

**MERCHANT SERVICES AGREEMENT  
(TERMS & CONDITIONS)**

between

**WIZZIT PAYMENTS PROPRIETARY LIMITED**  
(Registration number: 2000/008596/07)  
("OWNA PAY")

and

**"THE MERCHANT"**

## 1. INTRODUCTION

- 1.1 **WHEREAS** OWNA PAY is a payment service provider that offers the facilitation of Transactions within the Republic of South Africa.
- 1.2 **AND WHEREAS** OWNA PAY and the Merchant wish to enter into this Agreement for the purpose of enabling the Merchant, through the OWNA PAY App, to accept contactless card and digital wallet payments from consumers.
- 1.3 **AND WHEREAS** this Agreement contains important information about the rights and obligations relating to the Merchant and OWNA PAY in respect of the Acquiring Services and products delivered by OWNA PAY, a copy of which is available on OWNA PAY's Website or can be obtained from OWNA PAY by email at the Merchant's request.
- 1.4 **AND WHEREAS** this Agreement creates a legal relationship between the Merchant and OWNA PAY.
- 1.5 **NOW WHEREFORE** the Parties wish to record the terms and conditions applicable to the contactless card and digital wallet facilities offered by OWNA PAY to the Merchant.

## 2. DEFINITIONS AND INTERPRETATION

- 2.1 The following terms have the following meanings, namely:
- 2.1.1 **Acquirer**, in relation to South Africa, means a bank:
- 2.1.1.1 that provides Acquiring Services;
- 2.1.1.2 is a licensee of a Payment Scheme; and
- 2.1.1.3 is a member of PASA.
- 2.1.2 **Acquiring Service** means the service provided by an Acquirer to a Merchant in terms of which the Acquirer facilitates the processing of a card transaction on behalf of the Merchant;
- 2.1.3 **Acquiring Bank** means, the Absa Bank of South Africa Limited (Registration Number: 1986/04794/06), a company incorporated under the laws of South Africa;
- 2.1.4 **Activation Date** means the date upon which the Merchant has been approved by OWNA PAY and is activated to use the Services;
- 2.1.5 **Agreement** means this written merchant services agreement and all annexures and schedules attached hereto;
- 2.1.6 **App** means any application operated by OWNA PAY from which the Merchant can access the Services;
- 2.1.7 **Applicable Laws** means, whenever updated and with reference to the Parties' obligations:

- 2.1.7.1 all national, provincial, local, and municipal legislation or subordinate legislation, ordinances, regulations, or by-laws (including the Compliance Laws and Data Protection Laws);
- 2.1.7.2 policies, directives, rules, or other instructions of any relevant Regulatory Authority;
- 2.1.7.3 any instrument having the force of law; or
- 2.1.7.4 the common law, judgment, order, or decree,
- 2.1.8 applicable to the Parties;
- 2.1.9 **Application Process** means a process where the Merchant provides OWNA PAY with all the required information and/or documentation to access the Services through a process facilitated by an authorised representative of OWNA PAY;
- 2.1.10 **Authorisation** means the Issuing Bank's confirmation that a Card has enough funds to facilitate a Transaction;
- 2.1.11 **Authorised Person** means the person nominated during the Application Process as the primary person responsible for managing the Merchant Account;
- 2.1.12 **Business Day** means any day other than a Saturday, Sunday or a public holiday recognised as such under the Public Holidays Act 26 of 1994 as amended from time to time;
- 2.1.13 **Budget Transaction** means a Transaction where the Issuing Bank authorises the Customer to make a payment over an extended period;
- 2.1.14 **Calendar Month** means each of the twelve named periods into which a year is divided, commencing on the 1st day of that month and ending on the last day, i.e. the 28th; 29th; 30th or 31st day, as the case may be;
- 2.1.15 **Card** means any qualifying debit or credit Mastercard and/or Visa branded payment card supported by PASA, that enables a Cardholder and/or Customer to initiate a Transaction using the Card Information;
- 2.1.16 **Card Association** means any card association which facilitates electronic transactions between the Acquirer, Merchants, and Cardholders;
- 2.1.17 **Cardholder** means the natural or juristic person to whom a Card is issued by an Issuing Bank and, where applicable, whose name or details are printed or embossed on a valid Card;
- 2.1.18 **Card Information** means the name of the Cardholder, PAN, expiry date, card security code and/or other credentials, including any token or proxy, linked to a Card;
- 2.1.19 **Chargeback** means any Transaction that:
- 2.1.19.1 is disputed by a Cardholder;

- 2.1.19.2 is reversed for any reason by a Card Association, any of the Third-Party Service Providers, or the Acquiring Bank;
- 2.1.19.3 is deemed suspicious by OWNA PAY; and
- 2.1.19.4 if processed, would amount to a breach of any term of this Agreement or any Card Association rule;
- 2.1.20 **Chargeback Fee** means, in respect of a Chargeback, any fee charged by OWNA PAY in respect of a corresponding Transaction;
- 2.1.21 **Compatible Device** means a qualifying Android smartphone which is, as a minimum, NFC-enabled to accept contactless card payments;
- 2.1.22 **Customer** means the consumer making a purchase from the Merchant by using the Service;
- 2.1.23 **Data Compromise** means any actual or suspected breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Transaction Data transmitted, stored or otherwise processed;
- 2.1.24 **e-Receipt** means an electronic confirmation of a Transaction processed by the Merchant, recording the date, Merchant name, Merchant location, PAN, amount and reference number, sent by SMS or e-mail to the Merchant and the Customer;
- 2.1.25 **Excessive Authorisation Attempts** means each Authorisation attempt that:
- 2.1.25.1 after 20 (twenty) previously declined Authorisation attempts;
- 2.1.25.2 is made on the same Card;
- 2.1.25.3 is made at the same Merchant; and
- 2.1.25.4 is made within a 24 (twenty-four) hour period;
- 2.1.26 **Fees** means Merchant Commission Fee, Chargeback Fees and any *ad hoc* fees charged by OWNA PAY from time to time;
- 2.1.27 **Fee Schedule** means the schedule of Fees which OWNA PAY charges the Merchant for the Services and which OWNA PAY sends to the Merchant during the Application Process;
- 2.1.28 **FICA** means the the Financial Intelligence Centre Act No. 38 of 2001, as amended;
- 2.1.29 **FICA Documentation** means all documentation requested by OWNA PAY from the Merchant to enable OWNA PAY to comply with its contractual obligations to the Acquiring Bank and to enable the Acquiring Bank to comply with its obligations in terms of FICA;
- 2.1.30 **Force Majeure** means any circumstance not within a Party's reasonable control including acts of God, flood, drought, earthquake or other natural disaster, an event

of fire, lightning, explosion, flood, hurricane, war, terrorism, civil disorder, epidemics, plagues, any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause) provided in all cases that the affected Party has taken all steps and precautions which could reasonably be expected for it to have taken in order to prevent such act or event occurring and in order to mitigate and minimise the effects of the event;

- 2.1.31 **Fraudulent Transaction** means:
- 2.1.31.1 any Transaction that constitutes fraud under the law and/or common law, irrespective of whether or not the Transaction was Authorised or whether or not an Authorisation code number was provided to the Merchant; or
  - 2.1.31.2 a Transaction that is processed using a customer's financial details, account information or Payment Instrument and which is not authorised by the Customer; or
  - 2.1.31.3 the use of a Card which has not been issued by a genuine Card issuer;
- 2.1.32 **Harmful Code** means "viruses", "trojan horses", ransom ware, malware, spyware, computer code and instructions that:
- 2.1.32.1 are designed to disrupt, disable, harm or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation or use of OWNA PAY's Infrastructure or the Merchant's Portal;
  - 2.1.32.2 would disable the whole or any part of OWNA PAY's Infrastructure or the Merchant's Portal, or impair in any way their operation or use including based on the elapsing of a period of time, on exceeding the authorised number of copies, or on advancement to particular date or other numeral;
  - 2.1.32.3 would permit an unauthorised party to access the OWNA PAY's Infrastructure or the Merchant's Portal to cause such disablement or impairment;
  - 2.1.32.4 contains any other similar harmful, malicious or hidden procedures, routines or mechanisms; or
  - 2.1.32.5 can cause or allow unauthorised damage or access to, interference with, loss, theft, destruction or corruption of OWNA PAY's Infrastructure or the Merchant's Portal;
- 2.1.33 **Infrastructure** means information technology and telecommunications infrastructure and systems, including computer and telecommunications networks, equipment, hardware, software, middleware, firmware, data, databases, peripherals, terminals and components;
- 2.1.34 **Invalid Transaction** means, irrespective of whether or not the Card or electronic fund transfer Transaction was Authorised or whether an Authorisation code number

or electronic fund transfer confirmation was provided to the Merchant by OWNA PAY, a Transaction which arises as a result of:

- 2.1.34.1 an act and/or omission by the Merchant and/or the Merchant's employees which results in a loss or Chargeback;
- 2.1.34.2 the use of a Payment Instrument or electronic fund transfer by a person other than the lawful Customer;
- 2.1.34.3 processing a Transaction without OWNA PAY's prior Authorisation;
- 2.1.34.4 a Transaction where the date of the Transaction is earlier than the start date shown on the Card;
- 2.1.34.5 accepting Cards which are defaced, blank, illegible or Cards from which the embossed legends are not readable or legible;
- 2.1.34.6 accepting a Card which has expired;
- 2.1.34.7 accepting a Card or Payment Instrument for any purpose other than current Transactions;
- 2.1.34.8 duplicating a Transaction;
- 2.1.34.9 a Transaction for which the Merchant does not have a corresponding Receipt or e-Receipt;
- 2.1.34.10 a Transaction for which the Receipt is illegible;
- 2.1.34.11 a Transaction for which the Receipt or e-Receipt is materially incomplete or different from the Receipt or e-Receipt provided to the Customer;
- 2.1.34.12 a Transaction for which the Merchant laundered Receipts or e-Receipts;
- 2.1.34.13 a Transaction which does not comply with the obligations set out in the Card Association and/or PASA rules;
- 2.1.34.14 a Transaction for which the goods or services were not delivered within the agreed period or at all;
- 2.1.34.15 a Transaction where the supply of goods and/or services is for any reason illegal;
- 2.1.34.16 a Transaction which was performed by the Merchant's employee(s) who are not authorised to do so;
- 2.1.34.17 a Transaction which occurred as a result of an error on the Merchant or the Merchant's employee(s) or part;
- 2.1.34.18 a Fraudulent Transaction; or
- 2.1.34.19 accepting a Payment Instrument from the Merchant or the Merchant's Authorised Representative in respect of any type of Transaction for any

reason other than the valid supply of goods and/or services, which shall be evidenced upon request by OWNA PAY,

which entitles OWNA PAY to charge each such Invalid Transaction or incomplete Transaction back to the Merchant, hold the Merchant liable for all losses incurred as a result of the Invalid Transaction or incomplete Transaction and immediately terminate this Agreement;

- 2.1.35 **Intellectual Property** means all intellectual property rights of whatever nature (whether registered or unregistered) including, without limitation, all rights of copyright, compilations, collections and databases, computer programs (including the source and object code thereof), mask works, invention rights, patents, trademarks, designs, know-how, trade secrets, internet domain names and/or web site addresses, applications for registration of any of the foregoing and the right to apply for registration and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- 2.1.36 **Issuing Bank** means a bank that issues Cards as well as the bank where a Customer's payment transaction is being initiated;
- 2.1.37 **Materials** means all products, goods, software, documentation, literature, materials, tools, data, information, databases, modules, components, compilations of data, methodologies, processes, policies, procedures, techniques, models, configurations, mobile content, protocols, routines, interfaces (including API interfaces), reports, plans, notes, files, decoders, adaptors, diagrams, manuals, templates, schematics, correspondence, designs, circuit designs, algorithms, specifications, records, handsets, devices, equipment, hardware, servers, computers, platforms, computer code, derivative works, works of authorship, technology and intellectual property, and irrespective of the form and format of the foregoing and whether tangible or intangible;
- 2.1.38 **Merchant** means the entity that will utilise the Services and form the counterparty to this Agreement;
- 2.1.39 **Merchant Bank Account** means means the South African bank account nominated by the Merchant, into which all settlement funds will be paid by OWNA PAY;
- 2.1.40 **Merchant Agreement** means the agreement concluded between the Acquiring Bank and a Merchant in terms of which, *inter alia*, the Acquiring Bank enables the Merchant to accept Card and wallet payments via the Compatible Device or App as payment for their goods or services;
- 2.1.41 **Merchant Commission Fee** means the fee charged by OWNA PAY for processing the Merchant's Transaction, calculated as a percentage of the value of the Transaction and quoted excluding VAT as set out in the Fee Schedule;

- 2.1.42 **Merchant Portal** means the Acquiring Bank's website that the Merchant can access to, among other things, check Transactions and access reports;
- 2.1.43 **Merchant Account** means a profile created by OWNA PAY and/or the Acquiring Bank on the Merchant Portal for the purpose of managing settlements due to the Merchant and deducting Fees;
- 2.1.44 **Net Settlement Funds** means the balance after all Fees have been deducted from the Settlement Fees;
- 2.1.45 **NFC** means near field communication;
- 2.1.46 **OWNA PAY** means WIZZIT Payments Proprietary Limited (Registration number: 2000/008596/07);
- 2.1.47 **OWNA PAY Intellectual Property** means all Intellectual Property owned or used by OWNA PAY at any time whether as part of the provision of the Services or otherwise;
- 2.1.48 **PAN** means the primary account number;
- 2.1.49 **Parties** means OWNA PAY and the Merchant and "**Party**" shall refer to either of them as determined by the context;
- 2.1.50 **PASA** means the Payment Association of South Africa and/or its successor in title;
- 2.1.51 **Payment** means a transfer of funds from the Customer to the Merchant, the execution of which is completed by the Parties on the basis provided for in this Agreement;
- 2.1.52 **Payment Amount** means the amount the Customer will pay the Merchant for the goods and/or services provided by the Merchant;
- 2.1.53 **Payment Instruction** means an electronic instruction or request to make a Payment which is initiated by the Merchant on behalf of the Customer and intended to be processed through the Services;
- 2.1.54 **Payment Instrument** means a Card, Primary Account, Customer bank account, mobile, and/or any other mechanism that is designed to hold secure data and that enables the flow of funds from the holder of the payment instrument to another party;
- 2.1.55 **Payment Schemes** means Visa, MasterCard and any other Card Association as advised by the Acquiring Bank;
- 2.1.56 **Payment Scheme Rules** means the rules and regulations, including PCI DSS, published by the Payment Schemes which bind their participants;
- 2.1.57 **PCI** means Payment Card Industry;
- 2.1.58 **PCI DSS** means the PCI Data Security Standard, being the technical and operational requirements as set by the PCI SSC to protect Card Information;



- 2.1.59 **PCI SSC** means the PCI Security Standards Council;
- 2.1.60 **Personnel** means the individual partners, directors, officers, employees, representatives, agents, independent contractors, subcontractors, suppliers, advisors, licensors, product providers and service providers of a Party;
- 2.1.61 **Personal Information** means personal information as defined in POPIA;
- 2.1.62 **PIN** means a cardholder's personal identification number that is issued to the cardholder by the Issuing Bank or created by the Customer for the purpose of authenticating payment transactions;
- 2.1.63 **POPIA** means the Protection of Personal Information Act of 2013;
- 2.1.64 **Privacy Policy** means the OWNA PAY's data policy, as amended from time to time;
- 2.1.65 **Receipt** means the written confirmation of a Transaction processed by the Merchant, recording the date, Merchant name, Merchant location, truncated PAN, amount, and reference number and shall include an e-Receipt if the context or circumstances require;
- 2.1.66 **Refund** means a credit payment instruction issued by the Merchant to the Issuing Bank to credit a Customer's account. Such credit payment instruction is issued by the Merchant after a debit payment instruction;
- 2.1.67 **Regulator** shall mean any court or public body having regulatory or supervisory authority over all or any part of the businesses of either or both Parties, the activities contemplated by this Agreement or any matters related to or arising hereunder;
- 2.1.68 **Reserve Account** means a separate reserve account operated by OWNA PAY to secure the performance of any of the Merchant's payment obligations in terms of this Agreement, including in relation to any liability for any amounts arising due to a Chargeback;
- 2.1.69 **Reversal** means the cancellation of a previous Transaction;
- 2.1.70 **Routine Maintenance** means maintenance that is required to maintain the Services and all associated Infrastructure;
- 2.1.71 **Services** means the payment services rendered by OWNA PAY to the Merchant as set out in this Agreement and any other ancillary services offered by OWNA PAY to the Merchant from time to time;
- 2.1.72 **Settlement Funds** means the total of all funds received from the Issuing Bank as it relates to Transactions concluded pursuant to this Agreement;
- 2.1.73 **Statement** means a tax invoice setting out all fees and charges payable by the Merchant to OWNA PAY;

- 2.1.74 **Third-Party Features** means any additional services provided by independent third parties, as approved by OWNA PAY, and which additional services do not form part of the Services;
- 2.1.75 **Third-Party Service Provider** means any third-party service provider that OWNA PAY contracts with for the purposes of providing the Service;
- 2.1.76 **Transaction** means any payment made by a Cardholder and/or Customer to a Merchant which payment transaction is effected by a Card, processed by a Card Reader or via a payment link and cleared and settled by the Acquiring Bank;
- 2.1.77 **Transaction Data** means all the data, including but not limited to Personal Information, that is supplied by the Customers to the Merchant and is necessary for the Merchant to process the Transaction;
- 2.1.78 **Transaction Documents** means all documents, printouts or reports that contain information that relate to the Transaction including, but not limited to, Receipts, sales vouchers, documents that contain Transaction Data and bank notifications;
- 2.1.79 **Website** means the website operated by OWNA PAY, located at any domain or subdomain of OWNA PAY, as updated from time to time; and
- 2.1.80 **VAT** means Value Added Tax as defined in terms of the Value-Added Tax Act No. 89 of 1991, as amended from time-to-time.
- 2.2 Clause headings are simply for convenience and are not relevant in the interpretation of this Agreement.
- 2.3 Any reference to a natural person, where relevant, shall hereby also include a legal entity and vice versa.
- 2.4 In this Agreement, unless a contrary intention appears, words importing any one gender include the other two, the singular includes the plural (and the converse shall apply) and natural persons include legal entities (corporate or unincorporated) and the state (and the converse shall apply).
- 2.5 References to a statutory provision include any subordinate legislation made from time to time under that provision and any modification or re-enactment of such provision, as far as such modification or re-enactment applies, or is capable of applying, to this Agreement or any Transaction entered into in accordance with this Agreement.
- 2.6 If a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition.
- 2.7 If there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Annexure, the definition

appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement.

- 2.8 No rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for or participated in the preparation of this Agreement or any part of it.
- 2.9 The rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply.
- 2.10 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.11 Unless otherwise provided, any number of days set out in this Agreement shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 2.12 Where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day.
- 2.13 Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the rest of this Agreement without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision.
- 2.14 The expiration or termination of this Agreement shall not affect the provisions of this Agreement which by their nature, or which are expressly provided to, operate after any such expiration or termination. Without derogating from or limiting the foregoing, clauses which are by their nature intended to endure beyond the termination or expiration of this Agreement, shall continue in full force and effect after expiration or termination of this Agreement.
- 2.15 Technical terms that are not defined in this **clause 2** have the generally understood meaning in the financial services industry.

### **3. ACCEPTANCE, COMMENCEMENT, DURATION, SUSPENSION AND TERMINATION**

- 3.1 By electronically accepting this Agreement, the Merchant hereby confirms that it has read and understood the meaning and effect of its rights and obligations contained in this Agreement.

- 3.2 The Agreement shall commence and be binding upon the Parties on the Activation Date and shall remain in force and effect until terminated in terms of the provisions set below.
- 3.3 This Agreement may be terminated by either Party on 1 (one) Calendar Month's written notice to the other Party.
- 3.4 OWNA PAY may terminate this Agreement or suspend any of the Services immediately, without notice to the Merchant, if OWNA PAY:
- 3.4.1 is required to do so by the Acquiring Bank, any Cards Association, PASA or any Payment Scheme;
  - 3.4.2 is required to do so by any law or regulation;
  - 3.4.3 suspects, is aware of, or has been notified of –
    - 3.4.3.1 any fraudulent or criminal activities in connection with the Services;
    - 3.4.3.2 any unlawful or negligent use of the Services; or
    - 3.4.3.3 any activity that may create harm or loss to the goodwill of OWNA PAY or OWNA PAY's card payment system.
- 3.5 Upon the termination of this Agreement, the Merchant will return to OWNA PAY all the OWNA PAY Materials.

#### **4. SERVICE APPLICATION AND ONBOARDING**

- 4.1 The Merchant is required to complete the Application Process to apply for the Services that it requires from OWNA PAY.
- 4.2 The Merchant is required to submit its application together with its FICA documents and any other supporting documents and information that OWNA PAY may request.
- 4.3 The Application Process shall require the Merchant to provide certain information to OWNA PAY including, but not limited to information relating to the:
- 4.3.1 identity of the Merchant;
  - 4.3.2 Services that the Merchant would like to procure from OWNA PAY;
  - 4.3.3 Authorised Person nominated to operate the Merchant Account; and
  - 4.3.4 Merchant's nominated Bank Account.
- 4.4 OWNA PAY undertakes to send the Fee Schedule to the Merchant during the Application Process.
- 4.5 If there is any information outstanding during the Application Process, OWNA PAY will request such information from the Merchant. For the avoidance of doubt, OWNA PAY shall not approve the Merchant to use the Services if there is any information which is outstanding. If any information is outstanding for more than 1 (one) Calendar Month, the

Merchant will be required to submit a new application to OWNA PAY with the Merchant's updated information.

- 4.6 By completing the Application Process, the Merchant makes an offer to do business with OWNA PAY. OWNA PAY, at its sole and absolute discretion, is entitled to elect whether or not to accept the offer.
- 4.7 For the purposes of the Application Process, the Merchant hereby authorises and consents to OWNA PAY performing an upfront and ongoing credit and regulatory check on the Merchant, its business and/or any other principal, partner, trustees, members, proprietor, director or owner of the Merchant's business.
- 4.8 Once the Application Process is complete, OWNA PAY shall:
  - 4.8.1 advise the Merchant in writing of the Activation Date; and
  - 4.8.2 create a Merchant Account on the Merchant Portal for the Merchant.
- 4.9 The Merchant warrants that the information it provides to OWNA PAY is true and accurate.
- 4.10 The Merchant can commence processing Transactions from the Activation Date, but such Transaction will not be settled in the Merchant's Bank Account by OWNA PAY until the Merchant's FICA documentation has been received, reviewed and approved by OWNA PAY.
- 4.11 Should the Merchant not pass the verification process and/or OWNA PAY elects not to accept the Merchant's application, then:
  - 4.11.1 all funds that the Merchant has Transacted through OWNA PAY thus far will be refunded to the original Cardholders, and the Merchant will not be entitled to receive those funds from OWNA PAY, however lawfully they may have been generated. The onus will fall on the Merchant to recoup any lost earnings from the affected Cardholders;
  - 4.11.2 the Merchant must immediately cease using the Services;
  - 4.11.3 the Merchant shall refrain from making defamatory statements regarding OWNA PAY and the Services on any social media platform or any other platform, to any media or any other method of whatsoever nature;
  - 4.11.4 the Merchant agrees that it will not hold OWNA PAY liable for any damages, losses, and costs of whatsoever nature it may incur directly or indirectly due to the circumstances as contemplated in this **clause 4.11**; and
  - 4.11.5 the provisions in the Agreement and any other applicable documents that by their nature remain applicable to the relationship between the Parties, will continue to apply until such time as they are no longer applicable.

- 4.12 If, at any time, there are any changes to any changes to the Authorised Person, any material change to the Merchants related parties or any change in the documents or information submitted by the Merchant to OWNA PAY for purposes of the Application Process, including but not limited to, any FICA and/or verification documentation, then:
- 4.12.1 the Merchant must immediately inform OWNA PAY in writing of any such change and resubmit the relevant FICA and/or verification documentation to OWNA PAY;
- 4.12.2 the Merchant's access to the Services, or any part thereof, may be suspended by OWNA PAY; and
- 4.12.3 the Merchant will have to complete the onboarding process again in order to receive the Services and any settlement owed from Transactions made during the completion of this subsequent onboarding process.

## **5. SERVICES**

- 5.1 OWNA PAY shall render the Services to the Merchant in exchange for the payment of the Fees.
- 5.2 OWNA PAY shall pay all amounts due to the Merchant once OWNA PAY has retained its Fees.
- 5.3 The Merchant shall be bound by the terms and conditions which relate to the Services that it selects during the Application Process. The terms and conditions shall form an annexure to this Agreement.
- 5.4 Due to the nature of the Services, they are provided on an "as is" and "as available" basis. OWNA PAY will take reasonable steps to ensure that the Services are delivered in accordance with this Agreement but shall cannot guarantee that there will be no defects with the Services.
- 5.5 OWNA PAY warrants that the Services comply with the Applicable Laws, PASA and Card Association rules.
- 5.6 The Parties acknowledge that OWNA PAY may amend the terms and conditions related to the Services at any time and at its sole and absolute discretion and shall notify the Merchant of such changes.

## **6. THE MERCHANTS PORTAL**

- 6.1 Once the Application Process is complete, the Acquiring Bank shall allocate login credentials to the Authorised Person to enable the Authorised Person to access the Merchants Portal.
- 6.2 It is the sole responsibility of the Merchant to keep its login credentials private and confidential and to not allow anyone other than the Authorised Person access to such login credentials.

- 6.3 OWNA PAY and the Acquiring Bank shall not be held liable for any loss or damage that the Merchant may suffer as a result of any unauthorised access and/or use of the Merchants Portal using the Merchant's login credentials.
- 6.4 The Merchant shall not insert, or allow the insertion, of Harmful Code into the Infrastructure of OWNA PAY, the Acquiring Bank or the Merchants Portal. If the Merchant allows the insertion of Harmful Code or such Harmful Code is inserted by the Merchant, whether directly indirectly, into the Infrastructure of OWNA PAY, the Acquiring Bank and/or the Merchants Portal, then the Merchant shall bear all costs associated with the containment and elimination of the Harmful Code, including any costs arising from the restoration and reconstruction of all data which may be lost, damaged or destroyed as a result of such introduction, activation or use of any Harmful Code.
- 6.5 OWNA PAY and/or the Acquiring Bank may change the login credentials of the Merchant on instruction by the Merchant.
- 6.6 The Merchant's Personnel must operate the Merchant Portal with the necessary skill and care and shall not allow any unauthorised persons to access the Merchant Portal.

## **7. DORMANCY**

Should the Merchant cease to use the Services for 3 (three) consecutive Calendar Months, the Services shall be deemed dormant. Upon the Services being deemed dormant, OWNA PAY, at its sole and absolute discretion, shall have the right to:

- 7.1 suspend the Services and products immediately without prior notice to the Merchant;
- 7.2 terminate the Agreement with immediate effect without prior notice of such termination and without prejudice to any other rights in law; and
- 7.3 hold the Merchant liable for all outstanding Fees; and
- 7.4 debit the Merchant Bank Account and/or apply set-off for the purpose of settling all outstanding Fees.

## **8. PAYMENT AND PRICING**

- 8.1 The Merchant shall pay OWNA PAY the Fees for the Services as set out in the Fee Schedule.
- 8.2 OWNA PAY shall deduct from the Settlement Funds on each Business Day all Fees as set out in the Fees Schedule, unless otherwise agreed to in writing by OWNA PAY and the Merchant.
- 8.3 OWNA PAY reserves the right to change any of the Fees referred to in **clause 16.1** by giving the Merchant 30 (thirty) days' advance written notice.
- 8.4 The Merchant Commission Fee contained in the Fees Schedule is based on the Merchant's projected turnover as provided by the Merchant during the Application Process.

OWNA PAY reserves the right to re-assess the Merchant Commission Fee after a period of 3 (three) Calendar Months from the Activation Date.

- 8.5 All payments to be made pursuant to this Agreement shall, save as expressly provided for in this Agreement, be made without the cost of transfer of funds and free of exchange or other deduction and without the right of deferment or avoidance by virtue of any counterclaim or set-off.
- 8.6 The Merchant shall maintain complete and accurate records of all amounts billed to, and payments made by it pursuant to each Service in accordance with generally accepted accounting principles applied on a consistent basis.
- 8.7 The Merchant shall provide OWNA PAY with a copy of the Merchant's bank statements within 5 (five) Business Days after receiving such a request.

## **9. THE MERCHANT ACCOUNT**

- 9.1 The Acquiring Bank shall create a Merchant Account on behalf of the Merchant on the Merchant Portal.
- 9.2 All Transactions made through the Services shall be reflected on the Merchant Account the following Business Day.
- 9.3 The Merchant acknowledges that on a Sole Proprietor account, he/she is the sole mandated signatory.
- 9.4 All payments and Fees due to OWNA PAY shall be deducted by OWNA PAY from the Merchant Account. For this purpose, the Merchant hereby authorises OWNA PAY to deduct all Fees due to OWNA PAY from the Merchant Account.
- 9.5 All balances in the Merchant Account shall only be reflected in South African Rand.
- 9.6 The Merchant hereby cedes its rights and claims in and to the Merchant Account to OWNA PAY as security against any repayment of any obligations due by the Merchant to OWNA PAY pursuant to this Agreement, which cession OWNA PAY hereby accepts.
- 9.7 In the event that there are no funds in the Merchant Account, the Merchant hereby authorises OWNA PAY to debit the Merchant's Bank Account to repay any amounts due to OWNA PAY.
- 9.8 Once all amounts and Fees payable to OWNA PAY have been deducted from the Merchant Account, the Net Settlement Funds shall be paid to the Merchant's Bank Account on the next Business Day following the Transaction.
- 9.9 The Merchant will receive a monthly statement, setting out:
- 9.9.1 the record of Transactions in the Merchant Account;
- 9.9.2 amounts transferred to the Merchant's Bank Account by OWNA PAY pursuant to this Agreement; and



9.9.3 the Fees paid by the Merchant to OWNA PAY.

## **10. TRANSACTION PROCESSING**

10.1 The Merchant shall receive a Payment Instruction from the Customer to effect a Payment for goods or services offered by the Merchant using the Services.

10.2 Upon receipt of the Payment Instruction, the Merchant shall send the Payment Instruction to OWNA PAY and request Authorisation to verify that the Customer has enough funds in their Bank Account to effect Payment.

10.3 Should OWNA PAY receive confirmation from the Issuing Bank that it is satisfied that the Transaction meets the necessary requirements, the Issuing Bank shall provide OWNA PAY with an "Authorised" response which OWNA PAY will, in turn, transmit to the Merchant.

10.4 If the Payment Instruction is declined by the Issuing Bank for any reason whatsoever, the Customer will have to contact the Issuing Bank to enquire as to the reason for the decline.

10.5 All Authorisations shall be based on the information supplied by the Merchant in the Payment Instruction. The Merchant therefore warrants that all information in the Payment Instruction are true and accurate. OWNA PAY and the Acquiring Bank shall not be held liable for, and the Merchant hereby indemnifies OWNA PAY and the Acquiring Bank against, any loss or damage suffered by the Customer as a direct or indirect result of the Merchant supplying false and/or incorrect information in the Payment Instruction.

10.6 The Merchant may only request Authorisation at the time of processing a Transaction.

10.7 Authorisation is only valid for each specific Transaction and corresponding amount.

10.8 If the Customer wishes to amend the amount set out in the Authorisation, the Merchant shall cancel the Authorisation and send a new Payment Instruction to OWNA PAY. The Merchant shall not send any Payment Instructions on its own accord without being instructed by the Customer.

10.9 Obtaining an Authorisation code from OWNA PAY is merely a confirmation that there are sufficient funds available in the Customer's bank account for a Transaction. It does not amount, in any way whatsoever, to a warranty or a guarantee by OWNA PAY, that:

10.9.1 the Transaction is not a Fraudulent Transaction;

10.9.2 the Transaction is valid;

10.9.3 the identity of the Customer presenting the Payment Instrument is valid;

10.9.4 OWNA PAY will pay the value of the Authorised Transaction;

10.9.5 the intended Transaction will not be declined at a later stage; or

10.9.6 the Transaction will not be subject to a Chargeback.

- 10.10 OWNA PAY shall not be held liable for any loss or damages that the Merchant may suffer as a result of any of the factors listed in **clause 10.9** above.
- 10.11 The Merchant shall:
- 10.11.1 not process any Transaction that does not relate to a genuine and legal Transaction for goods and/or services;
  - 10.11.2 only process Transactions that are in amounts denominated in South African Rand;
  - 10.11.3 accept each valid Card that is presented to it by the rightful Cardholder in payment for goods and/or services;
  - 10.11.4 not add any extra charges or set any minimum or maximum Transaction amount for any particular Transaction;
  - 10.11.5 retain a copy of both the sales voucher along with the receipt for a period of at least 180 (one hundred and eighty) days from the date of the Transaction;
  - 10.11.6 not attempt to limit its liability by asking or requiring Customers to waive any of their their rights;  
  
not split or disguise Transactions or act in a way in order to avoid obtaining Authorisation from OWNA PAY; and
  - 10.11.7 not engage in undesirable Transaction processing behaviour, including but not limited to, Excessive Authorisation Attempts and nominal amount Authorisations.
- 10.12 Where applicable, the Merchant will be entitled to:
- 10.12.1 reverse Transactions back to the Cardholder on the same day of the Transaction;
  - 10.12.2 refund a Transaction back to the Cardholder up to 90 (ninety) days from the day of the Transaction;
  - 10.12.3 send and/or resend receipts to the Cardholder; and
  - 10.12.3.1 perform any other actions using any functionality that OWNA PAY and/or the Acquiring Bank may add to the Services from time to time.

## **11. MERCHANT'S OBLIGATIONS**

The Merchant undertakes to:

- 11.1 obtain and familiarise itself with the PASA and Card Association rules that are published by the Payment Schemes from time to time;
- 11.2 agrees to be bound, at all times, to this Agreement and the Card Processing Rules (including security rules), and with applicable PCI DSS rules when processing Transactions.

- 11.3 accept all Cards presented to the Merchant by a Customer in payment for goods and/or services;
- 11.4 ensure that it has and shall continue to have and maintain the required Infrastructure in order to make use of the Services and to access the Merchant Portal;
- 11.5 comply with all the Applicable Laws;
- 11.6 use the Services on a reasonable continuous basis;
- 11.7 comply with all PASA and Card Association rules, manuals, policies and processes related to the Services;
- 11.8 facilitate the Transaction on behalf of the Customer in terms of **clause 10** (*Transaction Processing*) above;
- 11.9 provide OWNA PAY with all reports, documents and information as may be required in terms of any Applicable Laws, PASA and Card Association rules and/or Payment Schemes;
- 11.10 make sure that all the Merchant's Personnel who process Transactions are sufficiently trained and skilled to do so;
- 11.11 procure that a Receipt is given or sent to the Customer in respect of every Transaction;
- 11.12 for each Transaction, dispatch the goods or services as soon as reasonably practicable after the Merchant receives an approved Receipt;
- 11.13 display promotional and brand material that OWNA PAY may supply to the Merchant from time to time in such a way that the public can clearly see that the Merchant accepts payment methods offered by OWNA PAY as Services in terms of this Agreement. The Merchant agrees that OWNA PAY may advertise and publish to all potential Customers the Services that the Merchant has chosen in terms of this Agreement;
- 11.14 within 7 (seven) days of being requested to submit a Transaction Document by OWNA PAY, the Customer or any Regulator, provide a copy of the requested Transaction Document to the requesting party;
- 11.15 respond promptly to inquiries and complaints from Customers relating to the Services;
- 11.16 keep all Transaction Documents for at least 180 (one hundred and eighty) days after the date of the Transaction;
- 11.17 not in any way state, imply or create the impression that OWNA PAY or any of its affiliates endorse or guarantee any of the Merchant's goods or services unless such endorsement is given by OWNA PAY or any of its affiliates in writing;
- 11.18 co-operate, communicate and/or interact with the OWNA PAY Personnel to the extent necessary for the purposes of giving effect to the terms and conditions of this Agreement;

- 11.19 use all reasonable endeavours to protect itself, its website and Infrastructure against any Harmful Code;
- 11.20 check all Transaction details and Transaction reports and notify OWNA PAY of any suspected discrepancies;
- 11.21 at all times cooperate with OWNA PAY, should OWNA PAY require the Merchant to offer certain rewards to Customers at the Merchant's cost and on OWNA PAY's behalf;
- 11.22 enter into a Merchant Agreement directly with the Acquiring Bank if required by the Payment Schemes or Applicable Laws;
- 11.23 all times, effect and maintain at its own expense, adequate insurance as may be required by OWNA PAY or by the Applicable Law; and
- 11.24 perform all checks and investigations required by the Applicable Laws and by good industry practice, to ensure that all Anti-Money Laundering, Combatting of the Financing of Terrorism and/or Trade Control Laws requirements are satisfied and complied with.

## 12. OWNA PAY'S OBLIGATIONS

OWNA PAY undertakes to:

- 12.1 provide the Services to the Merchant;
- 12.2 enter into and maintain a relationship with the Acquiring Bank and Third-Party Service Provider;
- 12.3 provide support related to the Services to the Merchant during its operating hours, communicated to the Merchant from time to time;
- 12.4 where applicable, provide the Merchant with the necessary Infrastructure as part of the Services;
- 12.5 pay the Merchant the Net Settlement Funds due to the Merchant.

## 13. AUDIT AND INSPECTION RIGHTS

- 13.1 The Merchant shall keep complete and accurate books and records relating to the performance of this Agreement.
- 13.2 The Merchant grants, to OWNA PAY and to its authorised agents and any statutory auditors (each a "**Permitted Auditor**"), a right of access to the Merchant's Personnel, systems (including the Merchant Portal), service records, retrieval systems and any other information that the Permitted Auditor may reasonably consider to be necessary in order to assess the adequacy of the Merchant's compliance with Applicable Laws and the provisions of this Agreement ("**Compliance Audit**"). A Compliance Audit may be carried out only during normal working hours, on reasonable prior written notice to the Merchant,

provided that a Compliance Audit can be performed more frequently if OWNA PAY has reasonable grounds to believe that the Merchant has not complied with Applicable Laws.

- 13.3 The Merchant shall ensure that each of its subcontractors deals with all Regulators and Permitted Auditors in an open and co-operative way.
- 13.4 OWNA PAY shall use all reasonable endeavours to ensure that the Permitted Auditor complies with the Merchant's reasonable health, safety and security requirements and confidentiality obligations.
- 13.5 Each Party shall use all reasonable endeavours to minimise any disruption to the operations of the Merchant caused by a Compliance Audit.
- 13.6 Following a Compliance Audit, OWNA PAY shall discuss its findings with the Merchant and, if appropriate, without prejudice to any of OWNA PAY's rights and/or remedies, the Parties shall agree to a plan (including a timetable to implement the plan) to address any concerns identified in the Compliance Audit, and the Merchant undertakes to comply with the steps set out in that plan.

#### **14. DISPUTES AND CHARGEBACKS**

- 14.1 In the event of a Chargeback, OWNA PAY may:
  - 14.1.1 deduct the full value of the Chargeback amount against the Reserve Account, subject to **clause 14.2**;
  - 14.1.2 adjust the Fees set out in the Fee Schedule;
  - 14.1.3 delay the payment of any Net Settlement Funds into the Merchant's Bank Account;
  - 14.1.4 terminate, modify or suspend the Services of the Merchant; and/or
  - 14.1.5 debit the amount of any Chargeback and any associated Fees, fines, or penalties applicable or imposed by any Card Association from the Merchant Account, including without limitation, any Reserve Account.
- 14.2 For purposes of **clause 14.1**, OWNA PAY may withhold the amount of the potential Chargeback from settlements due to the Merchant until such time that:
  - 14.2.1 a Chargeback is finally assessed in favour of a Customer, in which case OWNA PAY will retain such funds;
  - 14.2.2 the period of time under Applicable Law or Card Association rules by which the Customer may dispute the Transaction has expired; or
  - 14.2.3 OWNA PAY determines that a Chargeback on the Transaction will not occur.
- 14.3 If OWNA PAY is unable to recover funds related to a Chargeback for which the Merchant is liable, the Merchant will pay OWNA PAY the full amount of the Chargeback immediately upon demand. The Merchant shall pay all costs and expenses, including, without limitation, attorneys' fees on an attorney and own client scale, incurred by OWNA PAY in connection

with the collection of all such amounts. For this purpose, OWNA PAY shall be entitled to debit the full amount of any Chargeback from the Reserve Account. If the Merchant successfully defends any Chargeback claim in any South African court, the Merchant shall also be entitled to claim the Merchant attorneys' fees on an attorney and own client scale.

- 14.4 If a Customer lodges a complaint regarding any Transaction which is considered to be reasonable or returns goods purchased on reasonable grounds, the Merchant may not refuse to exchange or process a Refund for such Transaction.
- 14.5 The Merchant shall, at the Merchant's own cost and expense, satisfy all claims and complaints arising in connection with any Transaction and cause any such claim or complaint that is justified to be satisfied without any undue delay.
- 14.6 The Merchant must provide OWNA PAY with information and documentation required within the timelines communicated by OWNA PAY in order for OWNA PAY to resolve a dispute which has been raised by the Merchant's Customer with OWNA PAY. The Merchant will be bound by any settlement negotiated between OWNA PAY and the Customer and any defences that OWNA PAY raises against the Customer.

## **15. REFUND PROCEDURE**

- 15.1 OWNA PAY may give the Merchant a Refund facility at OWNA PAY's sole and absolute discretion. OWNA PAY can terminate this facility at any time, on verbal or written notice to the Merchant.
- 15.2 If the Merchant is of the reasonable opinion that the Cardholder is entitled to a Refund, or a Refund is requested by the Cardholder, then the Merchant must process the Refund Transaction through the App with the Card present.
- 15.3 The Merchant may give the Cardholder a cash Refund if the Merchant chooses to do so, the Merchant does so at the Merchant's own risk. Any Refund may only take place with the original Card present and may not take place using a different Card.
- 15.4 The amount of any Refund must be calculated at the date of the Refund and must take into account the prevailing exchange rate (where applicable) less any fees applicable at the time.

## **16. FRAUDULENT TRANSACTIONS**

- 16.1 The Merchant must implement fraud prevention measures and establish processes and controls aimed at combating, preventing and detecting fraud when processing Transactions and ensure that the Merchant is adequately protected against fraudulent activities.
- 16.2 The Merchant shall report any Fraudulent Transactions or suspected Fraudulent Transactions to OWNA PAY.

- 16.3 By entering into this Agreement, the Merchant undertakes to co-operate with OWNA PAY in furnishing all information and documentation requested by OWNA PAY to enable OWNA PAY to investigate Fraudulent Transactions or suspected Fraudulent Transactions.
- 16.4 The Merchant must not honour Transactions or accept Cards that the Merchant knows or suspects to be Fraudulent Transactions, fraudulent Cards or Transactions that are not authorised by the Customer.
- 16.5 If the Merchant is suspicious of a Payment Instrument or Customer at any time during the Authorisation process, the Merchant is required to cancel the Transaction.
- 16.6 If a Fraudulent Transaction or a suspected Fraudulent Transaction occurs, or if OWNA PAY suspects the Transaction is for any reason suspicious, erroneous, illegal or an Invalid Transaction, OWNA PAY may:
- 16.6.1 withhold or delay processing of the Transaction;
  - 16.6.2 recover from the Merchant, by debiting the Merchant's Bank Account, notwithstanding that such account may be held at another bank, or applying set-off or net settle amounts due to the Merchant with the value of any Fraudulent Transactions and losses that OWNA PAY incurred or suffered, as a result of, or in connection with any Fraudulent Transaction, Invalid Transaction, erroneous or illegal Transactions processed by the Merchant.;
  - 16.6.3 place a hold on the Merchant's Account;
  - 16.6.4 suspend the Services; or
  - 16.6.5 terminate this Agreement immediately without prior notice and without prejudice to any other rights in law.
- 16.7 The Merchant shall be responsible and liable for all losses and/or damages that may be suffered by the Cardholder and/or the Customer, OWNA PAY or a third party as a result of the direct or indirect fraudulent actions of the Merchant's Personnel.
- 16.8 Without prejudice to the Parties' further obligations under this Agreement, the Parties shall cooperate in good faith as reasonably necessary to investigate possible or alleged instances of fraud, money laundering, terrorist financing, corruption or any other criminal activity, illegal use or abuse of the Services or the services provided by the Merchant to its Customers and will take such reasonable steps as may be required to stop and prevent any such abuse.
- 16.9 In the case of any alleged or proven occurrence of fraud, money laundering, terrorist financing, corruption or any other criminal activity or illegal use or abuse of the Services (an "**Incident**"), the Merchant shall, without prejudice to its other obligations under this use its best endeavours to prevent any future such Incidents, including performing any steps and activities that OWNA PAY may prescribe in its sole and absolute discretion.

## 17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 The Merchant acknowledges that if OWNA PAY makes available to the Merchant any Intellectual Property owned or licensed by OWNA PAY in terms of this Agreement (“**Intellectual Property Rights**”), such Intellectual Property Rights are and shall remain the sole property of OWNA PAY.
- 17.2 OWNA PAY hereby grants a non-exclusive, non-transferable, sub-licensable, royalty-free licence to the Merchant to use the Intellectual Property Rights owned or licensed by OWNA PAY solely to the extent necessary for the receipt and use of the Service pursuant to this Agreement.
- 17.3 Unless expressly permitted in this Agreement, the Merchant agrees that the Merchant will not, nor will it allow or enable any third party to, do, cause, or attempt any of the following:
- 17.3.1 copying, modifying, duplicating, creating derivative works from, framing, mirroring, republishing, downloading, displaying, transmitting, or distributing all or any portion of the Services or OWNA PAY Intellectual Property in any form or media or by any means;
  - 17.3.2 reverse compiling, disassembling, reverse engineering or non-literal copying of all or any part of the OWNA PAY Intellectual Property or otherwise reducing any computer programs forming part of the OWNA PAY Intellectual Property to a human-readable form;
  - 17.3.3 using the OWNA PAY Intellectual Property to create any software, applications, products or systems whose expression is substantially similar to that of the OWNA PAY Intellectual Property or any of the Services;
  - 17.3.4 accessing all or any part of the Services or OWNA PAY Intellectual Property to build a product or service which competes with the Services;
  - 17.3.5 sub-licensing, selling, renting, leasing, transferring, assigning, distributing, displaying, disclosing, commercially exploiting (except as required to achieve the Purpose), or otherwise making the Services or OWNA PAY Intellectual Property, including the Card, Compatible Devices and applicable hardware, available to any third party, unless agreed otherwise in writing with OWNA PAY and subject to the OWNA PAY Card Policies;
  - 17.3.6 challenging the validity or enforceability of, or OWNA PAY’s entitlement to use, any of the OWNA PAY Intellectual Property;
  - 17.3.7 anything which may adversely affect the OWNA PAY Intellectual Property or OWNA PAY’s rights in and to the OWNA PAY Intellectual Property; or



17.3.8 anything which brings or is likely to bring the OWNA PAY Intellectual Property, the Services, OWNA PAY or any other licensee of OWNA PAY, into disrepute or which damages or is likely to damage the rights or interests of OWNA PAY.

17.4 The Merchant agrees that the Services are rented and not sold, and for this purpose, the Merchant agrees that all rights, title and interest, including but not limited to all rights of ownership and copyright in and to the OWNA PAY Intellectual Property shall continue to vest in OWNA PAY and that the Merchant will not, under any circumstances whatsoever, acquire any rights, proprietary or otherwise, in or to the OWNA PAY Intellectual Property.

17.5 In the event that the Merchant becomes aware of any infringement of Intellectual Property by OWNA PAY in the course of rendering the Services or of any unauthorised use of the OWNA PAY Intellectual Property or the Services, the Merchant shall inform OWNA PAY promptly thereof, in writing. To the extent necessary and applicable to protect the OWNA PAY Intellectual Property rights, OWNA PAY shall, at its own discretion, stop providing any OWNA PAY Intellectual Property to the Merchant, cancel this Agreement and refund the Merchant accordingly.

## 18. SORTING AT SOURCE

18.1 “**Sorting at Source**” refers to the Merchant having acquiring relationships with various banks with the intention of processing Transactions directly to the cardholder's bank.

18.2 Holding multiple primary acquiring relationships, which results in the bypassing of clearing is not permitted by PASA.

18.3 The Merchant may not be involved in, develop, allow, process or in any way whatsoever facilitate Sorting at Source.

18.4 The use of multiple acquiring relationships, for disaster recovery or as part of the Merchant's business continuity plan (such as the backing-up of point-of-sale devices) does not constitute Sorting at Source.

18.5 The Merchant's non-compliance with this **clause 18** may result in fines and/or penalties being levied by PASA or the Payment Schemes, which fines and/or penalties will be debited from the Merchant's Bank Account.

## 19. NO PARTNERSHIP

The Merchant agrees that:

19.1 the Merchant is not in partnership with OWNA PAY; and

19.2 the Merchant has no right or ability to bind OWNA PAY or incur any obligations on OWNA PAY's behalf.

## 20. WARRANTIES AND UNDERTAKINGS

20.1 The Merchant warrants and undertakes to OWNA PAY that:

- 20.1.1 the Merchant truthfully and accurately disclosed the nature of the Merchant's business to OWNA PAY during the Application Process;
- 20.1.2 the Merchant's business does not involve offering goods and/or services to or in respect of any restricted business –
  - 20.1.2.1 listed on the PASA website; or
  - 20.1.2.2 which OWNA PAY may identify, from time to time, due to regulatory, risk or operational reasons, and which has been notified to the Merchant by OWNA PAY by no later than 2 (two) Calendar Months before they become enforceable by OWNA PAY;
- 20.1.3 the Merchant is not a "Payment Service Provider" or a "Payment Facilitator", as defined in the national Payments Systems Act No. 78 1998;
- 20.1.4 if the Merchant is a natural person, the Merchant is at least 18 (eighteen) years of age;
- 20.1.5 the Merchant is eligible to register and use the Services and has the right, power, and ability to enter into and perform in terms of this Agreement;
- 20.1.6 each Transaction submitted by the Merchant represents a genuine sale by the Merchant;
- 20.1.7 the Merchant will resolve any consumer dispute or complaint directly with the Cardholder;
- 20.1.8 the Merchant shall comply with the Applicable Laws;
- 20.1.9 the Merchant will not use the Services, directly or indirectly, for any fraudulent purpose or in any manner so as to interfere with the operation of the Services;
- 20.1.10 no Transaction submitted by the Merchant through the Services will involve the Merchant's Cards (except for conducting reasonable test swipes);
- 20.1.11 the Merchant's use of the Services will be in accordance with the terms and conditions of this Agreement; and
- 20.1.12 the Merchant has not been party to a contract with any Card Association which contract was terminated at the direction of such Card Association, any regulatory authority or any court of law.
- 20.2 To the extent permissible by the Applicable Laws, OWNA PAY does not warrant or undertake that:
  - 20.2.1 the Services will meet the Merchant's requirements;
  - 20.2.2 the Services will be available at any particular time or location, uninterrupted or secure;

- 20.2.3 any defects or errors in the Services will be corrected; or
- 20.2.4 that the Services are free of viruses or any other harmful components.
- 20.3 Due to the nature of the Services, the Services are provided on an "as is" and "as available" basis to the maximum extent permitted by Applicable Law. Notwithstanding this, OWNA PAY shall take reasonable steps to ensure that the Services are delivered in accordance with this Agreement and that upon the discovery of any defects, that such defects are addressed timeously.
- 20.4 The use of the Services may have certain risks associated with such use. The Merchant acknowledges and agrees that the use of the Services is at its own risk.
- 20.5 The Service is subject to scheduled Routine Maintenance and any Service interruptions that may be required to undertake such Routine Maintenance.

## 21. LIMITATION OF LIABILITY

- 21.1 Subject to **clause 21.6**, to the maximum extent permitted by the Applicable Law, neither OWNA PAY, its Third-Party Service Providers, or their Personnel, in whose favour this **clause 21** is a third party stipulation, capable of acceptance in writing at any time, shall be liable for any direct, indirect, punitive, incidental, special, consequential, or exemplary damages, including, without limitation, any damages for loss of profits, goodwill, use, data, or other intangible losses, that result from the provision of the Services.
- 21.2 Without limiting the generality of the above, OWNA PAY will not be responsible to the Merchant for any indirect or consequential losses, claims, liabilities, damages, losses, fines, penalties and expenses arising from OWNA PAY's delay or failure to perform its obligations because of:
- 21.2.1 a Force Majeure event;
- 21.2.2 any failure or malfunction of any part of the Service; and/or
- 21.2.3 any delay in an electronic communication, including a communication via cellular telephones, or failure or malfunction in any supporting or shared networks, where applicable.
- 21.3 The Merchant specifically acknowledges that OWNA PAY does not have any control over whether all the Merchant's Transactions will be completed.
- 21.4 The use of any electronic means of communication is entirely at the Merchant's risk.
- 21.5 This **clause 21** does not exclude or limit any liability which, by law, is not capable of exclusion or limitation.
- 21.6 Should the Merchant qualify as a consumer in terms of the Consumer Protection Act No. 68 of 2008, this **clause 21.1** will not apply to any loss directly or indirectly caused through

the gross negligence of OWNA PAY or the Third-Party Service Provider, and their respective Personnel.

## **22. INDEMNITY**

- 22.1 To the fullest extent permitted by law, the Merchant irrevocably agrees to indemnify and hold OWNA PAY harmless from and against any and all claims and losses arising out of or in connection with any claim made or instituted against OWNA PAY by any third party, where such claim arises in relation to, or as a result of:
- 22.1.1 any action or omission of the Merchant or its Personnel breaching Applicable Laws, or causing OWNA PAY to breach Applicable Laws;
  - 22.1.2 any breach of, or non-compliance with, the provisions of **clauses 27** (*Consent to Disclose Information*) and **28** (*Data Protection*);
  - 22.1.3 any actual or alleged breach of the Merchant's warranties or obligations set out in this Agreement, including, without limitation, any breach of OWNA PAY's operational rules or the PASA and/or Card Association rules by the Merchant;
  - 22.1.4 any Transaction submitted by the Merchant through the Services; or
  - 22.1.5 the Merchant's violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property rights.

## **23. DISPUTE RESOLUTION**

- 23.1 The Merchant agrees that any dispute which arises in terms of this Agreement, other than where an interdict is sought or urgent relief obtained from a court of competent jurisdiction, must be dealt with and be formally decided by way of arbitration.
- 23.2 For purposes of this **clause 23.1**:
- 23.2.1 the arbitration will be held at Johannesburg unless otherwise agreed;
  - 23.2.2 the arbitration shall be held in a summary manner with a view to it being completed as soon as possible;
  - 23.2.3 the arbitration shall be subject to the rules of the Arbitration Foundation of South Africa;
  - 23.2.4 there shall be 1 (one) arbitrator who shall be an impartial admitted attorney, whether practicing or non-practicing, of not less than 10 (ten) years' experience, appointed by OWNA PAY;
  - 23.2.5 the Merchant agrees to keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential;
  - 23.2.6 the arbitrator shall be obliged to give his award in writing fully supported by reasons, and the arbitrator's award shall, in the absence of manifest error, be final and binding

on the Merchant and OWNA PAY, and may be made an order of any court of competent jurisdiction;

23.2.7 this **clause 23** does not preclude either Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or *mandamus* pending finalisation of this dispute resolution process, for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of South Africa; and

23.2.8 the costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the arbitration shall be borne by the Merchant and OWNA PAY in equal shares and shall be recoverable, as costs in the cause under the provisions of any award.

23.3 This **clause 23** is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason or cause.

#### **24. ADDRESS FOR SERVICE**

24.1 OWNA PAY nominates the address set out below as the address it will receive all communications required in terms of this Agreement:

2nd Floor Muirfield Building  
Fourways Golf Park  
Roos Street  
Fourways  
Gauteng  
2193

24.2 The Merchant nominates the address set out in the Application Process as the address it will receive all communications required in terms of this Agreement. The Merchant may change this address by notifying OWNA PAY in writing.

#### **25. GOVERNING LAW AND SUBMISSION TO JURISDICTION**

25.1 This Agreement will be governed at all times by the laws of South Africa.

25.2 The Merchant agrees that any legal action or proceedings arising out of or in connection with the terms of this Agreement and/or use of the Services, whether directly or indirectly, will be submit to the jurisdiction of a division of the High Court of South Africa.

#### **26. CONFIDENTIAL INFORMATION**

26.1 "**Confidential Information**" of a Party shall mean all information, in any format or material embodiment which such Party has an interest in keeping confidential and which is disclosed by that Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") prior

to the conclusion of this Agreement, during the existence of this Agreement, in terms of this Agreement or otherwise in connection with this Agreement.

- 26.2 Subject to the provisions of **clause 27**, the Confidential Information shall at all times and until otherwise agreed by the Parties remain the sole property of the **Disclosing Party** and the **Receiving Party** shall take appropriate security measures and keep the Confidential Information in such a way as to prevent its unauthorised disclosure. Without limiting or derogating from either Parties' rights under this Agreement, the Parties understand and agree that they are liable for damages arising to an injured party from unauthorised disclosure of the Confidential Information.
- 26.3 Subject to the provisions of **clause 27**, save for instances in which the Disclosing Party has given prior written consent, each Party understands that it and its representatives (as defined below) may only use Confidential Information for the purposes of this Agreement and may only disclose the Confidential Information:
- 26.3.1 to those of its Personnel and the Personnel of its affiliates ("**Representatives**") who need to know the same for the purpose for which it was shared on the basis that such Representatives will be bound to hold all Confidential Information in confidence to the standard required under this Agreement and any breach of any of the terms of this Agreement by any such person or any other person to whom the Confidential Information is disclosed by the Receiving Party will be treated as if the Receiving Party had committed the breach;
- 26.3.2 as required by law or by any regulation or similar provision or by any competent regulatory authority. In these circumstances, the Receiving Party shall give the Disclosing Party prompt advance written notice of the disclosure (where lawful and practical to do so) so that the Disclosing Party has sufficient opportunity (where possible) to prevent or control the manner of disclosure by appropriate legal means.
- 26.4 Subject to the provisions of **clause 27** the restrictions on disclosure or use of the Confidential Information set out in **clause 26.3** will not apply to:
- 26.4.1 any information which is generally available to the public, other than as a result of a breach of this Agreement;
- 26.4.2 any information which the Receiving Party possessed prior to disclosure by the Disclosing Party and where the Receiving Party was at the time of such disclosure free to disclose that information to others; and
- 26.4.3 any information independently originated by the Receiving Party or acquired by the Receiving Party from a third party in circumstances in which the Receiving Party is free to disclose it to others.

- 26.5 The Merchant shall not issue any publications, press releases, notices or provide OWNA PAY as a “reference site” in any of its marketing and/or materials and/or activities unless OWNA PAY has given its prior written consent.
- 26.6 The Merchant understands and agrees that OWNA PAY may provide the Issuing Bank and other OWNA PAY affiliates with full and detailed accounts and records of all statements, Transactions, carried out, including Payment Instructions, pursuant to this Agreement.
- 26.7 The Merchant understands and agrees that OWNA PAY may share the details regarding the Transactions with the OWNA PAY Personnel, agents, and Third-Party Service Merchants for training, research, analysis and operational business purposes, in accordance with the OWNA PAY Privacy Policy.
- 26.8 The provisions of this **clause 26** shall survive the termination or expiration of this Agreement.

## **27. CONSENT TO DISCLOSE INFORMATION**

- 27.1 By using the Services, the Merchant hereby consents that OWNA PAY may process, collect, use, update, make available, destroy, store, or otherwise deal with and conduct the necessary checks on, the Merchant's Personal Information, including processing such information outside the borders of South Africa, for the purposes of providing services and products to the Merchant, in accordance with any of the terms and conditions for products and services provided by OWNA PAY and the requirements of the law. The Merchant also confirms that the information provided by the Merchant, from time to time, to OWNA PAY is up to date, correct and complete, including information about the Merchant's residency and citizenship for tax purposes and that the Merchant will immediately inform OWNA PAY if this information changes.
- 27.2 “**Information**” includes amongst others, information regarding marital status, national origin, age, language, birth, education, financial history, identifying number, e-mail address, physical address, telephone number, online identifier, social medial profile, biometric information (like fingerprints, the Merchant's signature or voice) and the Merchant's name.
- 27.3 The Merchant confirms that OWNA PAY may process any Information and documentation relating to the Merchant's business or that of the Merchant's Personnel in relation to the services provided by OWNA PAY.
- 27.4 The Merchant agrees that OWNA PAY may access any information about the Merchant that is recorded with any credit bureau, or held by any other division of OWNA PAY, or obtain Fraud reports and checks at any time during the course of the Merchant's relationship with OWNA PAY.

- 27.5 OWNA PAY shall give the Merchant at least 20 (twenty) Business Days' notice of its intention to submit any adverse information concerning the Merchant to any credit bureau.
- 27.6 OWNA PAY will process Personal Information acquired from
- 27.6.1 the Merchant directly;
  - 27.6.2 from the Merchant's use of OWNA PAY's products and Services;
  - 27.6.3 the Merchant's engagements and interactions with OWNA PAY;
  - 27.6.4 public sources; and
  - 27.6.5 third parties;
- 27.7 The Merchant's Personal Information will be kept confidential and will only be processed if:
- 27.7.1 the Merchant consented thereto;
  - 27.7.2 it is necessary to conclude or perform in terms this Agreement or any other existing agreement with the Merchant; and
  - 27.7.3 the law requires it or a third parties lawful interest is being protected or pursued.
- 27.8 By applying for the Service or by using the Service the Merchant confirms that OWNA PAY may process the Merchant's Personal Information for the following reasons:
- 27.8.1 to comply with legislative, regulatory, risk and compliance requirements, including any directives, sanctions and rules, voluntary and involuntary codes of conduct and industry agreements or to fulfil reporting requirements and information requests;
  - 27.8.2 to detect, prevent and report theft, fraud, money laundering and other crimes;
  - 27.8.3 to enforce and collect on any agreement when the Merchant is in default or breach of the agreement's terms and conditions, such as tracing the Merchant or to institute legal proceedings against the Merchant;
  - 27.8.4 to conduct market and behavioural research, such as scoring and analysis to determine if the Merchant qualifies for products and services;
  - 27.8.5 to develop, test and improve products and services;
  - 27.8.6 for historical, statistical and research purposes;
  - 27.8.7 to process Payment Instruments and Payment Instructions;
  - 27.8.8 to do affordability assessments, credit assessments and credit scoring;
  - 27.8.9 to manage and maintain the Merchant's accounts or relationship with OWNA PAY;
  - 27.8.10 to disclose and obtain information from credit bureaus regarding the Merchant's credit history;



- 27.8.11 to enable the Merchant to participate in the debt review process under the National Credit Act No. 34 of 2005 (“**NCA**”);
- 27.8.12 to enable OWNA PAY to deliver goods or documents or notices to the Merchant;
- 27.8.13 for security purposes, identity verification and to check the accuracy of the Merchant's Personal Information;
- 27.8.14 to communicate with the Merchant and carry out the Merchant's instructions and requests; and
- 27.8.15 for Customer satisfaction surveys, promotional and other competitions.
- 27.9 OWNA PAY may share the Merchant's Personal Information with the following persons, who in turn, shall have an obligation to keep the Merchant's information secure and confidential:
  - 27.9.1 attorneys, tracing agents, debt collectors and other persons that assist with the enforcement of agreements;
  - 27.9.2 debt counsellors, payment distribution agents and other persons that assist with the debt review process under the NCA;
  - 27.9.3 payment processing service providers, banks and other persons that assist with the processing of the Merchant's Payment Instructions;
  - 27.9.4 insurers, brokers and other financial institutions that assist with providing insurance and assurance;
  - 27.9.5 law enforcement and fraud prevention agencies and other persons tasked with the prevention and prosecution of crime;
  - 27.9.6 regulatory authorities, government departments, local and international tax authorities and other persons in terms of the law;
  - 27.9.7 credit bureaus;
  - 27.9.8 OWNA PAY's service providers, agents and sub-contractors like couriers and other persons OWNA PAY uses to offer and provide products and services to the Merchant; and
  - 27.9.9 persons to whom OWNA PAY cedes its rights or delegates its obligations in terms of other agreements.
- 27.10 OWNA PAY may process the Merchant's Personal Information outside of the borders of South Africa.
- 27.11 OWNA PAY may process the Merchant's Personal Information using automated means to decide the outcome of the Merchant's application for any product or service, and the Merchant may query the outcome.

- 27.12 The Merchant has the right to access its Personal Information in the possession of OWNA PAY by contacting OWNA PAY. The Merchant has the right to request that OWNA PAY correct or delete any Personal Information OWNA PAY has in its possession in relation to the Merchant if it is inaccurate, irrelevant, excessive, out of date, incomplete, misleading, obtained unlawfully or no longer authorised to be kept.
- 27.13 The Merchant has the right to withdraw the Merchant's consent which allows OWNA PAY to process the Merchant's Personal Information.
- 27.14 The Merchant has the right to file a complaint with OWNA PAY regarding any alleged contravention of the protection of the Merchant's personal information held by OWNA PAY.

## **28. DATA PROTECTION**

- 28.1 By receiving data pertaining to or from a Customer ("**Data**"), the Merchant shall:
- 28.1.1 treat such Data as confidential and not use it other than as strictly necessary in terms of the Agreement;
  - 28.1.2 disclose such Data only to parties involved in the Transaction, only as is necessary to give effect to the Transaction;
  - 28.1.3 keep all systems and media containing Data, whether physical or electronic, in a secure manner, to prevent access by or disclosure to anyone other than the Merchant's authorised Personnel or OWNA PAY;
  - 28.1.4 destroy all such Data that is no longer necessary or appropriate to store in a manner that will render the Data unreadable;
  - 28.1.5 inform OWNA PAY of any Data Compromise; and
  - 28.1.6 at all times be liable for any losses resulting from any misuse of Data by the Merchant and the Merchant's Personnel; including any failure to keep Data secure and any Data Compromise.
- 28.2 The Data protection obligations under this Agreement shall survive the termination of this Agreement for any reason whatsoever.

## **29. MERCHANT CHANGES**

- 29.1 The Merchant shall be required to notify OWNA PAY in writing and not less than 30 (thirty) days prior to the occurrence of:
- 29.1.1 any change of control in the Merchant; or
  - 29.1.2 any change in the nature of the business of the Merchant.
- 29.2 Without limiting or derogating from its further rights under this Agreement, after receiving a notification from the Merchant in terms of **clause 29.1**, or becoming aware of any of the events or circumstances referred to in **clause 29.1**, OWNA PAY shall, be entitled, to the extent required by Applicable Law, to terminate this Agreement.

29.3 The Merchant shall give OWNA PAY 7 (seven) days' written notice of any amendment to the Merchant's banking details.

### 30. FORCE MAJEURE

30.1 A Party (the "**Affected Party**") will not be liable to the other Party for any default or delay in the performance of its obligations under this Agreement if and to the extent that such default or delay is caused by Force Majeure provided however, that the Affected Party is without fault in causing such default or delay, and such default or delay could not have been prevented by the Affected Party through the use of alternative sources, workaround plans or other means including, where the Affected Party is the Merchant, by the Merchant meeting its obligations to perform its disaster recovery responsibilities under this Agreement.

30.2 Following any circumstance of Force Majeure, the Affected Party shall notify the other Party as soon as possible and be excused from further performance or observance of its obligation(s) so affected for so long as such circumstances prevail. The Affected Party shall continue to use its reasonable efforts to recommence performance and co-operate with the other Party in implementing reasonable contingency measures.

30.3 If, in the reasonable discretion of the Party that is not the Affected Party, any circumstance of Force Majeure hinders the performance of any of the Services, or any part thereof, then at its election, it may:

30.3.1 procure such Services from an alternative supplier at its own expense for so long as the circumstance of the Force Majeure, in its reasonable opinion, prevents the Affected Party from performing the Services, or any part thereof; or

30.3.2 if the circumstance of Force Majeure continues for more than 21 (twenty one) consecutive days, the non-Affected Party may terminate the Agreement with immediate effect by way of notice to the Affected Party.

### 31. GENERAL

31.1 This Agreement together with its annexures and schedules sets out the entire agreement between the Merchant and OWNA PAY relating to the Merchant's use of the Services and replaces any other discussions, agreements and/or understandings between the Parties regarding the Merchant's use of the Services.

31.2 OWNA PAY is entitled, at any time, and from time to time, to amend the terms of this Agreement. If OWNA PAY amends the terms of this Agreement, it will immediately take reasonable steps to notify the Merchant of the amendments. It is the merchant's responsibility to review and familiarise itself with the amendments to the terms of this Agreement. All amendments to this Agreement contemplated in this clause will become effective 5 (five) days after the date on which the Merchant received the notification referred to in this **clause** Error! Reference source not found. (*Cooling Off Period*).

- 31.3 If the Merchant does not agree to any amendments to this Agreement, the Merchant may, before the expiry of the Cooling Off Period, exercise the Merchant's right to terminate the Agreement by immediately discontinuing the use of the Services and products and by notifying OWNA PAY in writing of such termination.
- 31.4 If the Merchant does not notify OWNA PAY of the Merchant's termination of the Agreement within the Cooling Off Period, the Merchant's continued use of the Services and products after the expiry of the Cooling-Off Period shall serve as confirmation that OWNA PAY has given the Merchant adequate opportunity to read and understand the Agreement and constitutes the Merchant's acceptance of the terms and conditions of the amended Agreement.
- 31.5 Any Transactions processed after the Cooling Off Period will be governed by the terms and conditions of the Agreement.
- 31.6 No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement.
- 31.7 The Merchant will not be entitled at any time to transfer any of the Merchant's rights or any of the Merchant's obligations set out in this Agreement to a third party without OWNA PAY's prior written consent.
- 31.8 No failure by OWNA PAY to enforce any provision of this Agreement shall constitute a waiver of such provision or affect in any way OWNA PAY's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 31.9 It is agreed that each clause and sub-clause of this Agreement is severable, the one from the other, and if any clause or sub-clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses and sub-clauses shall continue to be of full force and effect.
- 31.10 This Agreement shall be binding on and enforceable by and against the estates, heirs, executors, administrators, trustees, assigns, cessionary, successors in title, liquidators, curators, business rescue practitioners or other legal representatives, as the case may be, of the Parties.