



ENTERED INTO BY AND BETWEEN:

PAYGATE (PTY) LTD

("PayGate")

of

Great Westerford Building

240 Main Road

Rondebosch

7700

SOUTH AFRICA

and

("the Merchant")

of

in respect of the "PayGate" payment gateway payment processing facility

("the System")

BUSINESS DETAILS

Nature of business:

Trading as: Trading period (years & months): Y Y / M M

Registration No: VAT No:

Website URL:

Postal address:

Tel (o/h): Tel (a/h):

Email: Fax:

DIRECTOR / OWNER / MEMBER DETAILS

Name: Mobile:
Tel: Email:
ID or Passport No:

FINANCIAL CONTACT DETAILS

Contact name:
Email:
Telephone:
Mobile:

TECHNICAL CONTACT DETAILS

Contact name:
Email:
Telephone:
Mobile:
PayPartner Number:
(IF REFERRED BY A DEVELOPER OR RESELLER)

THE DETAILS OF MY/OUR ACCOUNT ARE AS FOLLOWS:

Account Name:
Account No: Type of A/C: Savings Current Business
Bank: Branch:
Branch No:

1. INTERPRETATION

- 1.1. Headings and instructive notes are inserted for convenience only and will not be used in the interpretation, or affect the construction of this agreement.
- 1.2. Words and expressions will bear the meanings assigned to them.
- 1.3. Where the Merchant comprises more than one person, the liability of such persons will be joint and several.
- 1.4. The Parties will not be entitled to rely, in any dispute regarding this agreement, on any terms, conditions or representations not expressly contained in this agreement.
- 1.5. The validity and interpretation of this agreement will be governed by the laws of the Republic of South Africa.
- 1.6. Reference to months or years shall be construed as calendar months (i.e. one or more of the twelve periods into which a conventional year is divided) or conventional years (i.e. 1 January to 31 December). Reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" shall be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time. Any reference to "business hours" shall be construed as being the hours between 08h00 (eight hours) and 17h00 (seventeen hours) on any business days. Any reference to time shall be based upon South African standard time being Greenwich Mean Time plus 2 (two) hours.
- 1.7. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day.
- 1.8. No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- 1.9. 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: the application of the eiusdem generis rule is excluded.

- 1.10. This Agreement incorporates the Annexes, which Annexes shall have the same force and effect as if set out in the body of this Agreement. In this Agreement the word "Agreement" refers to this Agreement and the words "clause" or "clauses" and "Annex" or "Annexes" refer to clauses of and Annexes to this Agreement.
- 1.11. Words and expressions defined in any clause shall, for the purpose of that clause, bear the meaning assigned to such words and expressions in such clause.

2. DEFINITIONS

- 2.1. Card - any payment card issued by an Issuer to a Cardholder;
- 2.2. Cardholder - any Person to whom an Issuer has issued a Card;
- 2.3. Commission - the agreed fee that is charged by PayGate to The Merchant for the facilitation of the payment using The Service.
- 2.4. Customer - any customer using The Service to pay for products;
- 2.5. Fraudulent Transactions - any transaction which, in terms of the common law or any applicable statute, may constitute fraud, where either the Bank or The Merchant or a Customer is defrauded.
- 2.6. Party - the Merchant or PayGate as the context indicates;
- 2.7. Parties - the Merchant and PayGate;
- 2.8. Payment Notification - notification of either a successful or unsuccessful payment of a requested order;
- 2.9. Products - any goods or services offered to the Customer on any website or service operated by The Merchant;
- 2.10. Receipts - individually and collectively mean POS Transactions slips and/or Card-Not-Present Receipts;
- 2.11. Rules - include Payment Scheme Rules as well as any rules of PCI SSC if applicable (including PCI DSS), the Payment System Management Body or the Issuer, as may be amended from time to time;
- 2.12. Sanctions - trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctioning Body;
- 2.13. Sanctioning Body - any one or a combination of the following entities:
- 2.13.1. the Office of Foreign Assets Control of the Department of Treasury of the United States of America;
- 2.13.2. the United Nations Security Council;
- 2.13.3. the European Union or any participating member state of the European Union;
- 2.13.4. Her Majesty's Treasury of the United Kingdom; and
- 2.13.5. any other sanctions authority body of a foreign country in whose currency payment may be facilitated;
- 2.14. Sanctioned Country - a country which is subject to general sanctions or embargo by a Sanctioning Body;
- 2.15. Sanctions List - the lists or specially designated national or designated Persons or Entities (or equivalent) held by a Sanctioning Body or authority, and/or any other sanctions lists that PayGate may from time to time deem necessary or be required to screen, verify and process transactions against;
- 2.16. Sanctioned Transaction - the use by the Merchant of amounts in an account for the purpose of financing directly or indirectly the

activities of any person or entity which is on a Sanctions List or which is in a Sanctioned Country, and/or the contribution or making available of amounts paid from an account to any person or entity, if the Merchant has actual knowledge that such Person or Entity intends to use such funds for the purpose of financing the activities of any person or entity which is in a Sanctioned Country and/or is on a Sanction List, in each case to the extent that such financing or provision of funds would be prohibited by Sanctions;

- 2.17. The Service - payment collection service offered by PayGate to The Merchant of which PayGate is the author and proprietor;
- 2.18. The System - the "PayGate" payment gateway payment processing facility;
- 2.19. Transaction - any transaction concluded by a Cardholder;
- 2.20. Transaction documents - all documentation (physical, electronic or otherwise) pertaining to a Transaction, including batch reports, Authorisation slips, Receipts or proof of delivery;
- 2.21. Undesirable Products - any Products offered for sale by The Merchant which PayGate, in its sole discretion, considers undesirable for any reason, including ethical or moral reasons or factors which may have an adverse effect on the reputation of PayGate.

3. SCOPE

- 3.1. This Agreement is legally binding on the Parties.
- 3.2. PayGate has introduced the Payment Collections Service to assist merchants to get paid easily and economically by customers using credit cards and debit cards. PayGate facilitates the transaction and all monies are paid into PayGate's account. PayGate then pays the monies owed to the Merchant (less any service fees as laid out in Clause 4 and Annexure A respectively) to the Merchant's account at intervals agreed to according to the pricing option elected. For avoidance of doubt, this payment may be made to the Merchant's account daily, weekly or monthly depending on the pricing option elected.
- 3.3. If the Merchant has any outstanding Due Diligence requirements, PayGate will withhold these pay outs.
- 3.4. It is The Merchant's responsibility to check that payment has been received correctly and to advise PayGate, within 21 days of notification by PayGate that a payment has been made, if there is any issue with the payment. PayGate will assist The Merchant wherever possible but will not be liable for any error in payment, after this time.
- 3.5. The Merchant, for the purposes of this Agreement, elects the (Starter/Medium/Premium) _____ pricing option.
- 3.6. PayGate merely facilitates the transaction using the System and all disputes relating to the Products, including but not limited to, returns, warranties, price, payment or delivery remains between The Merchant and the Customer.
- 3.7. The risk of fraud of any nature rests with The Merchant and PayGate will deduct amounts "charged back" by the bank from monies owing to The Merchant. If The Merchant is not owed any money by PayGate, then The Merchant will make a payment to PayGate within 30 days to cover the cost of the fraudulent transactions.
- 3.8. PayGate will maintain Payment Card Industry ("PCI") compliance and as such PayGate is responsible for securely storing, processing and transmitting card data to the PCI compliance standard. If/when the Merchant makes use of any PayGate product which results in the

Merchant storing, processing or transmitting card data, then the Merchant shall be responsible for securing this data in accordance with the PCI compliance standard.

3.9 The Merchant is desirous of acquiring the use of the Service subject to the terms and conditions set out hereunder.

4. SERVICE FEE AND PAYMENT

4.1. For the duration of this agreement, unless otherwise agreed in writing between parties, PayGate shall charge the Merchant

4.1.1. a Commission fee for the facilitation of payment through The Service as set out in Annexure A;

4.1.2. where the Merchant elects the Medium or Premium pricing option, a monthly fee payable, in addition to the Commission fee, as set out in Annexure A.

4.1.3 all other pricing option specific service fee's detailed in Annexure A.

4.2 The Merchant hereby acknowledges and agrees that any fee's referred to in Clause 4.1, and, where applicable, any other outstanding amounts owed to PayGate in terms of this Agreement, will be deducted from the monies owed to the Merchant, held in PayGate's account.

4.3 Where the monies owed to the Merchant held in PayGate's account are insufficient to cover the fee's and/or amounts owed to PayGate in terms of this Agreement, the Merchant hereby authorises PayGate to obtain outstanding fee's and/or amounts owed to it by initiating a debit order of the Merchant's account as detailed in the Debit Order Authorisation Form hereto attached. Such debit order will be initiated on the first business day of the month for fee's and/or amounts due in arrears.

4.4 If for whatever reason howsoever arising, a debit order cannot be effected by PayGate, the Merchant warrants that it will pay the outstanding fee's and/or amounts due in terms of this Agreement within 5 (FIVE) business days of notification thereof.

4.5. Transaction history will be made available to The Merchant via PayGate's back office web site detailing all the successful (and unsuccessful) transactions processed by The Service.

4.6. In requesting the payment, The Merchant warrants that –

4.6.1. the information thereon is correct;

4.6.2. there has been due and proper performance by The Merchant of its obligations in terms of the supply of Products to the Customer;

4.6.3. the value thereon is in respect of the undertaking to supply Products and that no additional charges are included;

4.6.4. PayGate is indemnified by The Merchant in respect of all losses, costs, penalties, payments or any other liability whatsoever arising from any dispute, claim or defence raised against PayGate where such dispute, claim or defence is a direct or indirect result of any act or omission on the part of The Merchant;

4.6.5. PayGate will be afforded all reasonably necessary assistance from The Merchant in handling a claim by a Customer against PayGate;

4.6.6. there has been due compliance with all the terms of the agreement.

5. PAYMENT NOTIFICATION

5.1. Customer authorisation will be requested by The Merchant by transmitting to PayGate the relevant order details in the form specified by PayGate from time to time or by capturing the relevant information on PayGate's secure Back Office payment page.

5.2. After authorisation by the Customer

5.2.1. If successful, PayGate will send a successful Payment Notification to The Merchant.

5.2.2. If unsuccessful, PayGate will send an unsuccessful Payment Notification to The Merchant.

6. PROPERTY OF PAYGATE AND INTELLECTUAL PROPERTY

6.1. "Intellectual Property" for purposes of this Agreement means all intellectual property, whether or not registerable, including but not limited to copyright, patents, proprietary material, trademarks, logos, design, software programs, systems, know-how, trade secrets, new proprietary and secret concepts, methods, techniques, processes, adaptations, ideas, technical specifications and testing methods.

6.2. The System remains the property of PayGate and the Merchant shall not reproduce the System in any manner or form nor make an adaptation of the System, nor let, nor offer, nor expose for hire by way of trade, directly or indirectly, a copy of such System.

6.3. Unless specifically authorised in this Agreement or in writing by PayGate, and then only to the extent so authorised, the Merchant shall have a limited right of use of PayGate's Intellectual Property in the use of the System. This limited right shall specifically include the use of PayGate's logo on any website used by the Merchant to accept transactions destined for processing by PayGate.

6.4. The Merchant acknowledges that PayGate will retain ownership of all right, title and interest, including but not limited to all Intellectual Property rights in and to the System and all software programs developed by PayGate and used in the delivery of the Services.

6.5. All Intellectual Property owned by PayGate and all modifications thereto shall at all times remain the sole property of PayGate and the Merchant shall not acquire any rights, title or interest of any kind in any of PayGate's Intellectual Property, other than permitted in terms of this Agreement.

6.6. PayGate grants the Merchant a non-exclusive, non-transferable limited right of use of PayGate's logo in terms of this Agreement and only for the duration of this Agreement. Upon termination this right will expire.

7. WARRANTIES

7.1. In addition to any other warranties that may be present in this Agreement, the Merchant warrants and represents that, as at the signature date of this Agreement –

7.1.1. it has never had a merchant agreement terminated at the direction of any Payment Scheme, regulatory authority or court of law;

7.1.2. it complies and will continue to comply with Sanctions and will not enter into any Sanctioned Transactions, nor with any Person on a Sanctions List;

7.1.3. it complies and will continue to comply with all the Rules (including PCI DSS) and applicable laws;

7.1.4. all information supplied to PayGate is true, accurate and complete in all respects;

7.1.5. it will not do anything, or engage in any activity, which is likely to adversely affect or damage PayGate and/or the Bank's good name and/or reputation.

7.2. The Merchant must-

7.2.1. only request Customer authorisation at the time of and for a

particular transaction;

- 7.2.2. after receipt of a successful Payment Notification, record and release the Products to the customer;
- 7.2.3. ensure that the Merchant obtains a successful Payment Notification for all transactions before releasing any Products to the Customer;
- 7.2.4. verify the status of a payment before releasing the Products where the original Payment Notification message was not received.
- 7.3. The presentation of a Transaction to PayGate in terms of this Agreement will be a warranty by the Merchant that-
 - 7.3.1. the Merchant has supplied the goods and/or services to the value stated on the Receipt to the Cardholder;
 - 7.3.2. no fictitious and/or fraudulent Transactions were processed by the Merchant to increase the Merchant's cash flow;
 - 7.3.3. the Transaction is not illegal;
 - 7.3.4. the Transaction has been authorised by the Cardholder;
 - 7.3.5. there has been due compliance with all the terms of this Agreement; and
 - 7.3.6. it indemnifies PayGate against any claim or liability that may arise from a Transaction dispute.
- 7.4. PayGate shall not be liable to the Merchant nor to any third party for any loss or damage of whatsoever nature, howsoever arising (including consequential or incidental loss or damage which shall include but not be limited to, damage to property or loss of profit, business, goodwill, revenue, or anticipated savings) unless such loss or damage arises from willful misconduct or gross negligence on the part of PayGate.

8. FRAUDULENT TRANSACTIONS

- 8.1. The Merchant undertakes to support PayGate with investigations relating to fraud. The Merchant should provide PayGate with the identity of the customers that purchased, the nature of Products purchased, the delivery address or electronic destination of Products purchased, and any other information reasonably required in the circumstances.
- 8.2. PayGate may at its discretion withhold monies owed to the Merchant for the first month or at any time if/when PayGate suspects foul play or possible fraudulent activity on the account.
- 8.3. In the event of the Merchant engaging in fraud of any kind, PayGate reserves the right to terminate the agreement immediately.

9. UNDESIRABLE PRODUCTS

- 9.1. Where The Merchant offers for sale any Undesirable Products, as detailed and updated from time to time at <https://www.paygate.co.za/undesirables/>, PayGate will be entitled to terminate this Agreement on 2 (two) days notice to The Merchant.

10. PERSONAL INFORMATION AND DATA PROTECTION

- 10.1. For purposes of this clause the following terms shall have the corresponding meanings:
 - 10.1.1. "Confidential Information" means information of whatever nature which is disclosed, directly or indirectly, and in whatever form (including without limitation, written, visual, oral, electronic or on tape or disk) by and relating to one Party, its staff or customers (the "Disclosing Party"), to the other Party (the "Recipient Party") and which shall not be disclosed by the Recipient Party to its agents, representatives, sub-contractors and/or staff, or to any third party

other than for the purpose of providing the services, without the prior written consent of the Disclosing Party.

- 10.1.2. "Data Protection Laws" means all applicable statutes, laws, secondary legislation, regulations pertaining to privacy, confidentiality and/or the protection of Personal Data or corporate data in the Republic of South Africa and any other territory as agreed by the parties in this Agreement;
- 10.1.3. "Personal Data" means any data or information which relates to an individual (including but not limited to the employees and customers of either Party) as defined under the relevant Data Protection Laws and to the extent the Data Protection Laws apply to data or information which relates to a corporate entity, "Personal Data" shall include, but not be limited to, such data and information, and which is supplied to the Recipient Party by the Disclosing Party or stored, collected, collated, accessed or processed on behalf of the Disclosing Party by the Recipient Party.
- 10.2. The Recipient Party acknowledges that in performing in terms of this Agreement, the Recipient Party may be exposed to Confidential Information relating to the Disclosing Party as well as the Personal Data of the Disclosing Party's employees, customers and clients. The Parties specifically record that all Personal Data provided by the Disclosing Party to the Recipient Party, or to which the Recipient Party may be exposed, shall constitute Confidential Information and where applicable, intellectual property belonging to the Disclosing Party.
- 10.3. The Recipient Party hereby warrants in favour of the Disclosing Party that it shall at all times strictly comply with all Data Protection Laws and with all the provisions and requirements of any Disclosing Party data protection policies and procedures which may be in force from time to time.
- 10.4. The Recipient Party hereby warrants and undertakes that it shall not, at any time, copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with, receive, record, organize, update, modify, retrieve, alter, consult on or over, disseminate, distribute, merge, link, restrict, degrade, erase or in any other manner use and/or process the Personal Data for any purpose other than with the express prior written consent of the Disclosing Party (which consent shall not be unreasonably withheld in the circumstances), and then only to the extent necessary to perform under this Agreement.
- 10.5. The Recipient Party further warrants that it shall ensure that all its systems and operations which it uses to perform under this Agreement, including all systems on which Personal Data is copied, compiled, collected, collated, processed, mined, stored, transferred, altered, deleted, interfered with, received, recorded, organized, updated, modified, retrieved, altered, consulted on or over, disseminated, distributed, merged, linked, restricted, degraded, erased or in any other manner used and/or processed in performance under this Agreement, shall at all times be of a minimum standard required by law and be of a standard no less than the standards which are in compliance with the international best practice for the protection, control and use of Personal Data.
- 10.6. In addition to and notwithstanding any other right or obligation arising under this Agreement, the Recipient Party shall (and shall ensure that its agents, representatives, sub-contractors and/or staff shall) take all reasonable appropriate technical and organisational security measures to ensure that Personal Data is protected against

loss, destruction and damage, and against unauthorised or accidental access, processing, erasure, transfer, use, modification, disclosure or other misuse, and that only staff authorised by the Disclosing Party have access to Personal Data.

10.7. The Recipient Party shall (and shall ensure that its agents, representatives, sub-contractors and/or staff shall) in respect of Personal Data:

10.7.1. comply with any reasonable request made or direction given by the Disclosing Party;

10.7.2. use Personal Data only for the purposes of fulfilling its obligations under this Agreement and not retain Personal Data for any longer than is necessary for these purposes;

10.7.3. not disclose Personal Data without the prior written authority of the Disclosing Party (except for the purposes of fulfilling its obligations under this Agreement), and immediately notify the Disclosing Party where it becomes aware that a disclosure of Personal Data may be required by law;

10.7.4. not transfer Personal Data which has been obtained by or made available to the Recipient Party within one country outside that country, or allow persons outside that country to have access to it, without the prior written approval of Disclosing Party.

10.8. The Disclosing Party has the right to access the Disclosing Party's Personal Data held by the Recipient Party. The Recipient Party shall grant the Disclosing Party such access during office hours within a reasonable time after receiving a written request for access.

10.9. The Recipient Party indemnifies the Disclosing Party and shall keep the Disclosing Party fully and effectively indemnified (and shall pay such sums to the Disclosing Party as would indemnify and keep the Disclosing Party indemnified) in respect of any type of liability, loss, damage, claims, demands, actions, charges, fines, penalties and costs (including legal/attorney fees) and expenses incurred by the Disclosing Party arising out of or in connection with any intentional or negligent breach of the Recipient Party's, its agents, representatives, sub-contractors and/or staff's obligations under this clause.

10.10. Material and information will not be seen as confidential if it lawfully is or becomes part of the public domain, the Disclosing Party agrees it may be disclosed, it subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information, or is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

10.11. This clause 9 shall survive termination of this Agreement.

11. LIMITATION OF LIABILITY

11.1. As recorded in paragraph 3.3 above, PayGate acts as an intermediary between the Merchant and the Bank, acquires information supplied from the Merchant and the Bank and the System processes transactions in good faith.

11.2. PayGate does not guarantee the correctness of information acquired or supplied and can in no way be held liable by the Merchant for any damages suffered by the Merchant acting upon such information.

11.3. Any dispute between the Bank and the Merchant howsoever arising, which includes, but is not limited to, a dispute regarding:

11.3.1. the value of reversals of invalid sales ("charge backs");

11.3.2. any discount;

11.3.3. any refund due to a cardholder;

11.3.4. any overpayment;

11.3.5. the value of any transaction;

11.3.6. the debiting of any Merchant's account;

is deemed to be a dispute between the Bank and the Merchant and PayGate is not a party thereto.

11.4. PayGate will in no way be held liable by the Merchant for any damages suffered by such Merchant pursuant to such dispute.

11.5. Notwithstanding the above, the Merchant will be liable to PayGate for any act or omission of the Merchant, or its employees, agents or representatives that causes loss or damage to PayGate;

11.6. Neither Party will hold the other Party liable for any loss or damage (including consequential loss or special damages) suffered by a third party or its Customers.

11.7. Any dispute, unless resolved amongst the Party's, will be resolved in accordance with the provisions of Clause 12 of this Agreement.

12. DISPUTE RESOLUTION PROCESS

12.1. Informal dispute resolution: Prior to the initiation of formal dispute resolution procedures as outlined in this Agreement, the Parties shall first attempt to resolve their dispute informally as follows:

12.1.1. Upon the written request of a Party, any dispute that arises between the Parties shall be referred to a joint committee appointed by PayGate and the Merchant. The joint committee shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The joint committee shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding. During the course of discussion, all reasonable requests made by one Party to another for non-privileged information, reasonably related to this Agreement, shall be honored in order that each of the Parties may be fully advised of the other's position. The specific format for the discussions shall be left to the discretion of the joint committee.

12.1.2. Should the Parties not resolve the dispute in terms of clause 11.1.1 within a period of 14 (fourteen) days, the dispute shall be referred by the joint committee to the Chief Executive Officer (CEO) of PayGate and a suitable Executive Manager from the Merchant, who shall follow a dispute resolution process similar to the process described in clause 11.1.1.

12.1.3. Formal proceedings for the resolution of a dispute may not be commenced until the earlier of the Parties referred to in clause 11.1.2 concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely, or 14 (fourteen) days after the matter has been referred to them pursuant to clause 11.1.2. This period shall be deemed to run notwithstanding any claim that the process described in this clause was not followed or completed.

12.2. Formal Dispute Resolution: Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute that arises in regard to –

12.2.1. the interpretation of; or

12.2.2. the carrying into effect of; or

12.2.3. any of the Parties' rights and obligations arising from; or

12.2.4. the termination or purported termination of or arising from the

- termination of; or
- 12.2.5. the rectification or proposed rectification of this Agreement, or out of or pursuant to this Agreement or on any other matter which in terms of this Agreement requires agreement by the Parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration.
- 12.3. That arbitration shall be held –
- 12.3.1. with only the Parties and their representatives including legal representatives, present thereat;
- 12.3.2. in Cape Town or Johannesburg, South Africa.
- 12.4. The arbitration shall be subject to the arbitration legislation for the time being in force in South Africa.
- 12.5. The arbitrator shall be, if the matter in dispute is principally –
- 12.5.1. a legal matter, then an impartial practising advocate of not less than 15 (fifteen) years' standing, or an impartial practising attorney of not less than 15 (fifteen) years' standing;
- 12.5.2. an accounting matter, then an impartial practising chartered accountant of not less than 15 (fifteen) years' standing;
- 12.5.3. any other matter, then an independent person agreed upon between the Parties.
- 12.6. If the Parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, the arbitrator shall be nominated, at the request of either Party by the President for the time being of the Law Society of the Western Province (or its successor). If that person fails or refuses to make the nomination, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the High Court is expressly empowered to do so.
- 12.7. If the Parties fail to agree whether the dispute is a legal, accounting or other nature within 10 (ten) days after the arbitration has been demanded, it shall be considered a matter referred to in clause 11.5.2.
- 12.8. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 12.9. The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 12.10. The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 12.11. The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

13. BREACH

- 13.1. In the event of either Party ("the Breaching Party") committing a breach of a material term of this Agreement, and who fails to rectify such breach within 14 (fourteen) days of receiving written notice of the breach from the other Party ("the Affected Party"), then the Affected Party will, at its option, be entitled – without prejudice to any of its rights - to either
- 13.1.1. cancel this agreement without further notice and to take such further steps, including suspension of access to the System, which may be appropriate in the circumstances;
- 13.1.2. or claim specific performance;

- and in either case the Affected Party may claim damages reasonable in the circumstances.
- 13.2. In addition to any and all other legal remedies which are available to the Parties, either Party may immediately cancel this Agreement if the other Party is liquidated, placed under business rescue or is sequestrated; effects a general compromise or any other arrangement with its creditors; suffers any judgment to be granted against it and fails to meet the judgment or to take steps to set it aside or rescind it within 30 (THIRTY) days of it having been granted; and/or ceases to carry on business.
- 13.3. Notwithstanding the provisions of this Agreement, should PayGate suspect that the Merchant is using its Services while being involved directly or indirectly in any unlawful activities, PayGate reserves the right to suspend its Services immediately and/or terminate the Agreement, pending the outcome of an investigation at the sole discretion of PayGate.

14. DURATION AND TERMINATION

- 14.1. This Agreement –
- 14.1.1. supersedes all prior agreements entered into between PayGate and The Merchant; and
- 14.1.2. will be effective from date of signature of the Agreement and shall remain in force for an indefinite period until terminated by either Party on a minimum of 30 (THIRTY) days' written notice to the other, whereafter the Merchant's access to the System shall be terminated by PayGate upon expiry of the notice period and all monies owing to PayGate or the Merchant shall be paid by the Merchant or PayGate (as the case may be) within 30 (THIRTY) days of the date of termination.
- 14.2. PayGate shall be entitled without notice, to terminate the agreement immediately in the event of The Merchant ceasing to trade or committing an act of insolvency.
- 14.3. Termination of this agreement will be subject to and not affect the obligations of the respective parties incurred or arising prior to such termination becoming effective.

15. TERMS AND CONDITIONS

- 15.1. The parties record that the Terms and Conditions as contained in the PayGate website form part of and are incorporated in this Agreement. The Terms and Conditions referred to are subject to change from time to time. In the event of PayGate contemplating any change to the Terms and Conditions, then PayGate undertakes to give the Merchant 7 (SEVEN) days written notice of such change.
- 15.2. PayGate and/or the Bank are entitled to request, all the Transaction documents which show that a Customer has authorised a specific Transaction, and the Merchant will furnish such documents to PayGate and/or the Bank within 7 (SEVEN) days of the request.
- 15.3. The Merchant is prohibited from allowing any other party access to the Services through the Merchant's merchant number with PayGate.
- 15.4. The Merchant shall be responsible and liable for each Terminal-ID and each one will be governed by this Agreement.

- 15.5. The Merchant may not at any time use the Services in contravention of any law, nor in contravention of any obligation imposed by the Merchant as between the Merchant and any Bank.
- 15.6. The Merchant acknowledges that PayGate does not assume any responsibilities the Merchant may have under any agreement concluded between the Merchant and any Bank.
- 15.7. The Merchant hereby agrees to display the PayGate logo, including a link to the PayGate website, on any website used by the Merchant to accept transactions destined for processing by PayGate.

16. GENERAL

- 16.1. No extension of time, waiver, indulgence, release from liability, compromise or other arrangement granted or allowed by either Party shall constitute a waiver or novation of that Party's rights nor shall it in any way prejudice such Party's rights in terms hereof.
- 16.2. Should any provisions of this Agreement be held to be invalid, unlawful or unenforceable, such provisions will be severable from the remaining provisions of this Agreement which will continue to be valid and enforceable. If any provision of this Agreement held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.
- 16.3. For the purpose of this Agreement, including the giving of notices and the serving of legal process, the Merchant chooses its domicilium citandi et executandi to be the physical address set out on page 5 or in the Application Form hereto and PayGate chooses Great Westerford, 240 Main Road, Rondebosch, Cape Town, 7700.
- 16.4. A notice in terms of this Agreement shall be presumed to have been duly given, if delivered, on the date of delivery, if sent by post, 5 (five) business days after posting, if sent by facsimile or e-mail, on the day that the facsimile or e-mail is transmitted.
- 16.5. The Merchant may not cede any rights or delegate any obligations in terms of this Agreement without PayGate's prior written consent.
- 16.6. PayGate or any person to whom its rights or obligations have been ceded, delegated or assigned, may cede, delegate or assign any of its rights or obligations to any person or to more than one person within the DPO PayGate Group. Should this happen, the Merchant will be notified thereof in writing.

17. POPI

- 17.1. For the purpose of this Clause:
 - 17.1.1. "POPI" means the Protection of Personal Information Act No. 4 of 2013, as amended from time to time, including any regulations and/or code of conduct made under the Act;
 - 17.1.2. "Personal Information" shall have the meaning ascribed to it in Chapter 1 of POPI;
 - 17.1.3. "Privacy and Data Protection Conditions" shall mean the 8 statutory prescribed conditions for the lawful Processing of Personal Information which is entered into a Record and such conditions are listed in section 4(1) of POPI and are dealt with in detail in Part A of Chapter 3 of POPI;
 - 17.1.4. "Processing" shall have the meaning ascribed to it in Chapter 1 of POPI;
 - 17.1.5. "Record" shall have the meaning ascribed to it in Chapter 1 of POPI.

- 17.2. The parties shall fully comply with their statutory obligations contained in POPI when Processing Personal Information and such Personal Information is entered into a Record.
- 17.3. The parties shall ensure that the Privacy and Data Protection Conditions are strictly adhered to when Processing Personal Information.
- 17.4. The Merchant hereby consents to and authorises PayGate to process its Personal Information, which includes but is not limited to, the name, identity or registration number, banking details, of the Merchant and its customers, for the purpose of: performing, managing and maintaining the Services in terms of this Agreement.
- 17.5. The Merchant hereby consents to and authorises PayGate to conduct credit checks with credit bureau on the Merchant and its directors/members/proprietors.
- 17.6. Without limiting the foregoing, the Merchant understands that the Personal Information given to PayGate is to be used to assess credit worthiness of the Merchant.
- 17.7. The Merchant confirms that the information given to PayGate is accurate and complete. The Merchant further agrees to update the information supplied as and when necessary in order to ensure the accuracy of the above information failing which PayGate will not be liable for inaccuracies.
- 17.8. PayGate will take appropriate security measures to ensure the Personal Information is kept secure and protected against unauthorized use or unlawful processing.
- 17.9. PayGate will not use or disclose the Personal Information to third parties without the Merchant's consent, unless the use or disclosure is required to for the purposes set out in this Clause 16; to comply with applicable law, order of court or legal process; and/or disclosure is necessary to protect and defend the legitimate interests of PayGate.
- 17.10. The Merchant consents to PayGate collecting Personal Information, directly from the Merchant and/or from any other source of and regarding the Merchant, for the purpose set out in this Clause 16.

18. JURISDICTION

- 18.1. This agreement shall be governed by the laws of the Republic of South Africa.

PAYGATE	THE MERCHANT
SIGNED at <input type="text"/> on this <input type="text"/> day of <input type="text"/> of 20 <input type="text"/> .	SIGNED at <input type="text"/> on this <input type="text"/> day of <input type="text"/> of 20 <input type="text"/> .
On behalf of PAYGATE (PTY) LTD. <input type="text"/> <input type="text"/> Full Name Signature	On behalf of MERCHANT and duly authorised. <input type="text"/> <input type="text"/> Full Name Signature
AS WITNESSES: 1. <input type="text"/> 2. <input type="text"/>	AS WITNESSES: 1. <input type="text"/> 2. <input type="text"/>
	THE MERCHANT OFFICIAL SIGNATORY FULL NAME: <input type="text"/> ID NUMBER: <input type="text"/> DESIGNATION: <input type="text"/>

PAYCOLLECT	STARTER	MEDIUM	PREMIUM
SET-UP FEE	No Charge	No Charge	No Charge
MONTHLY FEE	Free	R49.00	R99.00
PAY OUT FEE	R8.00	No Charge	No Charge
REFUND FEE <small>(Per Transaction)</small>	R25.00	No Charge	No Charge
CHARGEBACK FEE <small>(Per Transaction)</small>	R35.00	R35.00	R35.00
SETTLEMENT PERIOD	Weekly	Daily Weekly Monthly	Daily Weekly Monthly

PAYMENT METHODS

CARD TRANSACTION <small>(Credit & Debit)</small>	3.5%	3.25%	3.0%
VISA CHECKOUT	Same as Card	Same as Card	Same as Card
SID INSTANT EFT	2.0%	2.0%	1.5%
SCODE	3.9% + R4.00	3.9% + R4.00	3.9% + R4.00
MASTERPASS	Same as Card	Same as Card	Same as Card
ZAPPER	3.5%	3.5%	3.5%
MOBICRED	3.5%	3.5%	3.5%

VALUE ADDED PRODUCTS

PAYPROTECTOR	No Charge	No Charge	No Charge
PAYFX	R1.00	R0.75	R0.60
PAYVAULT	R250.00 (per month) per 1000 Cards stored		
PAYBILL	As per the selected Pricing Model - Starter, Medium or Premium		

MERCHANT KYC INFORMATION CHECKLIST

Please scan and email the following information to paycollect@paygate.co.za.

- 1 Copy of CK1 or Company Registration Document
- 2 Copy of Utility Bill showing company name and address
- 3 Copies of Director/Member ID's/Passports
- 4 Copy of either Cancelled Cheque or bank statement not older than three months addressed to the director or company to verify bank account listed on contract.

PRICING MODEL & PAYOUT PERIOD SELECTION

Pricing Option:

Starter

Medium

Premium

Settlement Period:

Weekly

Daily

Weekly

Monthly

Daily

Weekly

Monthly

INTEGRATION TYPE

PayWeb

PayHost Web

PaySubs

Shopping Cart (If yes please specify)

VALUE ADDED PRODUCT SELECTION

PayFX

PayVault

PayBill