attachment, encumbrance, lien, or security interest to be filed against the Terminal, and shall promptly notify NuPay if any of the aforesaid is filed or claimed. The Merchant hereby indemnifies NuPay for any damage, including reasonable attorneys' fees, resulting from any of the foregoing.

10. MAINTENANCE OF TERMINALS

- 10.1. The Merchant must take due and proper care of all Terminals and shall be liable to NuPay for any damage to or loss of any Terminal supplied by NuPay.
- 10.2. The Merchant shall not remove any labels, symbols or serial numbers that are or may be affixed to the Terminal, except as may be approved in advance and in writing by NuPay.
- 10.3. The Merchant shall provide and maintain all electrical, communication, and/or all other connections necessary in accordance with NuPay's normal requirements for the operation of the Terminals. NuPay will at all times have access to the Terminals for maintenance purposes.

11. SECURITY FEE

- 11.1. NuPay may, in its sole discretion, insure and replace all Terminals (excluding Mobile Terminals) at a monthly fee ("**Security Fee**") as set out in the NuPay SLA signed by the Merchant's duly authorized signatories. An administration and reinstallation fee as set out in the NuPay SLA signed by the Merchant's duly authorized signatories, will be payable on the loss of any Terminal.
- 11.2. Failing clause 11.1 above NuPay will request the Merchant to insure any Mobile Terminal received from NuPay, and NuPay may, in its sole discretion, request the Merchant to produce proof of such insurance at anytime.
- 11.3. The Merchant shall notify NuPay within a period of 7 (seven) days in writing, by email, or by means of facsimile, of any damage to or loss of any Terminal.
- 11.4. If the Mobile Terminal is lost, stolen, or destroyed and in the case of 11.2 above the Merchant's insurer refuses to accept the claim for any reason, then NuPay reserves the right to recover the cost of repairing or replacing the Terminal from the Merchant.
- 11.5. If any terminal is lost, stolen, or destroyed due to negligence on behalf of the merchant, then NuPay reserves the right to recover the cost of repairing or replacing the Terminal from the Merchant.

12. USE OF TERMINALS BY AGENTS OF THE MERCHANT

In the event of any Terminal being utilised by any agent of the Merchant, the Merchant shall continue to be liable for the payment of all fees, tariffs and disbursements in relation to the Services, including the maintenance fees in respect of the Terminal.

13. RELOCATION OF TERMINALS

- 13.1. The Merchant shall under no circumstances relocate a Terminal from one sales outlet to another unless agreed to in writing and in advance by NuPay.
- 13.2. The penalty fee set out in the NuPay SLA signed by the Merchant's duly authorized signatories will be payable by the Merchant to NuPay for the unauthorized relocation of a Terminal.

14. THE MERCHANT'S OBLIGATIONS

- 14.1. The Merchant shall ensure that the original Resolution(s) and applicable Agreements to the chosen Product(s)/Service(s) is/are duly signed and sent to NuPay within 7 (seven) Business Days of the Signature Date.
- 14.2. The Merchant shall ensure that only an employee/s of the Merchant, who is/are duly authorised to do so in terms of a valid Resolution, shall perform the Merchant Function.
- 14.3. The person(s) so authorised to perform the Merchant Function shall be responsible for the written and/or electronic authorisation of the cancellation of Transactions, a change of banking details, instalment processing requests, and instalment date changes.
- 14.4. Each Merchant Function shall be deemed to be valid and/or authorised, and the validity and/or authorisation thereof may not be disputed by the Merchant, nor will NuPay be obliged to determine the validity and/or authority of the Merchant Function or to investigate such validity and/or authority as set out in the Merchant's Resolution.
- 14.5. NuPay will endeavour, but is not obliged, to verify the signature(s) of the authorised person(s) appearing on the Resolution whenever a request is made relating to the cancellation of Transactions, a change of banking details, instalment processing requests, or instalment date changes.
- 14.6. The Merchant shall be liable for any error occurring or fraud committed through the use of the Merchant Functions which is due to the actions of the Merchant, its agents, and/or employees.
- 14.7. The Merchant undertakes to train adequately all personnel utilising the NuPay System. Such personnel must be in possession of a certificate indicating the training undertaken by them and their competence to utilise the NuPay System. Initial training will be provided free of charge, but subsequent training will be charged on a time and cost basis, except if training is required when the NuPay System has been changed, in which case, the training will be free of charge.

15. DEBIT ORDER INSTRUCTION

- 15.1. The Merchant authorises NuPay to debit the Merchant's nominated bank account, which details are stipulated on the Company Resolution signed by the Merchant's duly authorised signatories, held at the branch of which is a cheque/savings/transmission account on the first business day of each month, or to collect any amount outstanding under this Agreement by any other legally permissible means. The Merchant agrees to notify NuPay immediately in writing if any of these bank account details changes, and failure to do so will be a material breach of this Agreement.
- 15.2. The Merchant hereby authorises NuPay to issue and deliver payment instructions to its banker for collection against the Merchant's abovementioned account at the abovementioned bank on condition that the sum of such payment instructions will never exceed the Merchant's obligations under this Agreement.
- 15.3. The Merchant agrees that NuPay is entitled to debit the Merchant's bank account, at whatever bank that account is held, with all fees or amounts lawfully owing in terms of this agreement and any of the Schedules or annexures attached to this Agreement, where applicable.
- 15.4. The Merchant shall ensure that the aforesaid bank account always has sufficient funds in them.
- 15.5. The individual payment instructions so authorised to be issued must be issued and delivered monthly on or after the dates when the obligation in terms of this Agreement is due and the amount of each individual payment instruction may not be more or less than the obligation due.
- 15.6. The payment instructions so authorised to be issued must carry a number, which number must be included in the said payment instructions, and if provided to the Merchant should enable him to identify the Agreement.
- 15.7. The Merchant agrees that the first payment instruction will be issued and delivered on or after the Signature Date. Subsequent payment instructions will continue to be delivered in terms of this authority until the obligations in terms of this Agreement have been paid or until this authority is cancelled by NuPay by giving notice to the Merchant in writing of not less than one month and sent by prepaid registered post to the address listed in clause 34 of this Agreement.
- 15.8. The Merchant acknowledges that all payment instructions issued by NuPay shall be treated by the Merchant's bank as if the instruction had been issued by him personally.
- 15.9. The Merchant agrees that although this authority and mandate may be cancelled by him, such cancellation will not cancel this Agreement. The Merchant also understands that he cannot reclaim amounts which have been withdrawn from the Merchant's account in terms of this authority and mandate if such amounts were legally owing to NuPay.

- 15.10. The Merchant acknowledges that this authority may be ceded or assigned to a third party if this Agreement is also ceded or assigned to that third party.
- 15.11. The authorisation contained in this clause shall not be withdrawn by the Merchant without prior written consent from NuPay.
- 15.12. The Merchant is responsible for all banking costs in respect of all amounts payable in terms of this clause 15.
- 15.13. The Merchant will pay the administration fee, for each payment due by the Merchant to NuPay which is returned unpaid by the Merchant's bank.
- 15.14. The Merchant will pay the administration fee as agreed with NuPay at the time for clerical errors associated with incorrectly presented sales vouchers and as may be advised from time to time on the Merchant's statements.
- 15.15. The Merchant will pay the call-out fee as agreed with NuPay at the time should NuPay discover that the Merchant's Terminal is malfunctioning because he or any of his employees maltreated, neglected or badly operated this Terminal.
- 15.16. The amounts payable in terms of this clause 15 are subject to exchange rate variations, where applicable.
- 15.17. VAT will be payable on all fees referred to in this clause 15, where applicable and prescribed.

16. ACCOUNTS

The Merchant shall raise any query regarding any entry on the Merchant's account with NuPay within 60 (sixty) days from the date on which such entry appeared on the bank statement relating to the Merchant's current account.

17. CONFIRMATION OF INDEBTENESS

A certificate signed by a manager of NuPay, whose appointment need not be proved, shall serve as prima facie (at face value) proof in any court of law of the indebtedness of the Merchant towards NuPay.

18. INTELLECTUAL PROPERTY

- 18.1. The proprietary rights to, and copyright in respect of, all programs, documents, and material that NuPay makes available to the Merchant in order to fulfil the Agreement shall, at all times, and under all circumstances, remain vested in NuPay or its principal. The Merchant undertakes not to make known or available to any person or organisation any such programs, documents or material, or any part thereof, without the prior written approval of NuPay.
- 18.2. All intellectual property rights, including, but not limited to, copyright, trade-marks, service marks, patent rights, trade secrets, and general know-how relating to any software and/or hardware products owned by either party, its vendors, or suppliers, shall at all times remain the sole property of the respective party, its vendor or supplier, as the case may be.
- 18.3. Neither party shall in any manner alter the display of the respective intellectual property rights of the other party, its vendors or suppliers, or effect same, without the prior written approval of the other party, vendor or supplier, as the case may be.

19. REGULATORY BODIES; LAWS

- 19.1. In respect of the AEDO and NAEDO products the Merchant must be registered with the Early Debit Order Payment System Stakeholder Forum (the "EDO PSSF")
- 19.2. In general, the Merchant must also be registered with any other relevant regulatory body which is relevant to his/her business. and NuPay can from time to time request proof from the User of such registration.
- 19.3. Merchants who are registered with the NCR are under a positive obligation to provide NuPay with an annual certificate, signifying the Merchant's membership and/or registration with the NCR.
- 19.4. The Merchant shall comply at all times with the rules and regulations of the relevant Industry regulatory bodies, in addition to any and all other applicable laws, rules and regulations governing, or applicable to, the Products/Services (including, without limitation and to the extent applicable, the Consumer Protection Act, 68 of 2008 and the Protection of Personal Information Act, 4 of 2013).

20. USER MANUAL

- 20.1. NuPay shall, from time to time, issue the Merchant with a User Manual which regulates, among other things, the use of the NuPay System and the Terminal.
- 20.2. The User Manual shall be deemed to form part of the Agreement.
- 20.3. NuPay may amend the User Manual at any time by notifying the Merchant of such amendments. Such amendments shall be deemed to come into effect 7 (seven) days after dispatch of such notification by NuPay to the Merchant.

21. DISPLAYING OF SYMBOLS, LOGOS AND TRADEMARKS

- 21.1. The Merchant shall display such marks and symbols in respect of the NuPay System as may be specified by NuPay.
- 21.2. The Merchant may not, in any way whatsoever, state, imply or create the impression that NuPay, or any Card Association, or any other Card Issuer endorses or guarantees any of the Merchant's goods, services, and/or business associates.
- 21.3. In stating the eligibility of its products, services, or membership, the Merchant may not refer to NuPay.
- 21.4. NuPay may give the Merchant the branding for each type of Card from time to time. The Merchant must display the branding so that the public are aware that the Merchant is willing to accept such Card as a method of payment for the Merchant's goods and services.

22. CUSTOMER COMPLAINTS AND DISPUTES

- 22.1. Any customer related issues must be referred to NuPay by the Merchant immediately. A Network Operator will, in no event, be involved in such complaint/dispute.
- 22.2. Customer-related complaints and disputes must be handled through the NuPay Call Centre.
- 22.3. NuPay will investigate all such complaints and disputes and revert to the Merchant with its findings where possible.
- 22.4. Where a customer complaint is in respect of an EPV and the complaint is resolved in favour of the customer, NuPay will refund the Electronic Prepaid Voucher directly to the Merchant's Funding Account and it will be the Merchant's responsibility to refund the customer.

23. LIMITATION OF LIABILITY OF NUPAY

- 23.1. Subject to any applicable law, NuPay shall not be liable or have any obligation or duty towards the Merchant or any third party whatsoever, whether in contract, delict, or otherwise, for any financial loss or loss of profits, income, contracts, anticipated savings, business, or goodwill, or for any other indirect or consequential loss whatsoever, whether foreseeable or unforeseeable, including liability arising from or caused by any one or more of the following, except as expressly provided in the Agreement:
 - 23.1.1. failure of NuPay to perform any of its obligations herein due to circumstances beyond its control;
 - 23.1.2. any negligent act or omission (other than gross negligence) of NuPay or any of its employees, consultants, agents, officers, directors, and shareholders;
 - 23.1.3. malfunctioning of the computer hardware of the Merchant;
 - 23.1.4. defects in the software components of the Merchant used for the functioning of the computer system of the Merchant, including any computer software supplied by NuPay;
 - 23.1.5. malfunctioning of the telephone system, including network failure and other issues beyond the control of NuPay;
 - 23.1.6. the NuPay System, including the malfunctioning or inoperability of the NuPay System for any reason whatsoever and the delivery, installation, servicing, performance or use of the NuPay System in combination with other computer software;
 - 23.1.7. NuPay not verifying the signatures as they appear on any Resolution of the Merchant;
 - 23.1.8. *vis major* (an uncontrollable event), an offline situation, or any other defect in the computer system of NuPay that is beyond the control of NuPay;
 - 23.1.9. inability of the Merchant to gain access to or use the Terminal for any reason whatsoever; or
 - 23.1.10. the incorrect and/or late execution of any instructions of the Merchant as a result of any of the circumstances mentioned in this clause 23.1.
- 23.2. Subject to the Consumer Protection Act, in the event that the Merchant incurs any liability to any customer in relation to any Product or Service, including, without limitation, any liability for any claim/s that the Product/Service is "unsafe" or has a "defect", "failure" or "hazard" (as these terms are defined in the Consumer Protection Act), then the Merchant shall have no claim or recourse against NuPay in respect of such customer's claim/s.
- 23.3. The risk in respect of the Transaction remains with the Merchant at all times.
- 23.4. Subject to any applicable law, NuPay excludes any warranties in respect of the Services, Products, and NuPay System, whether expressed or implied, including, but not limited to, any implied warranty of quality, performance, merchantability, or fitness for a particular purpose.
- 23.5. Except as agreed upon in the Agreement, the Merchant acknowledges that no representations were made to it in relation to the Services and that it received no guarantees in relation to the Services.
- 23.6. The provisions of this clause 23 shall continue to apply notwithstanding the termination or expiry of the Agreement.

24. LIABILITY OF THE MERCHANT

- 24.1. The Merchant hereby warrants that every customer, on whose account a debit is drawn, will have signed an authority for the customer's bank to debit or credit such customer's account accordingly, and the Merchant acknowledges that there is no onus or obligation on the customer's bank, or any other person, to ensure that the amounts and/or account numbers on entries submitted under such authority are in fact correct.
- 24.2. In the event a voice-recorded mandate is obtained, it must be carried out in accordance with the provisions of the Electronic Communications and Transactions Act, No 25 of 2002 and the Merchant acknowledges that there is no onus or obligation on the customer's bank or any other person to ensure that the amounts and/or

- account numbers on entries submitted under such authority are in fact correct.
- 24.3. In all cases where debits are collected from other parties, the Merchant undertakes to obtain written authorisations from such parties before debits are collected, to safeguard such authorisations at all times, and to make them available to NuPay for inspection, at any reasonable time, as and when requested by NuPay.
- 24.4. The Merchant hereby indemnifies NuPay against any damage, loss, injury, and/or consequential damage that the Merchant may sustain as a result of incorrect and/or illegal instructions that may be given to NuPay by the Merchant, including, but not restricted to, instructions for crediting any of the account(s) of the Merchant with an amount to which the Merchant is not legally entitled from the account of a third party, as well as against any damage caused by a person who gained unauthorised access to the computer system by using computer hardware and/or computer software in the possession or under the control of the Merchant.
- 24.5. The Merchant undertakes to repay to NuPay on demand any amount credited against the Merchant's account on the Merchant's express instructions while such amount is not covered by an expressly agreed facility and/or funds to the credit of the said account.
- 24.6. The Merchant undertakes to submit all instructions to NuPay timeously according to the User Manual. Should the instructions not be delivered in full according to the agreed date(s), NuPay will be entitled to deviate from the User Manual; NuPay undertake to make, however, reasonable efforts to adhere to the User Manual. The parties record that it is and remains the responsibility of the Merchant to ensure that all such instructions for processing shall be delivered to the address of NuPay as set out in clause 34 of this Agreement, timeously and in full.
- 24.7. The Merchant undertakes to ensure that all computer software and computer hardware under the Merchant's supervision are free of computer viruses. Should he send virus-infected diskettes and/or data via line linkage to NuPay, the Merchant shall be liable for the costs associated with removing the viruses transmitted to the computer hardware and/or diskettes and/or software of NuPay as a result.
- 24.8. In the event that the Merchant subscribes for the NuCard Product the Merchant acknowledges and agrees that every transfer to a Card User, and every issuance of a NuCard Card to a Card User, will be irreversible and the sole responsibility of the Merchant. NuPay will not be held responsible for erroneous amounts transferred due to an input mistake by the Merchant.

25. REGISTRATION ON THE WEBSITE

- 25.1. The Merchant agrees and understands that it is responsible for maintaining the confidentiality of its password which, together with its login identity e-mail address ("Login ID"), allows the Merchant to access the Products.
- 25.2. By the Merchant providing NuPay with its email address, it agrees to receive all required notices electronically at such email address. Notices sent to the Merchant will be in HTML (or, if the Merchant's system does not support HTML, in plain text) in the text of the email or through a link to the appropriate page on the Website, accessible through any standard, commercially available internet browser.
- 25.3. If the Merchant becomes aware of any unauthorized use of its Registration Information, it shall notify NuPay immediately in writing.

26. INDEMNITY

- 26.1. NuPay is not responsible for and will not be bound by any act, committed by the Merchant and/or any other third party, which is beyond the terms of the Agreement.
- 26.2. The Merchant hereby indemnifies NuPay against any claims and/or damages which result from the Merchant and/or any of its representatives, agents or employees committing an act or omission which:
- 26.2.1. is beyond the terms of the Agreement;
- 26.2.2. is as a direct result of a failure to comply with the Agreement;
- 26.2.3. is proven to be fraudulent, dishonest, grossly negligent or a misrepresentation;
- 26.2.4. is a breach of any relevant law.
- 26.3. The indemnity contained in this clause shall be without prejudice to NuPay's other rights or remedies in terms of the Agreement, any mandate or authority or at law.
- 26.4. Subject to any law, the Merchant hereby agrees, without limitation or exception, to indemnify, defend and hold harmless NuPay from any and all liability, penalties, losses, damages, costs, expenses, attorneys' fees, causes of action or claims caused by or otherwise resulting directly or indirectly from its use of the Services, whether foreseen or unforeseen.

27. DISCLOSURE OF INFORMATION

- 27.1. The parties to this Agreement expressly undertake to keep confidential and not to Disclose to any third party any Information relating to this Agreement or to the negotiations leading up to the conclusion of the Agreement, without the prior written consent of the other party, which consent may not be unreasonably withheld.
- 27.2. The Merchant must advise NuPay in writing of any material change its business and/or ownership. In particular, the Merchant must inform NuPay in writing and in advance if for whatever reason:
- 27.2.1. when the owners of the Merchant's business (indicated on the Application Form) change;
- 27.2.2. when the classification of the Merchant's business changes; or
- 27.2.3. when there is any other material change in the nature of the Merchant's business. If the nature of his business changes to include the provision of gaming, gambling, or pornography, or related infrastructure or services, this change will be regarded as a material change for the purposes of this Agreement.
- 27.3. The Merchant must Disclose to NuPay all information about any previous merchant agreements the Merchant concluded with other financial institutions. This includes but is not limited to any restrictive conditions contained in those agreements and the reasons why those agreements ended. This is to ensure that NuPay can properly evaluate, assess and approve the Merchant's application. The Merchant hereby consents to and authorises NuPay's investigation into his previous merchant agreements.
- 27.4. The Merchant warrants that it will comply with all applicable law regarding the processing of data in respect of NuPay and the customer. In particular, the Merchant may not disclose, sell, purchase, provide, or exchange a customer's name or account number information in whatever form, including the form of imprinted sales vouchers, carbon copies of imprinted sales vouchers, mailing lists, tapes, financial histories, any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier, other particular assignment or other media obtained by reason of a Card Transaction, to third parties, except as required by law.
- 27.5. The Merchant must keep all systems and media containing account, customer, or Transaction information (physical or electronic, including but not limited to the account number, Card imprints, signatures of customers) in a secure manner. This is to prevent access by or disclosure to anyone other than the Merchant's authorised personnel and NuPay. The Merchant must destroy, in a manner that will render the data unreadable, all media that, in its opinion, it needs no longer to store.
- 27.6. The Merchant hereby consents to NuPay disclosing information about the Merchant to any Card Association, including the VISA International Service Association, MasterCard International Incorporated, or other financial institutions, for use in any fraud prevention schemes they may set up, including the National Merchant Alert Service, the Merchant Performance Reporting Service, and the Member Alert to Control High Risk (Merchant) System. This is to assist NuPay and these financial institutions to identify Merchants who are or may become involved in, among other things, fraud or suspected fraud, and to assist NuPay and its efforts to prevent fraud.
- 27.7. If the Merchant does not comply with this clause 27, NuPay has the right immediately to suspend the Merchant's access to the POS Service, report it to the relevant authorities and terminate this Agreement.

28. SUSPENSION

- 28.1. NuPay may, upon written notice to the Merchant, suspend the Services with immediate effect, in the event that:
- 28.1.1. any suspected act(s) of fraud and/or unlawful practice(s) is/are committed by the Merchant;
- 28.1.2. the Merchant fails to pay any amount(s) that become(s) payable in terms of the Agreement on the due date; and/or
- 28.1.3. if applicable, the Merchant breaches any of the Clearing Rules created by the Payment Clearing House.
- 28.2. NuPay shall, in exercising its right of suspension, act in good faith.

29. EFFECTS OF SUSPENSION

- 29.1. Should any of the circumstances contemplated in clause 28 occur:
- 29.1.1. NuPay will not be obliged to enter into any new business transactions with the Merchant, settle the Merchant's account, and/or pay any funds to the Merchant, for the duration of the suspension; and
- 29.1.2. where applicable, NuPay will cancel the Merchant's Website or NuCard Website Login ID to prevent access to the Website or NuCard Website.
- 29.2. The suspension shall continue for so long a period as to provide NuPay with time to investigate the event giving rise to the suspension.
- 29.3. During the aforesaid period of investigation, the Merchant shall provide NuPay with information reasonably requested by NuPay in order to assist with the investigation.
- 29.4. Should NuPay lift the suspension:
- 29.4.1. if the Merchant so desires, the Merchant may resume submission of new business transactions and, where applicable, reinstate the Merchant's Website Login ID;
- 29.4.2. where applicable, NuPay shall resume the Disbursement Cycle.

30. DEFAULT

- 30.1. NuPay may exercise its rights, which include demanding immediate payment of any overdue amounts due and payable to NuPay under this Agreement or ending this Agreement, as may be permissible in law, without prejudice to any of NuPay's other rights (i.e. without barring any future action NuPay may be entitled to take), if an "event of default" occurs, namely if:

- 30.1.1. the Merchant commits any breach of any term or condition of this Agreement and does not remedy this breach within 10 (ten) Business Days of receiving written notice from NuPay asking the Merchant to do so; or
- 30.1.2. any representation or warranty made by the Merchant, or any other documents supplied by the Merchant to NuPay, in connection with this Agreement is incorrect or false (a warranty refers to an express undertaking on the Merchant's part that something is or will be as the Merchant has represented to NuPay or promised NuPay that it is or will be);
- 30.1.3. the Merchant – being an individual–
 - 30.1.3.1. publishes notice of the voluntary surrender of his/her estate or dies;
 - 30.1.3.2. is placed under administration or commit an act of insolvency as defined in the Insolvency Act 24 of 1936;
 - 30.1.3.3. has any application or other proceedings brought against, or in respect of, him/her where a third party seeks to have the him/ her sequestered or placed under curatorship, in any event whether in a manner which is provisional or final, voluntary or compulsory;
- 30.1.4. the Merchant – being a juristic entity –
 - 30.1.4.1. is wound up, liquidated, dissolved or deregistered in any event in a manner which is provisional or final, voluntary or compulsory, or it passes a resolution providing for any such event;
 - 30.1.4.2. is treated as being unable to pay its debts;
 - 30.1.4.3. resolves that it will voluntarily begin business rescue proceedings or have any business rescue proceedings commenced against it as contemplated in section 132(1) the Companies Act, No 71 of 2008, as amended;
 - 30.1.4.4. is served with a court order for the attachment of assets or for payment of any amount and which order is not satisfied within 7 (seven) days after the date on which it is issued. Attachment refers to the process in terms of which property or goods or both are taken into custody to secure a judgment or to be sold in satisfaction of a judgment); or
 - 30.1.4.5. compromises or attempts to compromise with its creditors generally or defer payment of debts owing by it to its creditors.
- 30.2. Upon the happening of an event of default by the Merchant, or any other event which gives rise to NuPay having a right of cancellation at common law, NuPay shall be entitled, in addition and without prejudice to any right or remedy which it may have in terms of this Agreement or in law to terminate, immediately and without notice, this Agreement.
- 30.3. Upon the happening of an event of default by the Merchant, NuPay is hereby further authorised to perform any obligation of the Merchant which the Merchant fails to perform on the Merchant's behalf and to claim the cost thereof from the Merchant on demand, including all costs reasonably incurred in regaining possession of all documents, programs, material, and Terminals, including shipping, storage, and removal charges, and legal costs on an attorney and own client scale. For these purposes, to the extent applicable, the Merchant hereby irrevocably appoints and authorises NuPay as its duly authorised agent to act in its name, place and stead.

31. EFFECTS OF TERMINATION AND CANCELLATION

- 31.1. In the event that the Agreement is terminated or cancelled for any reason whatsoever, then:
 - 31.1.1. NuPay shall be entitled to claim and recover:
 - 31.1.1.1. immediate payment of all monies for which the Merchant may be liable in terms of this Agreement, all of which shall become immediately due and payable, and NuPay shall, despite any claim for immediate payment in terms of this clause, be entitled to claim and recover the relief set out below;
 - 31.1.1.2. any further penalty, damages, or other compensation which it is entitled to in law;
 - 31.1.2. the Merchant shall immediately return to NuPay:
 - 31.1.2.1. all documents, programs and any other material made available by NuPay to the Merchant; and,
 - 31.1.2.2. if applicable, each Terminal supplied by NuPay to the Merchant. Otherwise, NuPay shall be entitled to take possession of such Terminal on the premises of the Merchant or wherever it is kept, in which case the Merchant shall provide NuPay and/or its agent all reasonable cooperation and assistance therewith, including access to its premises, or such other place as the documents, programs, material, and/or Terminal may be situated;
 - 31.1.3. NuPay shall cease to accept any new business requests from the user that are scheduled to occur after the date on which the Agreement is terminated or cancelled;
 - 31.1.4. if applicable, where the User has outstanding future Payment Instruction registered on the NuPay System, then
 - 31.1.4.1. The User can request that all future payment instructions be cancelled immediately.
 - 31.1.4.2. The User can request that all future payment instructions only be cancelled after the last payment instruction has been processed.
 - 31.1.5. With reference to clause 31.1.4, NuPay will be entitled to charge a fee as set out in the NuPay SLA signed by the Merchant's duly authorized signatories to this Agreement, for the Services, rendered by NuPay, until such outstanding Payment Instructions have been processed. This fee is exclusive of the Transaction processing fee;
 - 31.1.6. if applicable, NuPay will be entitled to set off the Merchant's indebtedness to NuPay against all/any future Transactions that NuPay will manage on behalf of the Merchant. This is specific to future-dated Transactions which will be processed after the termination or cancellation of the Agreement;
 - 31.1.7. if applicable, despite clauses 31.1.4 and 31.1.5 above, NuPay reserves the right to cancel all future Transactions immediately and without notification to the Merchant should any dispute arise;
 - 31.1.8. if applicable, NuPay shall cease to process any requests loaded on NuCard during the Notice Period;
 - 31.1.9. if applicable, all unallocated Cards that the Merchant has in the Merchant's possession on the date of termination or cancellation will be rendered inactive and will be unusable;
 - 31.1.10. available funds which are in the Merchant's NuCard profile, if applicable, after the completion of the Notice Period will be refunded to the Merchant's nominated account.
 - 31.1.11. The termination or cancellation of the Agreement, for whatever reason, will not affect the rights of a party which may have accrued as at the date of termination or cancellation, and will further not affect any rights which specifically or by their nature survive the termination or cancellation of the Agreement.

32. DISPUTE RESOLUTION

- 32.1. If there is a dispute between the parties, the party initiating the Dispute will give a Dispute Notice to the other party, whereupon each party will promptly designate a senior officer or senior representative, and such designated officers or representatives will attempt in good faith to resolve the Dispute by negotiation.
- 32.2. Each party to the Dispute will provide to the other party all information reasonably requested by the other party that is relevant to the Dispute and not subject to confidentiality obligations to third parties or to a legally recognised privilege from disclosure. All negotiations and settlement discussions to resolve a Dispute shall be treated as compromise and settlement negotiations between the parties and shall not be subject to disclosure through discovery or any other process and shall not be admissible into evidence in any proceeding.
- 32.3. If the parties are unable to resolve the Dispute through negotiation within 20 (twenty) Business Days of the date that the Dispute Notice was delivered, or such longer period as agreed to by the parties, in writing, then the Dispute shall be settled by binding arbitration in accordance with clause 33.

33. ARBITRATION

- 33.1. If any Dispute is referred to arbitration in terms of clause 32 of this Agreement, such Dispute shall be referred to and be determined by arbitration in terms of the Rules of AFSA.
- 33.2. Any party to this Agreement may, subject to the provisions of clause 32, demand that a Dispute be determined in terms of this clause by written notice given to the other parties.
- 33.3. This clause shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 33.4. The parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should any party by written notice given to the other require the arbitration to be held on an urgent basis. In such event, the parties agree to apply jointly to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 33.5. The arbitrator shall be, if the matter in dispute is principally -
 - 33.5.1. a legal matter, a practicing advocate or attorney of Johannesburg of at least 10 (ten) years standing;
 - 33.5.2. an accounting matter, independent auditors appointed in the absence of agreement by the auditor of NuPay, or (failing agreement between them) by the President of the South African Institute of Chartered Accountants or its successor body;
 - 33.5.3. any matter other than a legal or accounting matter, any independent person, agreed upon between the parties to the dispute and (failing agreement) the independent person shall be appointed by AFSA.
- 33.6. Should the parties to the dispute fail to agree in writing whether the dispute is principally a legal, accounting or other matter within 5 (five) Business Days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 33.7. Should the parties fail to agree in writing on an arbitrator within 10 (ten) Business Days after the giving of notice in terms of clause 33.2, the arbitrator shall be appointed at the request of any of the parties to the dispute in terms of the Rules of AFSA.
- 33.8. The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court referred to in clause 33.9 at the instance of any of the parties to the dispute.
- 33.9. The parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to in clause 33.3.

- 33.10. The parties agree to keep the arbitration, including the subject-matter of the arbitration and the evidence heard during the arbitration, confidential and not to disclose it to anyone except for purposes of an order to be made in terms of clause 33.8.
- 33.11. Other than where clause 33.3 applies, the provisions of this clause –
- 33.11.1. constitute an irrevocable consent by the parties to any proceedings in terms of this Agreement and no party shall be entitled to withdraw from such proceedings or claim at any such proceedings that it is not bound by such provisions;
- 33.11.2. are severable from the rest of this Agreement and shall remain in effect despite the termination or invalidity of this Agreement for any reason.

34. NOTICE AND DOMICILIA

- 34.1. The parties choose as their *domicilium citandi et executandi* (address for acceptance of notices) the addresses set out in the NuPaySLA signed by the authorized person(s) on behalf of the Merchant of this Agreement, which shall not be a postal address or poste restante (i.e. a post office that holds mail until the recipient calls for it).
- 34.2. Either party shall be entitled to change its address from time to time, provided that the change shall only become effective on receipt by the other party of written notice by the addressee.
- 34.3. Any notice or communication required or permitted to be given to a party in terms of the Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by facsimile transmitted to the facsimile number set out opposite the name of the party so notified.
- 34.4. A notice sent by a party contained in a correctly addressed envelope shall be deemed to have been received on the day of delivery provided that such notice is delivered by hand to a responsible person during ordinary business hours at its chosen physical address in terms of clause 34.1 of this Agreement.
- 34.5. Any notice by telefax to a party at its telefax number shall be deemed to have been received on the first Business Day after the date of transmission.
- 34.6. Subject to any provision in the Agreement to the contrary, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address.

35. FORCE MAJEURE (ANY UNCONTROLLABLE EVENT THAT IS A RESULT OF NATURE)

- 35.1. If either party is prevented from carrying out any of its obligations in terms of this Agreement as a result of an act of nature, including but not limited to strikes, fire, riot, war (whether declared or not), embargoes, export control, international restrictions, shortage of transport facilities, any order of any international authority, any court order, any requirements of any authority or other competent local authority, or any other circumstances whatsoever which are not within the reasonable control of such party, such party will be deemed to have been released from its obligations to perform under this Agreement to the extent that, and for so long as, it is so prevented from performing, and this Agreement will be deemed to have been suspended to such extent and for the period concerned.
- 35.2. As soon as a party becomes aware that an act of *force majeure* (any uncontrollable event) is likely to cause a suspension of this Agreement, it shall give notice in writing to the other party, estimating the approximate duration of such suspension. The estimate shall not be binding and the party claiming *force majeure* (any uncontrollable event) shall -
- 35.2.1. use its best endeavours to terminate the circumstances giving rise to the *force majeure* (any uncontrollable event); and
- 35.2.2. give notice to the other party as soon as the *force majeure* (any uncontrollable event) ceases to operate.
- 35.3. Should an event of *force majeure* (any uncontrollable event) endure and prevent a party from performing its obligations under this Agreement for a period in excess of 90 (ninety) days, then the party who is prejudiced by such inability to perform shall be entitled immediately, on written notice to the other party, to terminate this Agreement.

36. CESSION AND PROTECTION OF RIGHTS

- 36.1. The Merchant may not cede, transfer, assign, delegate, or otherwise deal with all or any of its rights and obligations under the Agreement except with NuPay's prior written consent, which consent shall not be unreasonably withheld.
- 36.2. NuPay shall be entitled, at any time, to cede, transfer, assign, delegate, or otherwise deal with all or any of its rights and obligations under the Agreement to any associated company, or other person, without the Merchant's consent.

37. COST OF ACTION

Should NuPay take legal action against the Merchant in respect of the Agreement, then the Merchant shall be responsible for payment of all legal costs on scale as between attorney and client.

39. GOVERNING LAW

Subject to clauses 32 and 33, the Agreement, including its interpretation and all disputes arising out of this Agreement, shall be governed by, and construed in accordance with, South African law, and the parties hereby consent to the exclusive jurisdiction of the South African Courts in respect of any matter arising from or in connection with this Agreement, including its cancellation or termination.

40. AUTHORITY TO BIND

The parties hereby expressly warrant and represent to each other that each of them has taken or caused to be taken all steps and actions, and acquired and granted all consents, permissions, and authorisations, necessary to give full and legal effect to the Agreement and to make the Agreement binding upon each of them. The Merchant shall, if requested by NuPay, furnish NuPay with sufficient evidence of the authority of the person/s who will, on behalf of the Merchant, take any action or execute any documents required or permitted to be taken or executed by such person under the Agreement.

41. WHOLE AGREEMENT, NO AMENDMENT, GENERAL

- 41.1. This Agreement constitutes the whole agreement between the parties relating to the subject matter hereof and, if applicable, supersedes any oral agreement concluded between them in relation to the subject matter contained in this Agreement.
- 41.2. No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions, terms or rights of this Agreement or of any agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 41.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any party in respect of its rights under this Agreement, nor shall it operate so as to preclude (prevent) such party thereafter from exercising its rights strictly in accordance with this Agreement.
- 41.4. Each of the parties to this Agreement acknowledges that they have been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that they have either taken such independent legal advice or dispensed with the necessity of doing so.
- 41.5. Each of the parties to this Agreement further acknowledges that all of the provisions of this Agreement and the restrictions contained in this Agreement are fair and reasonable in all the circumstances and are part of the overall intention of the parties.
- 41.6. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed to be the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed in this Agreement.

42. EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same agreement as at the Signature Date.