1. INTRODUCTION

1.1. VPS, ('VPS'), and the Merchant wish to enter into the following Agreement for the purposes of enabling the Merchant to accept card and EFT payments at their respective establishments with the use of a either a VPS' Point of Sale Devices, QR Code or an E-commerce/Website channel.

1.2. This Agreement contains important information about the rights and obligations relating to the Merchant and VPS in respect of the Acquiring Services and products delivered by VPS. A copy of the Service terms and conditions are available on VPS' website and can be obtained by email at the Merchant's request. It is the Merchant's duty to speak to or contact VPS if they do not understand any part of the terms and conditions prior to entering into this Agreement

1.3. This Agreement creates a legal relationship between the Merchant and VPS.

1.4. The parties wish to record the terms and conditions applicable to both the card payment and EFT facilities offered by VPS to the Merchant and the rental of the equipment from VPS by the Merchant.

1.5. In its role as a Payment Facilitator, VPS has entered into agreements with the Associations, the Acquiring Bank and the Third Party Service Providers.

1.6. The Associations and PASA require that the Merchant, VPS and the Acquiring Bank comply with the Card Processing Rules as provided by the Associations and PASA, which may be amended from time to time. By entering into this Agreement, the Merchant agrees to be bound, at all times, to this Agreement and the Card Processing Rules.

1.7. In terms of the Merchant's relationship with VPS, the Merchant agrees that :

1.7.1. The Merchant is not in partnership with VPS; and

1.7.2. The Merchant has no right or ability to bind VPS or incur any obligations on VPS' behalf.

2. DEFINITIONS AND INTERPRETATION

2.1. The following terms have the following meanings, namely:

2.1.1. **Acquiring Bank or Acquirer** means Nedbank Limited with registration number 1951/000009/06 which VPS is registered with as a Payment Facilitator to provide the Services contemplated by this Agreement;

2.1.2. **Activation Date** means the date the Merchant is activated to use the Service;

2.1.3. **Agreement** means this written agreement and all annexures and schedules to this Agreement;

2.1.4. **Amex** means American Express, a financial services corporation;

2.1.5. **Applicable Laws** means all applicable laws, rules, codes, regulations, and formal regulatory guidelines and standards, made by a Regulator, legislature or other public authority with binding effect in force from time to time (construed having regard to related guidance and codes of practice issued or approved by a Regulator or other public body) and applicable to a Party and relevant to this Agreement;

2.1.6. **Application Process** means a process where the Merchant provides VPS with all the required information to access the Services through:

2.1.6.1. a process facilitated by an authorised representative of VPS; or

2.1.6.2. a self-service process available to the Merchant on the URL www.vodacom.co.za;

2.1.7. **Association Rules** means the by-laws, rules, and regulations published and updated by the Associations from time to time;

2.1.8. **Associations** mean the card associations supported by the Acquiring Banks from time to time for the purposes of processing Transactions which includes but are not limited to MasterCard, Visa, Amex and Diners;

2.1.9. **Authorise or Authorisation** means the process whereby the Merchant transmits a message to VPS and VPS in turn requests the Issuing Bank to approve the Payment Instruction;

2.1.10. **Authorised Person** means the person nominated during the Application Process as the primary person responsible for managing the Merchant Account;

2.1.11. **Business Day or Business Days** 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;

2.1.12. **Budget Transaction or Budget Transactions** means a Transaction where the Issuing Bank authorises the Customer to make a payment over an extended period;

2.1.13. **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;

2.1.14. **Card** means any of the cards supported by the Associations from time to time for the purposes of processing Transactions;

2.1.15. **Cardholder** means the person or entity in whose name a Card is issued by an Issuing Bank;

2.1.16. **Card Not Present Transaction or Card Not Present Transactions or CNP** Transaction or CNP Transactions means a Transaction which takes place without a physical Card being presented to the Merchant by the Customer;

2.1.17. **CAVV** means Customer Authentication Verification Value, the last 3 (three) digit number on the back of a Card;

2.1.18. **CVV or Card Verification Value** means the last 3 (three) digit number printed on the reverse of a Card;

2.1.19. **Change of Control** means, in relation to a Party ("the first party"), any event which results in a third party acquiring, or having the potential or right to acquire, the direct or indirect Control of the first party (but excluding any event which results in a third party acquiring, or having the potential or right to acquire, Control of a parent company having direct or indirect Control of the first party where such parent company has all of its equity shares listed on a recognised stock exchange). For the purposes only of this definition, references in the definition of "Control" shall be deemed to be references to 30%;

2.1.20. **Control** in relation to any party, means (i) the holding or beneficial ownership of 30% or more of the ordinary shares (or other like instruments) in that party's issued share capital (or like ownership structure), or the holding of a participation interest of 30% or more in that party where it is unincorporated; (ii) the right or ability to direct or otherwise control or exercise 30% or more of the voting rights attaching to that party's issued ordinary shares (or other like instruments), or the right or ability to direct or otherwise control or exercise the voting rights attaching to a participation interest of 30% or more in that party; (iii) the right or ability to appoint or remove 30% or more of the board of directors of that party (or such other body legally representing such party) or to appoint or remove individuals able to exercise 30% or more of the votes exercisable at the meetings of board of directors of such party; (iv) the right or ability to direct or generally manage, or to cause the direction or general management of, the affairs of such party; or (v) the ability to otherwise materially influence the policy of an entity in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in (i) through (iv) above, and "Controls" and "Controlled" shall have corresponding meanings;

2.1.21. **Chargeback** means a procedure where an Issuing Bank charges a Transaction back to the Acquiring Bank and subsequently debits the Merchant in accordance with the Association rules;

2.1.22. **Compatible Device** means the device(s) as outlined on the Website, and include all devices used to facilitate and provide the Services, including the POS device, QR Code and E-commerce facilities;

2.1.23. **Cooling Off Period** means a period of 5 (five) Business Days from the Effective Date;

2.1.24. **Confidential Information** means, in relation to a party, any information of a confidential and/or commercially sensitive nature, howsoever obtained or received and whether or not marked confidential, including (i) all records, files, analysis, documents, software, computer or electronic data disks or tapes, test data, printouts, processes, designs, file layout, technical bulletins, manuals, diagrams, formulas, research, inventions, patents and discoveries reasonably related to the Parties' businesses or products and services of the Parties that have not been publicly released, (ii) technical, financial, business plan or customer information, including standard periodic financial statements and analyses, budgets, tax returns, benefit and compensation plans, customer list(s) and contact names, functional and technical specifications; and (iii) other valuable information disclosed by one of the Parties to the other, in whatever form;

2.1.25. **Customer** means the consumer making a purchase from the Merchant by using the Service;

2.1.26. **CVC** or **CVC 2** means Card Verification Check;

2.1.27. **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;

2.1.28. **Diners or Diners Club** means Diners Club International, a financial services corporation;

2.1.29. **E-commerce** means electronic commerce and includes a transaction performed through electronic media in a non-face-to-face environment;

2.1.30. **Effective Date** means the date on which this Agreement is accepted by the Merchant;

2.1.31. **EFT or Electronic Funds Transfer** means the electronic transfer of money from the Customer' bank account into the Merchant's Merchant Account;

2.1.32. **EFT Confirmation** means the automated notification of payment generated by the Customer's bank and notified to the Merchant via the VPS' Payment Gateway upon completion of an EFT by the Merchant's Customer;

2.1.33. **EFT Transaction** means an assisted EFT which is an EFT facilitated by OZOW;

2.1.34. **eReceipt** 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 email to the Merchant and the Customer;

2.1.35. **Excessive Authorisation Attempts** means each Authorisation: (i) after 20 (twenty) previously declined Authorisations attempts; (ii) made on the same Card; (iii) made at the same Merchant; and (iv) made within a 24 (twenty-four) hour period, as amended from time to time;

2.1.36. **Fees** means Merchant Commission Fee, Chargeback Fees and any ad hoc Fees charged by VPS from time to time;

2.1.37. **Fee Schedule** means the Fees agreed to during the Application Process which VPS will charge the Merchant for the Services as sent to the Merchant by VPS;

2.1.38. **FICA Documentation** means all documentation requested by VPS from the Merchant to enable VPS to comply with its contractual obligations to the Acquiring Bank and to enable the Acquiring Bank to comply with its obligations in terms of the Financial Intelligence Centre Act, No. 38 of 2001;

2.1.39. **Fraudulent Transaction means**: any transaction that constitutes fraud under the law and/or common law (irrespective of whether or not the Card or EFT Transaction was Authorised or whether or not an Authorisation code number was provided to the Merchant by Vodacom); a Transaction that is processed using a Customer's financial detail, account information or Payment Instrument which is not authorised by the Customer; or the use of a card which has not been issued by a genuine Card issuer;

2.1.40. **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, act of God, 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;

2.1.41. **Harmful Code** means "viruses", "Trojan horses", ransom ware, malware, and spyware, and computer code, instructions, devices or other materials that (i) are designed to disrupt, disable, harm or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation or use of the VPS Infrastructure or Merchants Portal, or (ii) would disable the whole or any part of the VPS Infrastructure or Merchants 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; or (iii) would permit an unauthorised party to access the VPS Infrastructure or Merchants Portal to cause such disablement or impairment, or (iv) contains any other similar harmful, malicious or hidden procedures, routines or mechanisms; or (iv) can cause or allow unauthorised damage or access to, interference with, or loss, theft, destruction or corruption of, VPS Infrastructure or Merchants Portal;

2.1.42. **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;

2.1.43. **Invalid Transaction** means a Transaction which arises as a result of the following (irrespective of whether or not the card or EFT Transaction was Authorised or whether or not an Authorisation code number or EFT Confirmation was provided to the Merchant by VPS):

2.1.43.1. an act and/or omission by the Merchant and/or the Merchant's employees which results in a loss or Chargeback;

2.1.43.2. the use of a Payment Instrument or EFT by a person other than the lawful Customer;

2.1.43.3. processing a Transaction without VPS' prior Authorisation;

2.1.43.4. a Transaction where the date of the Transaction is earlier than the start date shown on the Card;

2.1.43.5. accepting Cards which are: defaced; blank; illegible or Cards from which the embossed legends are not readable or legible;

2.1.43.6. accepting a Card which has expired;

2.1.43.7. accepting a Card, EFT or Payment Instrument for any purpose other than current Transactions;

2.1.43.8. duplicating a Transaction;

2.1.43.9. a Transaction for which the Merchant do not have a corresponding Receipt or eReceipt;

2.1.43.10. a Transaction for which the Receipt is illegible;

2.1.43.11. a Transaction for which the Receipt or eReceipt is materially incomplete or different from the Receipt or eReceipt provided to the Customer;

2.1.43.12. a Transaction for which the Merchant launder Receipts or eReceipts;

2.1.43.13. a Transaction which does not comply with the obligations set out in the Association and / or PASA Rules;

2.1.43.14. a Transaction for which the goods or services were not delivered within the agreed period or at all;

2.1.43.15. a Transaction where the supply of goods and/or services is for any reason illegal;

2.1.43.16. a Transaction which was performed by the Merchant's employee(s) not authorised to do so; or

2.1.43.17. a Transaction which occurred as a result of an error on the Merchant or the Merchant's employee(s) or part;

2.1.43.18. a Fraudulent Transaction; or

2.1.43.19. 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 VPS;

2.1.43.20. Should a Transaction be regarded as an Invalid Transaction or incomplete, VPS has the right to charge each such Invalid Transaction or incomplete Transaction back to the Merchant and the Merchant will be held liable for all losses incurred as a result of the Invalid Transaction or incomplete Transaction. VPS further has the right to immediately terminate the Agreement;

2.1.44. **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;

2.1.45. **Issuing Bank** means a bank that issues Cards as well as the bank where a Customer's EFT is initiated;

2.1.46. **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;

2.1.47. **Merchant** means the entity that will utilize the Service and form the counterparty to the Agreement;

2.1.48. **Merchant Bank Account** means the Merchant's account that with a South African Bank;

2.1.49. **Merchant Commission Fee** means the fee charged by VPS for processing the Merchant's transaction and is calculated as a percentage of the value of the transaction and is quoted excluding VAT as set out in the Fee Schedule;

2.1.50. **Merchant Portal** means the VPS Website that the Merchant can access, among other things, to check Transactions and access reports;

2.1.51. **Merchant Account** means a profile created by VPS on the Merchant Portal;

2.1.52. **Merchant Website** means pages on the internet belonging to the Merchant and holding the Merchant's information;

2.1.53. **Net Settlement Funds** means the balance after all Fees have been deducted from the Settlement Fees received on a Business Day;

2.1.54. **Nominal Amount Authorisation** means any approved Card Not Present Transaction, Authorised for a nominal amount, equal to or less than 1 (one) ZAR (Rand) (or an equivalent single unit of currency, if the Transaction currency is not ZAR (Rand)), with a subsequent reversal;

2.1.55.   **Ozow** means i-Pay Secure Payments Proprietary Limited the provider of the EFT Transactions;

2.1.56.   **PAN** or **Primary Account Number** means the Card number printed on the front of the Card;

2.1.57.   **Parties** means VPS and the Merchant "**Party**" shall refer to either of them as determined by the context;

2.1.58.   **Primary Account** means the main account held by a Customer at a bank or financial institution;

2.1.59.   **Payment Facilitator** means a third-party agent that may do the following: Sign a merchant acceptance agreement on behalf of an acquirer;

2.1.60.   **PASA** means the Payment Association of South Africa;

2.1.61.   **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;

2.1.62.   **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;

2.1.63.   **Payment Amount** means the amount the Customer will pay the Merchant for the goods and/or services provided;

2.1.64.   **Payment Instrument** means a Card, Primary Account, Customer bank account, mobile, key fob 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;

2.1.65.   **PCI DSS** means Payment Card Industry Data Security Standards as stipulated by the Card Associations;

2.1.66.   **Personnel** means the individual partners, directors, officers, employees, representatives, agents, independent contractors, subcontractors, suppliers, advisors, licensors, product providers and service providers of a Party;

2.1.67.   **Personal Information** means information about an identifiable, natural or juristic person, including but not limited to, information about race, gender, marital status, nationality, ethnic or social origin, sexual orientation, age, physical or mental health, religion, belief, disability, language, birth, education, identity number, telephone number, email, postal or street address, location through the Merchant's Device's GPS, biometric information and financial, criminal or employment history as well as correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

2.1.68.   **Point-of-Sale ('POS') device** means an imprinter and/or a device that is primarily used for the processing of card transactions;

2.1.69.   **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 EFT transactions;

2.1.70.   **POPIA** means the Protection of Personal Information Act of 2013;

2.1.71.   **Privacy Policy** means the VPS' standard data policy, which is accessible on the VPS' Website;

2.1.72.   **QR Code** means a Quick Response Code generated to enable the Merchant to process Transactions. It is a machine-readable code consisting of either an array of black and white squares or a linked numeric code, typically used for storing URLs or other information. The QR Code can be a Static QR Code or a Dynamic QR Code:

    2.1.72.1.   **Static QR Code** means a QR code that has a predetermined value or will allow the   Customer to input a value; and

    2.1.72.2.   **Dynamic QR Code** means a QR code that is linked to specific purchases;

2.1.73.   **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 eReceipt if the context or circumstances require;

2.1.74.   **Refund** means a Transaction that is the opposite of a purchase Transaction. A refund is a credit payment instruction issued by the Merchant to the Issuing Bank to credit a Customer's account. Such credit payment instruction is issued the Merchant after a debit payment instruction;

2.1.75.   **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 or the activities contemplated by this Agreement or any matters related to or arising hereunder;

2.1.76.   **Reserve Account** means a separate reserve account operated by VPS 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;

2.1.77.   **Reversal** means the cancellation of a previous Transaction**;**

2.1.78.   **Routine Maintenance** means maintenance that is required to maintain the Services and all associated Infrastructure;

2.1.79.   **Statement** means a tax invoice setting out all fees and charges payable by the Merchant to VPS;

2.1.80.   **Service** means the payment services rendered by VPS to the Merchant as set out in Annexure A of this Agreement and as chosen by the Merchant in writing from time to time;

2.1.81.   **Settlement Funds** means the total of all funds received from the Issuing Bank as it relates to Transactions concluded pursuant to this Agreement;

2.1.82.   **Third-Party Features** means any additional services provided by independent third parties, as approved by VPS, and which additional services do not form part of the Services;

2.1.83.   **Third-Party Service Provider** means any third-party service provider that VPS have contracted with to provide the Service;

2.1.84.   **Transaction** means a monetary transaction in terms of which the Customer tenders the Payment Amount in exchange for goods or services offered by the Merchant. A Transaction can include the following:

    2.1.84.1.   Transaction entered into by a Customer using any mobile payment

application with the Merchant through the Merchant's Website;

        2.1.84.2.   a Transaction entered into by a mobile payment application user with the Merchant face to face; and

        2.1.84.3.   a Transaction entered into by a mobile payment application user with the Merchant pursuant which results in the issuing an eReceipt;

2.1.85.   **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;

2.1.86.   **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;

2.1.87.   **Website** means the website operated by VPS, located at any domain or subdomain of Vodacom.co.za, as updated from time to time;

2.1.88.   **VAT** means Value Added Tax as defined in terms of the Value-Added Tax Act, number 89 of 1991 as amended from time-to-time;

2.1.89.   **Virtual Transaction** or **Virtual Transactions** means the purchase of goods and/or services over the Internet by the Customer from the Merchant, whether the Transaction is facilitated by the Payment Facilitator or not, for which Authorisation has been obtained, or the purchase of goods and / or services;

2.1.90.   **VPS** means VPS the company with registration number 2007/010688/07 providing the Service to the Merchant as a Payment Facilitator;

2.1.91.   **VPS Intellectual Property** means all Intellectual Property owned or used by VPS at any time whether as part of the provision of the Services or otherwise;

2.1.92.   **VPS Materials** means all Materials that belong to VPS;

2.2.   Clause headings are simply for convenience and are not relevant in the interpretation thereof.

2.3.   Any reference to a natural person shall, 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); 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 prescribed 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 balance 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 such of the provisions of this Agreement which by their nature, or which are expressly provided to, operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this. 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 AND TERMINATION**

3.1.   By electronically accepting this Agreement, the Merchant hereby confirms that they have read and understood the meaning and effect of its corresponding rights and obligations.

3.2.   The Agreement will become binding upon both Parties on the Effective Date and shall remain in force and effect until terminated in terms of the provisions set below.

3.3.   This Agreement may be terminated:

3.3.1.   by either Party on Calendar Month written notice to the other Party;

3.3.2.   immediately by VPS, at VPS' sole discretion:

3.3.2.1.   if VPS is required to terminate this Agreement by (i) Applicable Law; or (ii) by the rules or directions of any Association; or (iii) the Acquiring Bank; or

3.3.2.2.   if the Merchant has committed a material breach.

3.4.   Upon the termination of this Agreement, the Merchant will return to VPS all the VPS Materials.

4.   **SERVICES**

4.1.   VPS shall render the Services to the Merchant in terms of Annexure A and any other specifications as agreed to by the Parties from time to time.

4.2.   The Merchant shall be bound by the terms and conditions in Annexure A that relate to the Services that it has selected during the Application Process

4.3.   VPS warrants that the Services comply with the Applicable Laws and Association Rules

4.4.   The Parties acknowledge that VPS may amend the Service terms and conditions set out in Annexure A at any time and shall notify the Merchant of such changes. The amended terms and conditions shall be published on the VPS Website.

5.   **SERVICE APPLICATION**

5.1.   The Merchant must complete the Application Process to apply for the either or all of the Services.

5.2.   The Merchant is required to submit the Application together with the Merchant's FICA Documents and any other supporting documents that VPS may request.

5.3.   The Application Process shall require the Merchant to provide:

5.3.1.   relevant information that is required to sufficiently identify the Merchant;

5.3.2.   Services that the Merchant would like to procure from VPS;

5.3.3.   Authorised Person nominated to conduct the Merchant Account; and

5.3.4.   Merchant's nominated Bank Account.

5.4.   VPS undertakes to send the Fee Schedule to the Merchant during the Application Process

5.5.   If there is any information outstanding during the Application Process, VPS shall request such information from the Merchant. For the avoidance of doubt, VPS shall not approve the Merchant to use the Services if there is information that is outstanding. If information is outstanding for more than one calendar month, the Merchant will be required to submit a new Application with updated information.

5.6.   By completing the Application Process, the Merchant makes an offer to do business with VPS and VPS is entitled to decide at its sole discretion whether or not to accept the offer.

5.7.   For the purpose of the Application Process, the Merchant hereby authorises and consents to VPS 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.

5.8.   Once the Application Process is complete, VPS shall:

5.8.1.   advise the Merchant in writing of the Activation Date; and

5.8.2.   create a Merchant Account on the Merchant Portal for the Merchant; and

5.9.   The Merchant warrants that the information it may provide to VPS is true and accurate.

5.10.   The Merchant can commence processing Transactions from the Activation Date but such Transaction will not be settled in the Merchant's Bank Account by VPS until and unless the Merchant's FICA Documentation has been received, reviewed, approved by VPS.

6.   THE MERCHANTS PORTAL

6.1.   Once the Application Process is complete in terms of clause 5 above, VPS shall allocate login credentials to the Authorised Person to enable them to access the Merchants Portal.

6.2.   It is the sole responsibility of the Merchant to keep its login credentials private and to not allow anyone other than the Authorised Person to use such credentials.

6.3.   **VPS shall not be held liable for any loss or damage that the Merchant may suffer as a result of unauthorised access and use of the Merchants Portal using the Merchant's credentials.**

6.4.   The Merchant shall not insert, or allow the insertion, of Harmful Code into the VPS Infrastructure or the Merchants Portal. If such Harmful Code is inserted into the VPS Infrastructure or Merchants Portal by fault (direct or indirect) of the Merchant, 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 invocation of any Harmful Code.

6.5.   VPS may amend details of the Merchant on its behalf on instruction of the Merchant.

6.6.   The Merchant's Personnel must operate the Merchant Portal with the necessary skill and care, and not allow any unauthorised persons to access the Merchant Portal.

7.   DORMANCY

7.1.   If the Merchant does not use the Service the Merchant procured from VPS for 3 (three) consecutive Calendar Month's, the Merchant's Services will be regarded as dormant. When the Merchant's Service is dormant, VPS reserves the right to do the following:

7.1.1.   suspend the Service and products immediately without prior notice;

7.1.2.   terminate the Agreement immediately without prior notice and without prejudice to any other rights in law;

7.1.3.   hold the Merchant liable and debit the Merchant Bank Account and apply set-off for all Fees; and

7.2.   VPS may further rely on any of the remedies available to it by law.

8.   MERCHANT'S OBLIGATIONS

The Merchant undertakes to:

8.1.   Obtain and familiarize themselves with the Association Rules that are published by the Associations from time to time;

8.2. accept all Cards presented to the Merchant by a Customer and EFT in payment for goods and / or services;

8.3. 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;

8.4. comply with all the Applicable Laws;

8.5. use the Services on a reasonable continuous basis;

8.6. comply with all Rules, manuals, policies and processes related to the Services;

8.7. facilitate the Transaction on behalf of the Customer in terms of clause 12 below;

8.8. provide VPS with all reports and documents or information as my be required in terms of any Applicable Laws and/or the Association Rules;

8.9. make sure that all the Merchant's Personnel who process Transactions are sufficiently trained and skilled to do so;

8.10. procure that a Receipt is given or sent to the Customer in respect of every Transaction;

8.11. for each Transaction dispatch the goods or services as soon as reasonably practicable after the Merchant receive an approved Receipt;

8.12. display promotional and brand material that VPS 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 VPS as Services in terms of this Agreement   The Merchant agrees that VPS may advertise and publish to all potential Customers the Services that the Merchant has chosen in terms of this Agreement;

8.13. give VPS, Customer or a Regulator a copy of the relevant Transaction Documents within 7 (seven) days of being requested to submit such Transaction Documents;

8.14. respond promptly to inquiries/complaints from Customers relating to the Services;

8.15. keep all Transaction Documents for at least 180 days after the date of the Transaction;

8.16. not in any way state, imply or create the impression that VPS or any of its affiliates endorse or guarantee any of the Merchant's goods or services unless such endorsement is given by VPS or any of its affiliates in writing;

8.17. co-operate, communicate and/or interact with the VPS Personnel to the extent necessary for the purposes of putting into effect the terms and conditions of this Agreement;

8.18. use all reasonable endeavours to protect itself, website and Infrastructure against any Harmful Code;

8.19. check all Transaction details and Transaction reports and Bly notify VPS of any suspected discrepancies;

8.20. at all times cooperate with VPS if VPS requires the Merchant to offer certain rewards to Customers at the Merchant's cost and on VPS' behalf;

8.21. enter into a merchant agreement directly with the Acquiring Bank if required by the Associations or Applicable Laws;

8.22.   all times, effect and maintain at its own expense, adequate insurances as may be required by VPS or by Applicable Law; and

8.23.   perform all checks and investigations required by Applicable Laws and checks and investigations required by good industry practice, to ensure that all Anti-Money Laundering ("AML"), Combatting the Financing of Terrorism ("CFT") and/or Trade Control Laws requirements are satisfied and complied with.

9.   VPS' OBLIGATIONS

VPS undertakes to:

9.1.   provide the Services to the Merchant;

9.2.   enter into and maintain a relationship with the Acquiring Bank;

9.3.   develop, maintain and host the Merchants Portal;

9.4.   provide support related to the Services and the Merchants Portal during the operating hours communicated by the Merchant from time to time to the Merchant;

9.5.   where applicable provide the Merchant with the necessary Infrastructure as part of the Services;

9.6.   will provide the Merchant with debit, credit Card and EFT clearing and settlement services in terms of which the Merchant accepts Cards from a Cardholder and EFT payments as a form of payment for goods, services and/or facilities supplied by the Merchant to that Cardholder. VPS shall clear and settle such payments for the Merchant.

9.7.   VPS will pay the Merchant the Net Settlement Funds due to the Merchant.

10.   PAYMENT AND PRICING

10.1.   The Merchant shall pay VPS the fees for the Services as set out in the Fee Schedule.

10.2.   VPS 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 VPS.

10.3.   VPS 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.

10.4.   The Merchant Commission Fee in the Fees Schedule are based on the Merchant's projected turnover as provided by the Merchant during the Application Process. VPS reserves the right to re-assesses these fees after a period of 3 months from the Activation Date. VPS may at any time adjust the fees based on the average turnover achieved by the Merchant.

10.5.   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.

10.6.   The Merchant shall provide VPS with a copy of the Merchant's bank Statements within 5 (five) Business Days after receiving such a request.

11. THE MERCHANT ACCOUNT

11.1.   VPS shall create a Merchant Account on behalf of the Merchant on the Merchant Portal.

11.2.   All Transactions made through the Services shall be reflected on the Merchant Account the following Business Day.

11.3.   All payments and fees due to VPS shall be deducted by VPS from the Merchant Account. For this purpose the Merchant hereby authorises VPS to deduct all amounts due from the Merchant Account.

11.4.   All balances in the Merchant Account shall only be reflected in South African Rand.

11.5.   The Merchant hereby cedes its rights and claims in and to the Merchant Account as security against any repayment of any obligations due by the Merchant to VPS pursuant to this Agreement;

11.6.   In the event that there are no funds in the Merchant Account, the Merchant hereby authorises VPS to debit the Merchant's Bank Account to repay any amounts due to VPS.

11.7.   Once all amounts and fees payable to VPS 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.

11.8.   The Merchant will receive a monthly statement, setting out –

   11.8.1.   the record of Transactions in the Merchant Account;

   11.8.2.   amounts transferred to the Merchant's Bank Account by VPS pursuant to this Agreement; and

   11.8.3.   the fees paid by the Merchant to VPS.

12. TRANSACTION PROCESSING

12.1.   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.

12.2.   The Merchant shall send the Payment Instruction to VPS and request Authorisation to verify that the Customer has enough funds in his/ her Bank Account.

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

12.4.   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.

12.5.   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 shall be true and accurate. VPS shall not be held liable for any loss or damage suffered by the Customer as a direct or indirect result of the Merchant supplying false information in the Payment Instruction.

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

12.7.   Authorisation is only valid for that specific Transaction and amount.

12.8.   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. The Merchant shall not send any Payment Instructions on its own accord without being instructed by the Customer.

12.9.   Obtaining voice Authorisation from VPS and/or receiving an Authorisation code from VPS is merely a confirmation that there are sufficient funds available in the Customer's bank account and does not mean that VPS warrants or guarantee:

12.9.1.   that a Transaction is not a Fraudulent Transaction;

12.9.2.   the validity or genuineness of the Transaction;

12.9.3.   the validity of the identity of the Customer presenting the Payment Instrument;

12.9.4.   that VPS will pay the value of the Authorised Transaction;

12.9.5.   that the intended Transaction will not be declined later; or

12.9.6.   that the Transaction will not be subject to a Chargeback.

12.10.   VPS shall not be held liable for any loss or damages that the Merchant may suffer as a result of the factors stated in clause 12.9 above.

12.11.   The Merchant shall:

12.11.1.   not process any Transaction that do not relate to a genuine and legal transaction for goods and/or services;

12.11.2.   only process Transactions that are in amounts denominated in South African Rand;

12.11.3.   accept each valid Card that is presented to it by the rightful Cardholder in payment for goods and/or services;

12.11.4.   not add any extra charges or set any minimum or maximum Transaction amount for any particular Transaction;

12.11.5.   retain a copy of both the signed and the unsigned sales voucher along with the receipt for a period of at least 180 (one hundred and eighty) days from the date of the transaction;

12.11.6.   not attempt to limit its liability by asking or requiring Customers to waive their dispute rights; and

12.11.7.   not split or disguise Transactions or act in a way to avoid obtaining Authorisation from VPS.

12.12.   Merchants must ensure that they implement the following measures:

12.12.1.   use widely available tools, such as CVC 2 validation, 3D-Secure, real-time Authorisation, monitoring, and Captcha to limit the scope of Harmful Code;

12.12.2.   deploy technology, such as web application firewalls, to detect and mitigate the effect of Harmful Code.

12.13.   The Merchant may not engage in Undesirable Transaction Processing Behaviour, including but not limited to Excessive Authorisation Attempts and Nominal Amount Authorisations.

1.1 The Merchant will not attempt to limit their liability by asking or requiring Cardholders to waive their dispute rights in a Card Transaction in the Merchant's favour.

1.2 In terms of any additional Transaction functionality with VPS, where applicable, the Merchant will be able to

12.16.1 reverse Transactions on the same day back to the Cardholder;

12.16.2 refund a Transaction for up to 90 (ninety) days back to the Cardholder;

12.16.3 send/resend receipts to the Cardholder; and

12.16.4 perform any other actions using any functionality that VPS may add to the Services from time to time.

13. AUDIT AND INSPECTION RIGHTS

13.1. The Merchant shall, and shall ensure that each of its Personnel shall, keep complete and accurate books and records relating to the performance of this Agreement.

13.2. The Merchant grants, and shall ensure that each of its Personnel grants, to VPS 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 in normal working hours, on reasonable prior written notice provided that a Compliance Audit can be performed more frequently if VPS has reasonable grounds to believe that the Merchant has not complied with Applicable Laws.

13.3. The Merchant shall, ensure that each subcontractor, deal with all Regulators and Permitted Auditors in an open and co-operative way.

13.4. VPS shall use reasonable endeavours, if and to the extent within its control, to ensure that persons conducting that audit shall comply with the Merchant's reasonable health and safety and security requirements and confidentiality obligations.

13.5. Each Party shall use reasonable endeavours to minimise any disruption to the operations of the Merchant caused by an audit.

13.6. Following an audit, VPS shall discuss its findings with the Merchant and, if appropriate, but without prejudice to VPS's other rights and remedies, the Parties shall agree to a plan (including a timetable to implement the plan) to address any concerns identified in the audit and the Merchant will comply with the steps set out in that plan.

14. DISPUTES AND CHARGEBACKS

14.1. In the event of a Chargeback, VPS may:

14.1.1. deduct the full value of the Chargeback amount in 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 amounts 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 Association from the Merchant Account (including without limitation any Reserve Account).

14.2. For purposes of clause 14.1.1, VPS 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 VPS will retain such funds;

14.2.2. the period of time under Applicable Law or Association Rules by which the Customer may dispute the Transaction has expired; or

14.2.3. VPS determines that a Chargeback on the Transaction will not occur.

14.3. If VPS is unable to recover funds related to a Chargeback for which the Merchant is liable, the Merchant will pay VPS 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 VPS in connection with the collection of all such amounts from the Merchant. For this purpose, VPS 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 about 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 VPS with information and documentation required within the timelines communicated by VPS in order for VPS to resolve a dispute which has been raised by the Merchant's Customer with VPS. The Merchant will be bound by the settlements negotiated between VPS and the Customer and any defences that VPS raise against the Customer.

15. REFUND PROCEDURE

15.1. For Card Transactions:

15.1.1. VPS may give the Merchant a Refund facility at VPS's discretion. VPS can terminate this facility at any time, on verbal or written notice to the Merchant.

15.1.2. 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 POS device with the Card present.

15.1.3. The Merchant may not 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.

15.1.4. The amount of any refund must be calculated at the refund date and must take into account the prevailing exchange rate (where applicable) less any fees applicable at the time.

15.2.   For EFT, the Merchant will be required to refund the Customer in cash.

16. FRAUDULENT TRANSACTIONS

16.1.   The onus is on the Merchant to implement Fraud prevention measures and to establish processes and controls aimed at combating, preventing and detecting Fraud when processing Transactions and to ensure that the Merchant are adequately protected against fraudulent activities. The Merchant is required to report any Fraudulent Transactions by contacting 082 17855

16.2.   The risk of fraudulent transactions lies with the Merchant

16.3.   By entering into this Agreement, you undertake to co-operate with VPS in furnishing all information and documentation requested by VPS to enable VPS to investigate Fraudulent Transactions.

16.4.   The Merchant must not honour Transactions or accept Cards that the Merchant know or suspect 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 VPS suspects the Transaction is for any reason suspicious, an Invalid Transaction, erroneous or illegal; VPS 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 VPS incurred or suffered, as a result of or in connection with any Fraudulent Transaction; Invalid Transaction; erroneous or illegal Transactions processed by the Merchant. The Merchant indemnify VPS in respect of all losses in this regard;

16.6.3.   place a hold on the Merchant's Account;

16.6.4.   suspend the Services; or

16.6.5.   terminate the Agreement immediately without prior notice and without prejudice to any other rights in law.

16.7.   The Merchant shall be responsible and liable for any and all losses or damages that may be suffered by the Customer, VPS 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 Parties to their respective 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 such steps and activities that VPS may prescribe in its sole discretion.

17. INTELLECTUAL PROPERTY RIGHTS

17.1.   The Merchant acknowledges that if VPS makes available to the Merchant any Intellectual Property Rights owned or licensed by VPS, those Intellectual Property Rights are and shall remain the sole property of VPS.

17.2.   VPS hereby grants a non-exclusive, non-transferable, sub-licensable, royalty-free licence to the Merchant to use Intellectual Property Rights owned or licensed by VPS 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 agree that the Merchant will not (nor will the Merchant allow or enable any third party to) do, cause or attempt any of the following, namely –

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 VPS 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 VPS Intellectual Property or otherwise reducing any computer programs forming part of the VPS Intellectual Property to a human-readable form;

17.3.3.   using the VPS Intellectual Property to create any software, applications, products or systems whose expression is substantially similar to that of the VPS Intellectual Property or any of the Services;

17.3.4.   accessing all or any part of the Services or VPS 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 VPS Intellectual Property (including the Card, Compatible Devices and applicable hardware) available to any third party, unless agreed otherwise in writing with VPS and subject to the VPS Card Policies;

17.3.6.   challenging the validity or enforceability of, or VPS' entitlement to use, any of the VPS Intellectual Property;

17.3.7.   anything which may adversely affect the VPS Intellectual Property or VPS' rights in and to the VPS Intellectual Property; or

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

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

17.5.   In the event of the Merchant becoming aware of any infringement of Intellectual Property by VPS in the course of rendering the Services or of any unauthorized use of the VPS Intellectual Property or the Services, the Merchant shall inform VPS thereof, in writing. To the extent necessary and applicable, VPS shall, at its discretion, stop providing any infringing material and/or may replace the infringing material or may cancel this Agreement and refund the Merchant accordingly.

18. SORTING AT SOURCE

18.1. '**Sorting at Source**' is where the Merchant have acquiring relationships with different banks with the intention of processing Transactions directly to the cardholder's bank. Multiple primary acquiring relationships, which result in the bypass of clearing is not permitted by PASA.

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

18.3. The secondary use of multiple acquiring relationships, e.g. back-up POS Devices for disaster recovery or as part of the Merchant's business continuity plan does not constitute Sorting at Source.

18.4. The Merchant's non-compliance with the above requirements may result in fines or penalties being levied by PASA or the Card Associations, which fines or penalties will be debited from the Merchant's Bank Account.

19. WARRANTIES

19.1. The Merchant warrants to VPS that:

19.1.1. the Merchant truthfully and accurately disclosed the nature of the Merchant's business to VPS during the Application Process;

19.1.2. the Merchant's business does not involve offering goods and/or services to or in respect of any restricted business listed on the Association Website or which VPS may identify, from time to time, due to regulatory, risk or operational reasons, and which has been notified to the Merchant by VPS no later than 2 (two) months before they become enforceable by VPS;

1.3 the Merchant is not a Payment Service Provider or Payment Facilitator.

19.1.3. the Merchant are at least 18 (eighteen) years of age;

19.1.4. the Merchant are eligible to register and use the Services and have the right, power, and ability to enter into and perform under this Agreement;

19.1.5. any Transaction submitted by the Merchant will represent a genuine sale by the Merchant;

19.1.6. the Merchant will resolve any consumer dispute or complaint directly with the Cardholder;

19.1.7. the Merchant shall comply with the Applicable Laws;

19.1.8. the Merchant will not use the Services, directly or indirectly, for any Fraudulent undertaking or in any manner so as to interfere with the operation of the Services;

19.1.9. no Transaction submitted by the Merchant through the Services will involve the Merchant's Cards (except for reasonable test swipes);

19.1.10. the Merchant's use of the Services will be in compliance with this Agreement; and

19.1.11. the Merchant has never had a contract with a Card Association which contract was terminated at the direction of Card Association or any regulatory authority or court of

law.

19.2. To the extent permissible by Applicable Laws, VPS does not warrant that:

19.2.1. the Services will meet the Merchant's requirements;

19.2.2. the Services will be available at any particular time or location, uninterrupted or secure;

19.2.3. any defects or errors in the Services will be corrected; or

19.2.4. that the Services are free of viruses or other harmful components.

19.3. VPS shall take reasonable steps to ensure that the Services are delivered in accordance with this Agreement and that on the discovery of any defects, these are addressed timeously, however, due to the nature of the Services, these are necessarily provided on an "as is" and "as available" basis to the maximum extent permitted by Applicable Law.

19.4. **The use of the Services may have certain risks and use of the Services is at the Merchant's own risk**.

19.5. VPS does not warrant the full uninterrupted functionality of the Service. The Service is subject to scheduled Routine Maintenance.

20. LIMITATION OF LIABILITY

20.1. Subject to section 20.6 below, to the maximum extent permitted by Applicable Law, neither VPS nor the Third Party Service Merchants (and their respective employees, shareholders, directors, agents, affiliates and representatives, in whose favour this clause 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 damages for loss of profits, goodwill, use, Data, or other intangible losses, that result from.

20.2. Without limiting the generality of the above, we will not be responsible to the Merchant for any indirect or consequential losses, claims, liabilities, damages, losses, fines, penalties and expenses arising from our delay or failure to perform our obligations because of:

20.2.1. a Force Majeure event;

20.2.2. any failure or malfunction of any part of the Service; and/or

20.2.3. any delay in an electronic communication, including a communication via cellular telephones, or failure or malfunction in any supporting or shared networks, where applicable.

20.3. The Merchant specifically acknowledge that VPS does not have any control over whether all the Merchant's Transactions will be completed.

20.4. The use of any electronic means of communication is entirely at the Merchant's risk.

20.5. This clause does not exclude or limit any liability which, by law, is not capable of exclusion or limitation.

20.6. If the Merchant qualify as a consumer in terms of the Consumer Protection Act 68 of 2008, the limitation of liability in section 20.1 above will not apply to any loss directly or indirectly caused through the gross negligence of VPS or the Third Party Service Merchants (and their respective employees, shareholders, directors, agents, affiliates and representatives).

21. INDEMNITY

21.1. To the fullest extent permitted by law, the Merchant irrevocably agrees to indemnify and hold harmless VPS from and against any and all claims and losses arising out of or in connection with any claim made or instituted against VPS by any third party, where such claim arises in relation to, or as a result of:

21.1.1. any action or omission of the Merchant or its Personnel breaching Applicable Laws (or causing VPS to breach Applicable Laws);

21.1.2. any breach of, or non-compliance with, the provisions of clause 26 and 27.

21.1.3. any actual or alleged breach of the Merchant's warranties or obligations set out in this Agreement, including, without limitation, any breach of the VPS Operational Rules or the Association Rules by the Merchant;

21.1.4. any Transaction submitted by the Merchant through the Services; or

21.1.5. the Merchant's violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property rights.

21.2. If the Merchant qualify as a consumer in terms of the Consumer Protection Act 68 of 2008, the indemnity in section 21.1 above will not apply to the extent that a claim relates to loss directly or indirectly caused through the gross negligence of VPS or the Third Party Service Merchants (and their respective employees, shareholders, directors, agents, affiliates and representatives).

22. DISPUTE RESOLUTION

22.1. The Merchant agree that any dispute that arises in terms of this Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) must be dealt with and be formally decided by way of arbitration.

22.2. For purposes of this clause 22.1:

22.2.1. the arbitration will be held at Johannesburg;

22.2.2. the arbitration shall be subject to the arbitration legislation for the time being in force in South Africa;

22.2.3. the arbitrator will be an impartial admitted attorney whether practicing or non-practicing of not less than 10 (ten) years' experience appointed by VPS;

22.2.4. the Merchant agree to keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential;

22.2.5. the arbitrator shall be obliged to give his award in writing fully supported by reasons, and the arbitrator's award shall be final and binding on the Merchant and VPS; and

22.2.6. 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 VPS in equal shares and shall be recoverable, as costs in the cause under the provisions of any award.

23. ADDRESS FOR SERVICE

23.1. VPS nominates the address set out below as the address it will receive all communications required in terms of this Agreement –

Physical: Corporate Park 082, Vodacom Boulevard, Vodavalley, Midrand, 1685.

Postal: Corporate Park 082, Vodacom Boulevard, Vodavalley, Midrand, 1685.

Email: VPSBUSOPS@vodacom.co.za

23.2. The Merchant nominate 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 VPS.

24. GOVERNING LAW AND SUBMISSION TO JURISDICTION

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

24.2. The Merchant agree 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 brought in any competent court in the High Court of South Africa (South Gauteng High Court).

25. CONFIDENTIAL INFORMATION

25.1. Subject to the provisions of clause 26, the Confidential Information shall at all times and until otherwise agreed by the Parties remain the sole property of that Party disclosing it (the "**Disclosing Party**") and the Party receiving it (a "**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 unauthorized disclosure of the Confidential Information.

25.2. Subject to the provisions of clause 26, 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:

25.2.1. 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;

25.2.2. 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.

25.3. Subject to the provisions of clause 26 the restrictions on disclosure or use of the Confidential Information set out in clause 25.2 above will not apply to:

25.3.1. any information which is generally available to the public, other than as a result of a breach of this Agreement;

25.3.2. 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

25.3.3. 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.

25.4. The Merchant shall not issue any publications, press releases, notices or provide VPS as a 'reference site' in any of its marketing and/or materials and/or activities unless VPS has given its prior written consent.

25.5. The Merchant understands and agrees that VPS may provide the Issuing Bank and other VPS affiliates with full and detailed accounts and records of all Statements, Transactions, carried out, including Payment Instructions, pursuant to this Agreement.

25.6. The Merchant understands and agrees that VPS may share the details regarding the Transactions with the VPS Personnel, agents, and Third Party Service Merchants for training, research, analysis and operational business purposes, in accordance with the VPS Privacy Policy.

25.7. The provisions of this clause 25 shall survive the termination or expiration of this Agreement.

26. CONSENT TO DISCLOSE INFORMATION (POPIA)

26.1. By using the Services, the Merchant hereby consent that VPS may process (collect, use, update, make available, destroy, store, or otherwise deal with and conduct the necessary checks) 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 VPS and the requirements of the law. The Merchant also confirm that the information provided by the Merchant, from time to time, to VPS 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 VPS if this information changes.

26.2. 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.

26.3. The Merchant confirm that VPS may process any information and documentation relating to the Merchant's business or that of the Merchant's employees, directors and members in relation to the services provided by VPS.

26.4. The Merchant agree that VPS can access any information about the Merchant that is recorded with any credit bureau, or held by any other division of VPS, or obtain Fraud reports and checks at any time during the course of the Merchant's relationship with VPS. The credit bureau provides credit profiles on persons as well as a credit score on the credit-worthiness of persons.

26.5. VPS shall give the Merchant at least 20 (twenty) Business Days' notice of its intention to submit adverse information (relating to the non-compliance with the agreements the Merchant entered into with VPS) concerning the Merchant to TransUnion and Experian (credit bureau);

26.6. How VPS will use the Merchant's information:

26.6.1. VPS will process personal information from the Merchant directly; and from the

Merchant's usage of VPS' products and services; from the Merchant's engagements and interactions with VPS; from public sources and from third parties; and

26.6.2. The Merchant's personal information will be confidential and will only be processed if: the Merchant consented thereto; it is necessary to conclude or perform in terms of a contract with the Merchant; the law requires it or a third parties lawful interest is being protected or pursued.

26.6.3. By applying for the Service or by using a VPS service the Merchant confirm that VPS may process the Merchant's personal information for the following reasons (amongst others):

26.6.3.1. to comply with legislative, regulatory, risk and compliance requirements (including directives, sanctions and rules), voluntary and involuntary codes of conduct and industry agreements or to fulfil reporting requirements and information requests;

26.6.3.2. to detect, prevent and report theft, fraud, money laundering and other crimes;

26.6.3.3. to enforce and collect on any agreement when the Merchant are in default or breach of the agreement's terms and conditions, like tracing the Merchant or to institute legal proceedings against the Merchant;

26.6.3.4. to conduct market and behavioural research, including scoring and analysis to determine if the Merchant qualify for products and services;

26.6.3.5. to develop, test and improve products and services;

26.6.3.6. for historical, statistical and research purposes;

26.6.3.7. to process Payment Instruments and payment instructions;

26.6.3.8. to do affordability assessments, credit assessments and credit scoring;

26.6.3.9. to manage and maintain the Merchant's accounts or relationship with VPS;

26.6.3.10. to disclose and obtain information from credit bureaus regarding the Merchant's credit history;

26.6.3.11. to enable the Merchant to participate in the debt review process under the National Credit Act of 2005 ('NCA');

26.6.3.12. to enable VPS to deliver goods or documents or notices to the Merchant;

26.6.3.13. for security purposes, identity verification and to check the accuracy of the Merchant's personal information;

26.6.3.14. to communicate with the Merchant and carry out the Merchant's instructions and requests; and

26.6.3.15. for Customer satisfaction surveys, promotional and other competitions.

26.6.4. VPS may share the Merchant's personal information with the following persons (amongst others) who have an obligation to keep the Merchant's information secure and confidential:

26.6.4.1. attorneys, tracing agents, debt collectors and other persons that assist with

the enforcement of agreements;

26.6.4.2. debt counsellors, payment distribution agents and other persons that assist with the debt review process under the NCA;

26.6.4.3. payment processing service providers, banks and other persons that assists with the processing of the Merchant's payment instructions;

26.6.4.4. insurers, brokers and other financial institutions that assist with providing insurance and assurance;

26.6.4.5. law enforcement and Fraud prevention agencies and other persons tasked with the prevention and prosecution of crime;

26.6.4.6. regulatory authorities, government departments, local and international tax authorities and other persons in terms of the law;

26.6.4.7. credit bureaus;

26.6.4.8. VPS' service providers, agents and sub-contractors like couriers and other persons VPS uses to offer and provide products and services to the Merchant; and

26.6.4.9. persons to whom VPS cedes their rights or delegates their obligations under agreements.

26.6.5. VPS can process the Merchant's personal information outside of the borders of South Africa, according to the safeguards and requirements of the law.

26.6.6. VPS may process the Merchant's personal information using automated means (without human intervention in the decision-making process) to decide for the Merchant or the Merchant's application for any product or service. The Merchant may query the outcome.

26.6.7. The Merchant have the right to access the personal information VPS has about the Merchant by contacting 082 17855. The Merchant have the right to request VPS to correct or delete the personal information VPS has about the Merchant if it is inaccurate, irrelevant, excessive, out of date, incomplete, misleading, obtained unlawfully or no longer authorised to be kept.

26.6.8. The Merchant have the right to withdraw the Merchant's consent which allows VPS to process the Merchant's personal information.

26.6.9. The Merchant have the right to file a complaint with VPS about an alleged contravention of the protection of the Merchant's information at 082 17855.

27. DATA PROTECTION

27.1. By receiving Data pertaining to or from a Customer, the Merchant shall:

27.1.1. treat such Data as confidential and not use it other than as strictly necessary in terms of the Agreement;

27.1.2. disclose such Data only to parties involved in the Transaction, only as is necessary to give effect to the Transaction;

27.1.3. 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 employees or VPS;

27.1.4. destroy all such Data that is no longer necessary or appropriate to store in a manner that will render the Data unreadable;

27.1.5. inform VPS of any Data Compromise; and

27.1.6. at all times be liable for any losses resulting from any misuse of Data by the Merchant and the Merchant's employees; including any failure to keep Data secure and any Data Compromise.

27.2. The Data protection obligations under this Agreement shall survive the termination of this Agreement for any reason whatsoever.

28. MERCHANT CHANGES

28.1. The Merchant shall be required to notify VPS in writing and not less than 30 (thirty) days prior to the occurrence of:

28.1.1. any Change of Control in the Merchant; or

28.1.2. any change in the nature of the business of the Merchant.

28.2. Without limiting or derogating from its further rights under this Agreement, after receiving a notification from the Merchant in terms of clause 28.1, or becoming aware of any of the events or circumstances referred to in clause 28.1, VPS shall, be entitled, to the extent required by Applicable Law, to terminate this Agreement.

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

29. FORCE MAJEURE

29.1. 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.

29.2. 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.

29.3. 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 part thereof), then at its election, it may:

29.4. procure such Services from an alternative supplier at its own expense for so long as the

circumstance of force majeure in its reasonable opinion prevents the Affected Party from performing the Services (or part thereof); or

29.5. If the circumstance of Force Majeure continues for more than 21 consecutive days, the non-Affected Party may terminate the Agreement by giving notice to the Affected Party, with immediate effect.

30. ENTIRE AGREEMENT

30.1. This Agreement sets out the entire agreement between the Merchant and VPS relating to our use of the Services and replaces any other discussions, agreements and/or understandings regarding the Merchant's use of the Services.

30.2. VPS is entitled, at any time, and from time to time, to amend the terms of this Agreement. If VPS 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 BE FAMILIAR WITH THE AMENDMENTS TO THE TERMS OF THIS AGREEMENT. All amendments to this Agreement contemplated in this clause will become effective 5 (five) days of the date on which the Merchant receive the notification referred to in this clause.

30.3. If the Merchant do not agree to any amendments to this Agreement, the Merchant can 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 VPS in writing or by contacting 082 17855 .

30.4. If the Merchant do not notify VPS of the Merchant's intention to terminate 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 will serve as confirmation that VPS 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 Agreement.

30.5. Any Transactions processed after the Cooling-Off Period will be governed by the amended Terms and Conditions of the Merchant Agreement.

30.6. 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 without VPS' written notice.

30.7. VPS will, at all times, be entitled to exercise its rights to the fullest in terms of this Agreement, even if it has previously not exercised such rights.

ANNEXURE A: SERVICES

As part of VPS' product suite, the following facilities are offered in order facilitate Transactions:

1. E-commerce
2. Point of Sale (POS) Device
3. QR Code

SCHEDULE 1: E-COMMERCE FACILITY TERMS AND CONDITIONS

The E-commerce Terms and Conditions shall form part of Annexure A and must be read in conjunction with the remaining Terms and Conditions of the main Agreement. A copy of all Terms and Conditions is available on VPS' Website and can be supplied to the Merchant by post and/or email at the Merchant's request. It is the Merchant's duty to speak to VPS if the Merchant do not understand any part of the Terms and Conditions prior to entering into this Agreement.

1. **DEFINITIONS**

   1.1 **3D Secure** means a protocol that enables the secure processing of E-commerce Transactions

   1.2 **AMT** means Authenticated Mobile Transactions and means a Card-Not-Present bank-PIN-Authenticated mobile transaction

   1.3 **ECI** means Electronic Commence Indicator, a 2 (two) or 3 (three) digit code issued by the Association Rules to notify the Merchant of the authentication of the Cardholder and the status of the Cardholder's Issuing Bank under 3D Secure;

   1.4 **MasterCard Secure Code** means MasterCard's interpretation of the 3D-Secure code specification;

   1.5 **Three Domain Secure or 3D-Secure** means an XML-based protocol designed to be an additional security layer for online credit Card and debit Card Transactions;

   1.6 **Verified by Visa** means Visa's interpretation and application of the 3D-Secure code specification;

   1.7 **Virtual Transaction** means the purchase of goods and/or services over the internet by the Customer from the Merchant for which Authorisation has been obtained, or the purchase of goods and / or services;

   1.8 **VPS Payment Gateway** means the software used by VPS to forward and receive messages from the Merchant Website server to process E-commerce Transactions;

2. **THE MERCHANT'S OBLIGATIONS**

   2.1. The Merchant must do the following when processing Virtual Transactions:

      2.1.1. only operate within the Acquirer's jurisdiction country as specified by the Acquiring Bank;

      2.1.2. ensure that the Merchant's Website complies with the Association Rules;

      2.1.3. install or integrate on the Merchant's Website: software; internet infrastructure and processes that enable electronic data to identify the Merchant and the Customer by verifying the Merchant and the integrity of the message;

      2.1.4. ensure that prior to carrying out Virtual Transactions: the Merchant's website and the Merchant server; software; internet infrastructure and processes comply with Vodacom's standards and specifications for secure authentication protocol;

      2.1.5. implement hardware or software prescribed by VPS to limit or reduce fraud;

      2.1.6. notify VPS of any changes relating to: the Merchant's commerce service provider ('CSP') website developer and the location where the Merchant's website is hosted;

      2.1.7. carry the risk relating to the operational effectiveness through which Virtual Transactions are transmitted. The contents of the message received by VPS from the Merchant's CSP will be deemed to be the contents of the message forwarded by the Merchant via the Merchant server;

2.1.8. inform the Customer of any tax implications, exchange control regulations and/or any other relevant legislation that may be applicable to the agreement between the Merchant and the Customer; and

2.1.9. ensure that the information printed and completed on the delivery note and/or proof of dispatch is true and correct.

2.1.10. generally require Cardholders to create complex passwords; limiting the number of times a Cardholder can unsuccessfully attempt to log in and temporarily locking out Customers who exceed the specified maximum number of failed login attempts

2.2. Website Requirements

In terms of the Association Rules it is a requirement that the Merchant's website contains the following information:

2.2.1. the Visa, MasterCard, Amex and Diners brand mark in full colour to indicate Visa, MasterCard, Amex and Diners acceptance, as specified in the respective Visa, MasterCard, Amex and Diners Product Brand standards;

2.2.2. a complete description of the goods and/or services offered;

2.2.3. the Merchant's returns/refund policy;

2.2.4. the Merchant's contact details which include a contact name, telephone number, physical address of the Merchant's permanent establishment and email address;

2.2.5. the total price of the goods or services on offer, including any relevant taxes and delivery charges;

2.2.6. Transaction currency (only South African Rands (ZAR) are allowed);

2.2.7. the Merchant's delivery policy; and

2.2.8. consumer data privacy policy i.e. how the Customer's information will be used.

2.2.9. a disclosure to the Customer that the Merchant are the merchant of record and responsible for fulfilment of the Transaction; and

2.2.10. the Merchant's full name and online address.

3. **USE OF THE SERVICE FOR TRANSACTIONS THROUGH THE MERCHANT'S WEBSITE**

3.1. The Merchant may choose to use the Service of accepting Transactions on the Merchant's Website.

3.2. The Merchant must notify the Customer that the Merchant is responsible for transactions, products and services, direct customer service, the resolution of disputes and all terms and conditions of sale.

3.3. The Merchant confirms that the URL reflected in the Application during the completion of the Application Process, (mentioned in clause 4 of this Agreement), is the Merchant's current URL and the Merchant must inform us in writing within 3 (three) working days if this URL changes.

3.4. The Merchant must comply with PCI DSS.

3.5. The Merchant must comply with all applicable laws regarding import and export transactions performed over the internet.

3.6. The Merchant agrees to implement security standards in the manner we prescribe.

3.7. We will not be a party to any dispute between the Merchant and any service provider the Merchant appoints to establish the Merchant's internet infrastructure.

3.8. We will also not be liable for any damage the Merchant suffers as a result of any failure or malfunction of this infrastructure.

3.9.   We will not be liable for damage caused by a network breakdown, system failure or equipment malfunction, or by the destruction of or damage to facilities caused by power failures or similar occurrences. We will also not be liable for loss or damage caused by events beyond our control and/or the fact that the Merchant is unable to gain access to the Merchant's infrastructure or to use it.

4.   VIRTUAL TRANSACTIONS

4.1.   The Merchant may not store a Cardholder's CVV number.

4.2.   The Merchant must, via the Merchant's CSP, obtain Vodacom's prior Authorisation before accepting any Virtual Transaction.

4.3.   The Merchant may only request Authorisation at the time of and for a particular Virtual Transaction.

4.4.   The Merchant may not split or disguise Virtual Transactions or act in a way to avoid obtaining authorisation.

4.5.   Authorisation is a prerequisite for the dispatch of any goods and delivery of services. If the initial amount for which Authorisation was obtained differs from the final amount charged to the Customer, the Merchant must cancel the initial Authorisation request.

4.6.   If Authorisation is granted, the Merchant must dispatch the goods or deliver the service within the time stipulated in the Merchant's delivery policy.

4.7.   The Merchant is responsible for ensuring that the Merchant's CSP populates the correct CAVV and ECI indicators in the Virtual Transaction message, failing which the Merchant will be held liable for any loss incurred.

4.8.   The Merchant must forward a message to the Merchant's CSP consisting of a record of all Authorised Virtual Transactions in respect of which the goods and/or services have been dispatched. Such message will be construed as being a guarantee given by the Merchant that such goods and/or services have been dispatched and will constitute an instruction to VPS to process the Virtual Transaction.

4.9.   The Merchant must securely keep a record of the Merchant's Customers' addresses.

4.10.   Failure to comply with any or all of the requirements set out above will render the Virtual Transaction to be invalid.

5.   3D-SECURE

5.1.   All E-commerce Merchants must be 3D-Secure enrolled

5.2.   The Merchant may not process Transactions which do not indicate 3D-Secure authentication or attempted authentication or has been authenticated with AMT

5.3.   The Merchant will be held liable for all Losses incurred as a result of Virtual Transactions processed by the Merchant that are not 3D-Secured or AMT Authenticated

5.4.   If the 3D-Secure or AMT authentication is successful for enrolled Cards, the Merchant will process the Authorisation in the ordinary course, passing on 3D-Secure authentication data to VPS or the CSP for processing.

5.5.   The Merchant indemnifies VPS against any and all Losses and Fraud that may occur as a result of the Merchant or the Merchant's CSP disabling 3D-Secure. Any and all such losses and instances of Fraudulent or invalid Transactions will be Charged Back to the Merchant.

6.   CHARGEBACK

6.1.   Protection against certain Chargebacks is subject to the Association Rules. The Merchant needs to ensure that the Merchant's Virtual Transactions are secured at all times in accordance with the

Association Rules.

6.2. The Merchant acknowledges that it is in the Merchant's best interest to ensure that the Merchant have checks and balances in place for all Virtual Transactions, as all valid Chargebacks arising from disputed Virtual Transactions will be debited from the Merchant's Bank Account.

7. RISK MITIGATING MEASUREMENTS

7.1. The following guidelines, amongst general risk mitigating measures, are recommended to assist E-commerce Merchants:

7.1.1. the Merchant and the Merchant's CSP must ensure that both have adequate risk management and Fraud reduction tools in place;

7.1.2. the Merchant must not store the CAVV/CVC number on the Merchant's systems or write these numbers down;

7.1.3. the Merchant may only store the full Card number on the Merchant's systems in accordance with the PCI DSS requirements;

7.1.4. the Merchant must be aware of and query Virtual Transactions which are higher in value than the average Virtual Transactions processed on the Merchant's website;

7.1.5. the Merchant must be aware of Virtual Transactions where the goods are delivered to the same address but different names or Card numbers are used, or the same name but different addresses are used;

7.1.6. the Merchant must deliver the goods to a house or office and not to a person at a general or unspecified location who claims to be the Customer; and

7.1.7. the Merchant must confirm telephone numbers prior to delivery, especially in the case of high-value goods and services. A work telephone number is a more substantial reference and can usually be traced in a telephone directory.

7.2. These recommendations merely serve as guidelines since VPS does not wish to prescribe to the Merchant how they should conduct their online business, nor does VPS suggest that these guidelines will eliminate all instances in respect of Virtual Transactions.

SCHEDULE 2: POINT OF SALE DEVICE TERMS AND CONDITIONS

The POS device Terms and Conditions form part of the Merchant's main Annexure A and must be read in conjunction with the remaining Terms and Conditions of the main Agreement. A copy of the Terms and Conditions is available on the VPS' Website and can be supplied to the Merchant by post and/or email at the Merchant's request. It is the Merchant's duty to speak to VPS if the Merchant do not understand any part of the Terms and Conditions prior to entering into the Agreement.

1. **DEFINITIONS**

    1.1. **Cashback Transaction or Cashback with Purchase Transactions** means an agreement concluded between the Merchant and a Customer in terms of which the Customer purchases goods and services from the Merchant and simultaneously withdraws cash from the Merchant;

    1.2. **Contactless Card** means a chip card with additional functionality, which can make a contactless payment;

    1.3. **Contactless Payment** means a payment transaction made below the contactless transaction limit whereby the contactless card is touched against or placed within close proximity of a contactless POS device;

    1.4. **Contactless POS Device** means a VPS POS device that can perform contactless payments/transactions.

    1.5. **Fallback Transaction** means the process that is followed when a normal Card Transaction cannot be completed on a POS device due to a POS device being unable to read the Card, and where the POS device prompts the Merchant to complete the Transaction using the magnetic strip;

    1.6. **Floor Limit** means a set amount which a Customer may spend on a single Transaction using a Payment Instrument without obtaining authorization from VPS;

    1.7. **Premises** means the premises where the POS device is used;

2. **GENERAL**

    2.1. The onus is on the Merchant to do the following:

        2.1.1. provide the Customer with a secure environment when he/she is asked to enter his/her PIN;

        2.1.2. at all times treat the Customer's account detail and PIN as confidential and do not disclose them to any person except as required in terms of the Association Rules;

        2.1.3. ensure that only the Merchant or the Merchant's employee(s) who are duly Authorised use the supervisor function;

        2.1.4. ensure that the Receipt is processed on a POS device supplied by Vodacom;

        2.1.5. retain the Card if VPS or the POS device instructs the Merchant to do so, provided that it is safe for the Merchant to do so; and

        2.1.6. bank and reconcile the Merchant's Transactions daily. VPS will hold the Merchant liable for any losses incurred by VPS or Chargebacks received as a result of the Merchant's failure to bank and reconcile the Merchant's Transactions daily. The onus is on the Merchant to advise VPS if the Merchant's POS device is not functioning or providing the Service correctly. VPS and the Acquirer reserves the right to automatically bank the Merchant's Transactions.

    2.2. the Merchant may not process a Transaction on a Card by utilising the:

        2.2.1. supervisor function; or

2.2.2.   magnetic stripe data, except as provided for herein.

3. USE OF THE SERVICE FOR TRANSACTIONS THROUGH A POINT OF SALE DEVICE

3.1.   Rent and/or purchase of a POS Device:

    3.1.1.   The Merchant may choose to use the Service to accept Transactions through a POS device.

    3.1.2.   The Merchant may choose to rent a POS device from VPS.

    3.1.3.   VPS will provide support for the POS Devices rented and purchased.

    3.1.4.   The Merchant hereby warrants the POS Device rented from VPS shall be operated with the necessary skill and care.

3.2.   We will not be liable for damage caused by any malfunction of the POS Device. We will also not be liable for loss or damage caused by events beyond our control and/or the fact that the Merchant is unable to gain access to the Merchant's infrastructure or to use it.

3.3.   The Merchant will be liable in the Merchant's own capacity for any insurance policy on a purchased POS device.

3.4.   The Merchant will further be liable for any costs associated with the return and repair of a purchased.

3.5.   For the avoidance of doubt, clauses 3.3 and 3.4 shall only apply to POS devices purchased from VPS and not devices that are rented.

4. POS DEVICE

4.1.   The Merchant must retain control over the POS device at all times and allow VPS or VPS' Third Party Service Providers to inspect or conduct Routine Maintenance on the POS device upon request.

4.2.   The risk in and to the POS device shall pass to the Merchant on delivery of the POS device to the Merchant or the Merchant's nominated third party, save for where such passing of risk is expressly excluded in terms of the Agreement. The Merchant shall be liable for loss of and damage to the POS device and VPS shall apply set-off, net-settlement and/or debit the Merchant's Bank Account with the value of the loss or damage incurred by VPS as a result of the Merchant's actions or omissions. The full replacement costs of the POS device will be set-off, net-settled and/or debit from the Merchant's Bank Account in the event of loss of POS device.

4.3.   Upon termination of the Agreement, the Merchant shall return the POS device to VPS in materially the same working condition (fair wear and tear excepted). The Merchant must allow VPS and Vodacom's Third Party Service Providers access to the Merchant's premises to collect the POS device on the agreed collection date.

4.4.   If the Merchant does not allow VPS to collect the POS device, the Merchant irrevocably authorises Vodacom, by using the Service and products, to apply set-off, net-settlement and/or to debit the Merchant's Bank Account with the full replacement cost of the POS device and to immediately terminate the Merchant's Agreement.

4.5.   VPS reserves the right to terminate the Agreement and to collect the POS device that has not been used for a period of 3 (three) consecutive months.

4.6.   The Merchant must:

    4.6.1.   at all times have the POS device plugged in and connected to an operational communication Network Authorised by VPS in order to update vital information on a daily basis;

    4.6.2.   assume responsibility for the provision of power and any other infrastructural modifications required for the POS device;

4.6.3.   keep and operate the POS device with due care and in a secure manner; and

4.6.4.   ensure that the POS device reflects the correct date and time.

4.7.   Insurance

4.7.1.   VPS will hereby insure a rented POS device.

4.7.2.   The rented POS device shall be insured against the theft, loss, damage or malfunction of the device.

4.7.3.   VPS hereby reserves the right to lodge a potential claim with the insurer at its sole discretion for any rented POS device.

4.7.4.   VPS will hereby determine both the validity and need to lodge a claim regarding any rented POS device.

4.7.5.   The Merchant may call VPS at 082 17855 in order to report any issue regarding the Merchant's rented POS device. VPS will thereafter:

4.7.5.1.   investigate the reported issue; and

4.7.5.2.   make a determination regarding the need to lodge a claim with the insurer.

4.8.   Installation and Training

4.8.1.   VPS or Vodacom's Third Party Service Provider will deliver the Device and telephonically assist the Merchant in setting up the device, train the Merchant, to train the Merchant's employees on how to use the Compatible device and maintain the POS device.

4.8.2.   The Merchant is responsible for choosing a supervisor and manager PIN upon installation of the POS device, to change it from time to time and to keep it secure.

4.9.   Restrictions on use

4.9.1.   The Merchant may only use the POS device to process Transactions for the entity that has entered into the Agreement at the address provided to VPS during the Application Process or on a subsequent written notification to VPS of a change in the Merchant's address. VPS will have the right to immediately terminate the Agreement and will hold the Merchant liable for any claims made against it or losses incurred if the Merchant allow other non-contracted entity (ies) and/or third party (ies) to use the POS device.

4.9.2.   It is the Merchant's responsibility to make sure that the Merchant only allows Vodacom's approved Third Party Service Provider on site. Should anything seem suspicious, please contact VPS at 082 17855.

4.9.3.   The Merchant must obtain Vodacom's approval to relocate the POS device to an address other than what VPS has on record.

4.10.   Installation costs, no fault calls, and repair costs of the POS device

VPS reserves the right to apply set-off, net-settlement and/or to debit the Merchant's Merchant Account with a service fee for installation costs, no fault calls, and repair costs of the POS device.

5.   **MERCHANT SERVICES EXCLUSIONS**

The scope of the maintenance services will not include the following and the Merchant will be held liable for the costs incurred by VPS in respect thereof:

5.1.   maintenance or repairs to electrical work, telecommunications circuits and/or apparatus connected to, but external to the POS device and/or any accessories;

5.2.   painting and/or refurbishment of the POS device;

5.3.   installation and/or use of items not approved by VPS in writing or supplied by Vodacom;

5.4.   the supply of consumable items including tally roles;

5.5.   services resulting from the Merchant relocating or removing the POS device, or any part thereof;

5.6.   the costs incurred by VPS as a result of a request by the Merchant to attend to: damage caused directly or indirectly as a result of: misuse; malicious damage; negligence and/or the failure of connectivity lines, other equipment or apparatus connected to the POS device;

5.7.   "no fault calls" - where a call for maintenance services is logged and it subsequently becomes apparent that there is no problem with the POS device;

5.8.   repair of or damage to the POS device or the restoration of lost or impaired services resulting, directly or indirectly, from:

5.8.1.   the connection of accessories, attachments or devices to the POS device, without the prior written consent of Vodacom;

5.8.2.   installation of the POS device by anyone other than VPS or its Third Party Service Provider/s;

5.8.3.   use of software applications not provided by Vodacom;

5.8.4.   alterations or additions to the POS device, except as otherwise provided for in the Agreement; and

5.8.5.   unauthorised maintenance or tampering (including circumstances where the Merchant's POS device is replaced with another POS device which has been tampered with, or on which unauthorised maintenance has been carried out) with the POS device or negligence on the Merchant's part or that of the Merchant's third party service provider(s).

6.   AUTHORISATION OF TRANSACTIONS

6.1.   The Merchant must apply to VPS for Authorisation for all Transactions including Budget Transactions, at the time of the Transaction by:

6.1.1.   Tapping a Card on the POS device for a Contactless Payment

6.1.2.   inserting a Card into the POS device and allowing the Customer to key in the PIN; or

6.1.3.   by following the security prompts for other payment instructions.

6.2.   The Merchant may not override a Transaction if the Merchant's request for Authorisation of the Transaction is declined electronically.

6.3.   The Merchant may not process a Fallback Transaction in order to avoid processing the Card by using the POS device.

6.4.   The Merchant may not force through Transactions by using the supervisor PIN without obtaining a valid Authorisation code.

6.5.   The Merchant must ensure that the Card that is presented to the Merchant by the Customer has not expired.

6.6.   The Merchant must obtain the signature of the Customer on the Receipt when instructed to do so and provide the Customer with a legible copy of the Receipt. The Merchant must compare the signature on the back of the Card with the signature on the Receipt. Should the signatures not correspond, do not accept the card. This provision only applies Cards, where a chip on a Card has been damaged and a Fallback Transaction is processed with the Customer entering a PIN on the POS device

6.7.   Should one or more of the abovementioned requirements not be met, the Transaction in question will be regarded as invalid and VPS may immediate terminate the Agreement on notice to the Merchant and apply set-off, net-settlement and/or debit the Merchant's Merchant Account with the value of the loss or losses incurred.

7. FALLBACK TRANSACTIONS

7.1.   The Merchant must first follow the process set out in the Authorisation clause above before processing a Fallback Transaction.

7.2.   The Merchant may not process Fallback Transactions on MasterCard cards.

7.3.   A Fallback Transaction will be processed in the event that the Merchant is unable to complete the Transaction on a POS device where the POS device prompts the Merchant to complete the Transaction using the magnetic strip.

7.4.   A Fallback Transaction must be completed by using the magnetic strip and obtaining the signature of the Customer on the Receipt.

7.5.   Fallback Transactions on an un-embossed Card are not allowed.

7.6.   By using the Fallback Transaction procedure, the Merchant acknowledges that the risks in utilising the Fallback Transaction procedure have been explained to the Merchant and that the Merchant understands and accepts such risks.

8. REFUNDS

8.1.   The Merchant must process Refunds on credit Cards by using the Refund facility on the Merchant's POS device.

8.2.   The Merchant may only process Refunds to the Card that was used when the purchase took place.

8.3.   The Merchant may not give cash Refunds for credit or cheque Card Transactions.

8.4.   The Merchant may not process a Refund on debit Cards by using the POS device. The Merchant must process Refunds on debit Cards by refunding the Customer in cash.

9. ACCEPTANCE OF CONTACTLESS CARDS

9.1.   Contactless Cards may be accepted on a Contactless POS Device for Transactions equal to or less than the threshold amount defined by Vodacom. Please contact the 082 17855 for more information on the threshold amount.

9.2.   VPS reserves the right to change the threshold amount at any time.

9.3.   For Transactions over the threshold amount, a Customer will be requested to key in their PIN into the POS device in order to process a Transaction.

9.4.   Transactions over the maximum threshold amount will be regarded as a contact Transaction and the Customer must either insert the Card into the POS device and key in his or her PIN, or the Transactions must be processed as a Fallback transaction when the POS device instructs the Merchant so

10. CASHBACK WITH PURCHASE FACILITY

10.1.   The limit on the maximum amount of cash which may be withdrawn by the Customer at any time and on any day, will be determined by VPS or by PASA.

10.2.   The Merchant may not use Vodacom's POS device to only process Cashback with Purchase Transactions.

10.3.   Should the Cashback with Purchase facility be abused, the Merchant's Cashback with Purchase facility may be terminated and penalties may be levied, and the Merchant will be held liable for any losses incurred by Vodacom.

10.4.   The Merchant will be held liable for any Fraudulent Transactions and associated Chargebacks that arise from Cashback with Purchase.

10.5.   Cashback with Purchase Transactions may not be processed by way of a Fallback Transaction

10.6.   The Merchant is only allowed to process Cashback with Purchase Transactions on domestic MasterCard and VISA Cards.

10.7.   When using the Cashback with Purchase facility, the Merchant must do the following:

10.7.1.   process all Cashback with Purchase Transactions electronically on the Merchant's POS device as a purchase;

10.7.2.   apply for Authorisation for all Cashback with Purchase Transactions, regardless of the Merchant's Floor Limit; and

10.7.3.   allow VPS to conduct random mystery shopping exercises or checks at the Merchant's Store.

11.   IMPORTANT NOTICE: TAX IMPLICATIONS

11.1.   VPS strongly recommends that the Merchant obtain independent professional advice regarding any tax implications arising from the acceptance and processing of Cashback with Purchase Transactions.

11.2.   The Merchant is fully responsible for any tax implications arising from the acceptance and processing of Cashback with Purchase Transactions.

11.3.   The Merchant agrees that they will not hold VPS liable and the Merchant hereby indemnify VPS fully, and hold VPS completely harmless, against all losses which arise from processing Cashback with Purchase Transactions.

11.4.   The Merchant agrees and acknowledges that the Merchant will not issue a tax invoice, credit or debit note in respect of the taxable supply of goods and/or services, where VPS has issued a tax invoice, credit or debit note.

SCHEDULE 3 - MERCHANT'S QR CODE FACILITY TERMS AND CONDITIONS

The QR Code Terms and Conditions form part of Annexure A and must be read in conjunction with the remaining Terms and Conditions of the main Agreement. A copy of the Terms and Conditions is available on the VPS' Website and can be supplied to the Merchant by post and/or email at the Merchant's request.

1. **DEFINITIONS**

   1.1. **Mobile Payment Application** means the application on a device which allows a Mobile Payments Application User to purchase goods or services from the Merchant through inter alia the scanning of the QR Code. The Mobile Payment Application may allow for various methods of payment; and

   1.2. **Mobile Payment Application User** means a person who has registered for the Mobile Payments Application and includes a Cardholder.

2. **GENERAL**

   By Transacting with the QR Code Service, the Merchant hereby endeavor to:

   2.1. Check that the details of the Merchant's sale to the Mobile Payments Application User are correct. This pertains not only to the contents and price of the sale but also to the Merchant's details. Once a Transaction is submitted it cannot be reversed.

   2.2. VPS shall not be responsible for any loss the Merchant suffers if any of the Transaction details are incorrect.

   2.3. The Merchant must only dispatch the Merchant's goods or services to the Mobile Payments Application User once the Merchant has received an authorised Receipt. We are not responsible for any loss the Merchant suffers if they only rely on the Receipt received by the Mobile Payments Application User.

   2.4. The Merchant must ensure that the Merchant's details are accurately updated at all times through the Merchant Portal or by notifying us of any changes by phoning our helpdesk at 082 17855.

3. **REFUNDS AND RETURNS**

   3.1. The Merchant undertakes to provide a fair and reasonable refund policy for all goods or services offered for sale through the Service.

   3.2. The Merchant also agrees to process all refunds for Transactions by logging a Refund request with us.

   3.3. The Merchant agrees not to give a cash refund or any other item of value for a Transaction Refund.

   3.4. A fee will be charged on any Refunds processed. We will not refund the Merchant the Merchant Commission in respect of any Refund processed.