

## STANDARD TERMS AND CONDITIONS

These standard terms and conditions are to be read as incorporated with the Application form and terms relating thereto.

### 1 DEFINITIONS

**To make this Agreement easy to read and understand, please take note of the following definitions which will be used throughout the Agreement:**

- 1.1 "Agreement" means the Application form, terms and conditions relating thereto, as well as these Standard Terms and Conditions, concluded between the User and EFTPOS which together sets out the conditions and terms in respect of the use by the User of the Merchant Terminal and the EFTPOS Services. The Agreement will be binding on both the User and on EFTPOS, even where the User has not signed the Agreement in whole or in part.
- 1.2 "EFTPOS" means EFTPOS a division of Paycorp Group (Proprietary) Limited, Registration number 2013/077629/07, having its principal place of business at Sandhaven Office Park, 14 Pongola Crescent, Eastgate Ext. 17, Sandton 2199;
- 1.3 "EFTPOS Services" means the services provided by EFTPOS to the User in terms of the Agreement, which are more fully described and set out under clause 1 of the Application terms and conditions;
- 1.4 "CPA" means the Consumer Protection Act, 68 of 2008;
- 1.5 "Download and/or Transfer" means the download of a Voucher from EFTPOS's interface to the Merchant Terminal and is effective when the Merchant confirms the transaction by selecting the relevant option to accept the transaction on the Merchant Terminal. At no stage are Value Added Services and/or PINS housed on the Merchant Terminal;
- 1.6 "End User" means the cardholder utilising a card issued by a banking institution, which allows him or her to pay for goods or services or receive a refund, where applicable, in respect of goods or services purchased from the User using his card and the Merchant Terminal, the EFTPOS Services and related merchant services;
- 1.7 "Commencement Date" means the date detailed in the Application form;
- 1.8 "Day(s)" means Business days, being Monday to Friday but excluding any regulated Public holiday or a Saturday or Sunday;
- 1.9 "Fleet Card Transaction" means a transaction processed by the User when the End User purchases any petroleum products, spares or accessories to or provides any maintenance, repair or other services for the End User;
- 1.10 "Including without limitation," means that the list is not an exhaustive listing;
- 1.11 "Initial Period" means the period set out in the Application form
- 1.12 "Merchant Acquiring Agreement" means an agreement between the User and a Merchant Bank of EFTPOS's choice in terms of which certain financial transactions using the Merchant Terminal and EFTPOS Services are processed and a debit or credit acquired by the User and End User;
- 1.13 "Merchant Bank" means a merchant bank of EFTPOS's choice in terms of which certain financial transactions using the Merchant Terminal and EFTPOS Services are processed by the Merchant Bank and a debit or credit acquired by the User and End User in terms of a Merchant Acquiring Agreement;
- 1.14 "Merchant Bank Service Fee" means an amount levied by EFTPOS and payable by the User which amount is determined as a percentage of the value of each transaction processed through the Merchant Terminal, which amount is detailed in the Application Form;
- 1.15 "Merchant Terminal" means the electronic funds transfer point of sale terminal, comprising an electronic card based system used for processing transactions through terminals at points of sale and used in conjunction with the EFTPOS Services, which terminal is more fully described in the Application Form;
- 1.16 "Monthly Minimum Service Fee Threshold" means the difference between the Monthly Minimum Service Fee Threshold and the actual Merchant bank service fees generated in respect of the previous months transactions, which Monthly Minimum Service Fee Threshold amount is set out under Application Form;
- 1.17 "Network Operator" means a company (e.g. Vodacom, MTN and Telkom) that owns an electronic communications network, and which makes such network and the electronic communications services conveyed over such network available to the EFTPOS and other industry players for commercial purposes;

- 1.18 “Operational Date” means the date when the Merchant Terminal and related EFTPOS Services become operational, which date is set out in the Installation Form to be signed by the User upon installation of the Merchant Terminal;
- 1.19 “Operating Hours” means the hours when the Merchant Terminal and EFTPOS Service will be available and operational, which are set out in the Application Form;
- 1.20 “PIN/PIN Number” means a unique identification number, owned by and personal or unique to the End User which is used to activate and process transactions via the Merchant Terminal;
- 1.21 “Prepaid Products and/or Services” means any prepaid airtime or third party prepaid credit purchases
- 1.22 “Premises” means the premises described in the Application form, which Premises are owned or leased by the User, where the Merchant Terminal will be installed and where the Merchant Terminal will be primarily used;
- 1.23 “Prime” means the publicly quoted basic rate of interest per annum at which EFTPOS’s bankers will lend on overdraft, as certified by a manager of the said bankers, whose appointment it shall not be necessary to prove;
- 1.24 “Service Provider/SP” means any service provider and/or their direct agents, including but not limited to Telephony Networks, Electricity Suppliers, Postal Services, Municipalities, Merchant Banks and/or any other providers of services;
- 1.25 “Training Mode” means a specific feature housed on the Merchant Terminal where mock transactions are simulated to imitate processing a legitimate transaction, which is done for the purposes of training the User and staff;
- 1.26 “Transaction(s)” means any successful transaction processed by the User on behalf of the End User using the Merchant Terminal and related EFTPOS Services;
- 1.27 “Termination Date” means the date when the Agreement will end due to effluxion of time, detailed in the Application form;
- 1.28 “User” means the person set out in the Application form, who will be using the Merchant Terminal and EFTPOS Services and to whom this Agreement applies;
- 1.29 “Uncontrollable Event” means including without limitation (in other words this is not an exhaustive listing), any fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, strikes, labour disputes, government regulations, rebellions or revolutions in any country, disruptions to the Merchant Terminal and/ or the EFTPOS Services as a result of acts or omissions of the other party, any Service Provider, third party non-performance, Network failure or Network Operator failure, failure or malfunction of computer or telecommunications hardware, equipment or software, or any other cause beyond the reasonable control of EFTPOS including the termination or suspension of any service or product provided by a Service Provider that may result in a delay or a failure to provide the Merchant Terminal or the EFTPOS Services; and/or any and delay or a failure in or of the Merchant Terminal or the EFTPOS Services, whatever the case may be;
- 1.30 “Unique PIN” means a unique identification number, which upon input into a device, grants the end-user a credit value for the use of the Value Added Services as offered by EFTPOS or a Service Provider, as the case may be.
- 1.31 “Value Added Services” or “VAS” means Prepaid Products and/or Services as well as any post-paid products (such as bill payments), which may be offered by EFTPOS from time-to-time.
- 1.32 “VAT” means Value Added Tax as provided for in the Value Added Tax Act, 1991.
- 1.33 “Voucher” refers to an electronic card or similar device purchased or held by an End –user which allows the End user to redeem such voucher for gifts, commodities, services, or cash as may be offered by a participating vendor or a Service Provider from time to time.

## 2 DESCRIPTION OF THE SERVICES AND OBJECTIVES OF THE AGREEMENT

**This clause sets out the objectives of the Agreement and summarises what EFTPOS will provide the User with and what the User will receive (i.e. the Merchant Terminal and related EFTPOS Services) as a result of the conclusion of the Agreement.**

- 2.1 EFTPOS installs and allows Users who own business outlets and operations in South Africa to use the Merchant Terminals and the EFTPOS Services on certain terms and conditions.
- 2.2 The User would like to make use of the Merchant Terminal and the related EFTPOS Services and has asked EFTPOS to install at its Premises a Merchant Terminal, which EFTPOS has agreed to do subject to the terms and conditions set out under this Agreement.

- 2.3 The terms and conditions pertaining to the use of the Merchant Terminal by the User and the provision of the related EFTPOS Services by EFTPOS are detailed under this Agreement,
- 2.4 In order to facilitate the installation and provision of the Merchant Terminal and EFTPOS Services, the User agrees to accurately complete all of the documentation which is reasonably required by EFTPOS and the Service Providers to facilitate the installation of the Merchant Terminal and provision of the EFTPOS Services, which documentation includes the Merchant Acquiring Agreement, the Application for Registration and the Addendum to the Merchant Acquiring Agreement.

### **3 SUITABILITY AND LOCATION OF THE MERCHANT TERMINAL**

**This clause sets out what has to be done before the Merchant Terminal can be provided and installed at the Premises where your business is operated.**

**You need to get permission from your landlord where you lease the Premises and a waiver to his landlord lien; and from the Municipality should your local Bylaws require permission.**

**Take note that EFTPOS also has the right to make sure that the Premises are suitable for the use of the EFTPOS MERCHANT TERMINAL.**

- 3.1 The User has received from EFTPOS a specification of the Merchant Terminal and EFTPOS Services which sets out and describes what the Merchant Terminal is able to do, and how it functions and operates and has confirmed that the Merchant Terminal and related EFTPOS Services are suitable for its business purposes and the End Users' purposes.
- 3.2 EFTPOS has inspected the Premises where the Merchant Terminal will be installed and primarily used from and has confirmed that the Premises are suitable for the installation and use of the Merchant Terminal and EFTPOS Services.
- 3.3 The User confirms and warrants that it is the owner of the Premises where the Merchant Terminal will be installed and from which it will be operated or that it alternatively holds a valid lease for the Premises, which lease duration is of equal or greater duration than the duration of the Agreement. Where the Premises are owned by any third party, the User will obtain all necessary approvals and consents required for the use of the Merchant Terminal on such Premises from the landlord.
- 3.4 Prior to installation by EFTPOS of the Merchant Terminal, the User will obtain all necessary approvals and consents, licenses, certificates and exemptions including any consent to install and operate the Merchant Terminal and to display any advertising and signage in respect of the Merchant Terminal from the landlord where the Premises are leased and /or from any local authority or regulator, where applicable.

### **4 RISK AND OWNERSHIP OF THE MERCHANT TERMINAL**

**This clause confirms that whilst the Merchant Terminal will be used exclusively by the User, that it will always be owned by EFTPOS**

- 4.1 Notwithstanding anything to the contrary contained under the Agreement, EFTPOS will at all times own and remain the owner of the Merchant Terminal.
- 4.2 The User will keep the Merchant Terminal free of all liens and encumbrances.

***In plain language** liens and encumbrances include a *burden, obstruction, or impediment on property that lessens its value or makes it less marketable. An encumbrance (also spelt incumbrance) is any right or interest that exists in someone other than the owner of an estate and that restricts or impairs the transfer of the estate or lowers its value. This might include a lien, a mortgage, a mechanic's lien, or accrued and unpaid taxes.* A lien will include the right to retain the lawful possession of the property of another until the owner fulfils a legal duty to the person holding the property, such as the payment of lawful charges for work done on the property. A mortgage is a common lien.*

- 4.3 Should the Merchant Terminal become damaged or is stolen, the User will notify EFTPOS immediately by telephone of such loss or damage. The User will thereafter within 24 hours, give EFTPOS written details of any such loss or damage.
- 4.4 In all cases, as regards any report concerning a theft, loss, or case of damage, EFTPOS will provide the User with a reference number which must be quoted by the User in all and any subsequent follow up communications with EFTPOS. Failure to quote the reference number will result in EFTPOS not being able to provide the User with any feedback relating to the matter.
- 4.5 Once EFTPOS has received all details from the User as regards the loss or damage envisaged under clause 4.3 above, EFTPOS will use its reasonable efforts to repair and/or to replace the Merchant Terminal within a reasonable period, which decision – i.e. to repair or to replace will be at EFTPOS's sole discretion.

- 4.6 The User will assist EFTPOS in the completion of and the submission and processing of any claim made to its insurers in respect of the lost or damaged Merchant Terminal and will promptly comply with all reasonable requirements of the relevant insurer in respect of any claim made in respect of the lost, stolen or damaged Merchant Terminal, where applicable.
- 4.7 Notwithstanding anything to the contrary contained in this Agreement, where the Merchant Terminal has been previously lost, stolen or damaged (in other words on more than one occasion), and EFTPOS has received notification from the User that the Merchant Terminal has been lost, damaged or stolen once again, EFTPOS will at its sole and absolute discretion decide whether it will repair, replace or re-install the Merchant Terminal at the Premises. Should EFTPOS ascertain that the User is a high risk user, and accordingly elect not to replace, re-install or repair the Merchant Terminal and accordingly elects as a result to terminate the Agreement, EFTPOS will notify the User in writing, within a 10 (ten) Day period, of such election and decision and the reasons therefore and the Agreement will thereafter be deemed to have come to an end, this election being without prejudice to any rights which EFTPOS may have in consequence of its election to terminate the Agreement.
- 4.8 In the event of any re-installation, replacement or repair as envisaged under clause 4.5, the User will allow EFTPOS all reasonable access to the Premises during the User's ordinary business hours for the purpose of installing or repairing the Merchant Terminal and the provisions of this Agreement relating to the installation of the Merchant Terminal will apply in the same manner (mutatis mutandis) to the replacement, re-installation and/or uplifting of the Merchant Terminal.
- 4.9 Once the Merchant Terminal has been installed at the Premises, it will be placed into "Training Mode" for the purposes of training the User and its staff on how to use the Merchant Terminal. Once the User and its staff are comfortable and familiar with the use of the Merchant Terminal, EFTPOS will take the Merchant Terminal out of "Training Mode" and hand the operational Merchant Terminal over to the User for use.
- 4.10 Once the User has received the Merchant Terminal in an operational state as per clause 4.9 above, it undertakes not to place the Merchant Terminal into Training Mode at any time, as this will result in the Merchant Terminal simulating transactions only, which in turn will not be processed by the Merchant Bank.

## **5 OPERATION AND AVAILABILITY OF THE MERCHANT TERMINAL**

**This section sets out how the Merchant Terminal and EFTPOS Services operate and when they will be available for use.**

- 5.1 The User is aware and acknowledges that the Merchant Terminal does not operate in isolation but instead relies on functionalities which are provided by a number of Service Providers who provide separate but interrelated and connected services which as a whole, allow the Merchant Terminal to function. The Service Providers operate as independent Service Providers who are not necessarily contracted by EFTPOS.
- 5.2 EFTPOS will use its best endeavours to ensure that the Merchant Terminal remains operational at all times during Operating hours. However, due to the nature of the Merchant Terminal and the EFT Services, which are dependent on a number of independent Service Providers over whom EFTPOS has no direct control, EFTPOS expressly stipulates and the User acknowledges that EFTPOS provides the Merchant Terminal and the EFTPOS Services "as is" and "as available", save and except where the Merchant Terminal itself and on an independent basis is defective and hence un-operational.
- 5.3 EFTPOS accordingly cannot warrant or guarantee that the Merchant Terminal and/or the EFTPOS Services will at all times be free of errors or interruptions, that the EFTPOS Services will always be available, fit for any purpose, not infringe on any third party rights, be secure and reliable, BUT subject always to the provisions of the CPA where applicable and in particular where the Merchant Terminal is defective and the User is able to show that the reason for the inoperativeness or un-availability of the EFTPOS Services is solely attributable to such defect.
- 5.4 Notwithstanding the above and under all circumstances, EFTPOS will use its best endeavors to notify the User in advance of any failure of, or interruption to the Merchant Terminal or the EFTPOS Services and where applicable any required maintenance and repairs which may have to be carried out or be performed as a result of such failure, interruption or unavailability of the EFTPOS Service, where it is in a position to do this.

## **6 RELOCATION OR REMOVAL OF MERCHANT TERMINAL**

**This clause describes what the User must do if he wants to relocate the business to another place which then means that the Merchant Terminal will have to be moved to the new premises and whether this is allowed by EFTPOS.**

- 6.1 Where the User is forced to relocate and/or move from the Premises, it will have to apply for and obtain written permission from EFTPOS before the Merchant Terminal can be relocated, which application must be made in writing at least 1 (one) month before the anticipated relocation or removal of the Merchant Terminal.

- 6.2 On receipt of the application EFTPOS may at its sole and absolute discretion, consent to the requested removal, provided always that the removal is to a site or alternative premises which EFTPOS has in writing confirmed is suitable and acceptable for the installation of the Merchant Terminal.
- 6.3 EFTPOS will have the right to attach any conditions to any relocation and/or removal, of the Merchant Terminal including any variation or adjustment of the fees and charges detailed under this Agreement.
- 6.4 EFTPOS or its appointed service provider will be the only party entitled to effect such removal and relocation and any consequential installation, which costs will be paid for by the User, on demand and by way of debit order.
- 6.5 This Agreement, save for the description of the new Premises and any changes to the fee and charges, will apply to any relocation
- 6.6 Any relocation or removal which is not done in accordance with this clause 6 will be a material breach of the Agreement.

## **7 VALUE ADDED SERVICES AND PREPAID SERVICES**

**This clause describes what the User must do if he will sell Value Added Services and Prepaid Services such as prepaid airtime from the Merchant Terminal,**

- 7.1 Where the User makes use of any Value Added Services supplied by EFTPOS, the terms and conditions and those contained in the Application Form shall be applicable.
- 7.2 Discount Rates
  - 7.2.1 Where it is applicable or allowable, the User shall be entitled to purchase Prepaid Products and/or Services at a discount rate, which discount rate shall be determined in accordance with the discount rates as recorded in Schedule A of the application form hereto.
  - 7.2.2 EFTPOS shall be entitled to vary any/all of the discount rate/s recorded in the Schedule hereto and/or to discontinue the supply of any pre paid denominations it deems necessary, subject only to 10 (ten) Days prior written notice to the User of such variation in the event that:
    - 7.2.2.1 the rate/s at which EFTPOS obtains Unique PIN from Service Providers, is changed for any reason whatsoever,
    - 7.2.2.2 EFTPOS deems it to be necessary to vary such rates, in its sole and absolute discretion.
  - 7.2.3 EFTPOS shall not be liable to the User pursuant to the expiry of any prepaid services and/or products and/or the Unique Pin, while such Prepaid Products and/or Services and/or the Unique Pin are in the User's possession or under the User's control and the User hereby indemnifies EFTPOS in respect of any such claim made against EFTPOS pursuant hereto.

## **8 SALE AND TRANSFER OF THE BUSINESS**

**This clause describes what the User must do if he wants to sell the business or Premises to a third party.**

- 8.1 Should the User decide to sell or dispose of the business or Premises where the Manual Terminal is situated, the following will apply:
  - 8.1.1 no cession or assignment (transfer of the rights or obligations) under this Agreement to a third party will be allowed unless EFTPOS has given its prior written approval to such assignment or cession;
  - 8.1.2 the User will immediately notify EFTPOS of the intended sale and the details of the prospective buyer;
  - 8.1.3 the prospective buyer will be interviewed by EFTPOS and will have to complete and execute all and any documentation which may be required by EFTPOS for the transfer of the rights to install/operate the Merchant Terminal;
  - 8.1.4 EFTPOS is under no obligation to give its written consent to the cession or assignment and where any application is declined, the User will be deemed to have cancelled the Agreement and EFTPOS will have the right to immediately uplift the Merchant Terminal from the Premises at the User's expense and claim payment of the cancellation fee detailed under clause 8(b) of the Application terms and conditions.

- 8.1.5 where the purchaser of the User's business has advised that it is not interested in taking over the Merchant Terminal, the User will be deemed to have cancelled the Agreement and EFTPOS will have the right to immediately uplift the Merchant Terminal from the Premises at the Users expense and claim payment of the cancellation fee detailed under clause 8(b) of the Application terms and conditions.
- 8.1.6 any cession or assignment of the rights and obligations under this Agreement will be subject to the condition that the User guarantees compliance by the prospective purchaser of all the terms of the Agreement, as such the User acknowledges that it has a primary obligation to EFTPOS for the payment of all sums which may be due to EFTPOS in terms of this Agreement, notwithstanding that the Agreement has been ceded or assigned to a third party.
- 8.1.7 the User will include in any sale of business agreement the provisions detailed under this clause 8 (i.e. that the prospective buyer will not automatically take cession or assignment of all the User's rights and obligations under and in terms of this Agreement, as this will be subject to EFTPOS's prior approval).

## 9 FEE'S, INSTALLATION COSTS AND PENALTIES

**This clause details what the User will pay to EFTPOS in respect of the rights to use of the Merchant Terminal and the EFTPOS Services.**

- 9.1 All payments which may become due and owing by the User to EFTPOS will be paid by way of debit order. In order to give effect to this undertaking, the User will simultaneously on signature of the Agreement sign a debit order authority, in the form acceptable to EFTPOS.
- 9.2 All payments due and owing to EFTPOS as set out in the Application form and duly set out under a monthly EFTPOS Invoice shall be paid by the User in advance, free of exchange, set-off or deduction, into the Merchant Banking account of EFTPOS or its nominee on a month to month basis on or before the last working day of the month, save for the Merchant Banking fee which will be debited on the 1<sup>st</sup> day of the following month.
- 9.3 The User shall be liable for payment immediately upon demand, of an amount equivalent to the amount charged by EFTPOS's Merchant Bankers in respect of any of the User's cheques, debit orders or other forms of payment, which may be dishonoured by the User's Merchant Bankers, where applicable.
- 9.4 Any amount which the User may owe to EFTPOS at any time shall be determined and proved by a certificate signed by a manager or director of EFTPOS, the User agreeing that such certificate will:
- 9.4.1 until the contrary is proved be prima facie proof of the amount of the User's indebtedness to EFTPOS  
*(prima facie means – correct on first presentation and unless rebutted or argued to the contrary would be sufficient to prove a particular proposition or fact)*
- 9.4.2 be valid as a liquid document against the User in any competent court for the purpose of obtaining provisional sentence or judgment against the User.
- 9.4.3 The amounts payable by the User to EFTPOS at the commencement of the Agreement will escalate annually on the 1 March by an amount equivalent to the Consumer Price Index ("CPI").
- 9.4.4 Where the value of transactions processed through the Merchant Terminal(s) per month, for 3 (Three) consecutive calendar months, is less than that as declared in the Application Form, EFTPOS reserves the right to increase the Merchant Bank Service Fee, by an amount equal to the rate as set out in the rate card for the actual value of transactions, which rate card is available upon request. Subject at all times to the provisions of clause 9.4.3.
- 9.4.5 Should the debit order for any amounts due under this Agreement is rejected, the User agrees and acknowledges that the payment of these fees will be dealt with on either net settlement basis or EFTPOS shall have the right to withhold payment of any monies which may be or become due to the User by EFTPOS (the "retained amount") and set off these amount against any amounts which EFTPOS may owe or which will become due and payable to the User by EFTPOS.
- 9.4.6 The User undertakes to sign up with a local fleet issuer before processing any Fleet Card Transactions. The User agrees that EFTPOS and the Merchant Bank will not be liable to the User for any delayed settlements or non-receipt of any funds that may be due from Fleet Card Transactions as a result of the User not signing up with the local fleet issuer.
- 9.4.7 EFTPOS or the acquiring bank shall be entitled to retain settlements or any funds due to the User in the case of excessive chargebacks, bankruptcy, fraud or suspected fraud.

## 10 LIABILITY AND INDEMNITIES

**This clause sets out that the Merchant Terminal is used by the User and the End user at their own risk, unless the loss is caused by EFTPOS's gross negligence or as a result of a defective Merchant Terminal which has been caused solely by EFTPOS and is to be read in conjunction with clause 7 of the Application terms and conditions.**

- 10.1 Without detracting from the generality of the risk detailed under clause 7 of the Application terms and conditions, the User acknowledges that such risk will include:
- 10.1.1 the risk of any loss or damage, suffered as a result of using the Merchant Terminal and which loss is occasioned as a result of any theft, attempted theft, fraudulent tampering, attempted tampering, vandalism, theft of and/or attempts to access, intercept and steal personal details and /or information or cash from the User, End User or their Merchant Bank accounts;
  - 10.1.2 the risk of any loss or damage, suffered due to the theft of the End Users Merchant Banking details;
  - 10.1.3 the risk of any loss or damage, suffered by the User or the End User due to any unauthorised interception and/or monitoring of information by a third party of the End User or User's Merchant Bank or financial institutions;
  - 10.1.4 the risk of any loss or damage, suffered due to any unauthorised transaction(s) that were submitted after the End User's Pin Number and/or any other passwords or access codes were entered into the Merchant Terminal;
  - 10.1.5 the risk of any loss or damage incurred as a result of the User or the End User failing to take reasonable steps to safeguard their Merchant Bank account and details, their access codes and/or any failure to follow the steps recommended by their Merchant Bank or by EFTPOS from time to time;
  - 10.1.6 the risk of any loss or damage, suffered by the User or End User due to any failed, late or delayed transactions, save where either the User or the End User can show that any loss or damage was due to the gross negligence of EFTPOS and /or a defect in the Merchant Terminal which has been caused solely by EFTPOS and subject always to the provisions and defences permitted under the CPA.
- 10.2 For the avoidance of doubt, EFTPOS will under no circumstances be liable for any damage, costs or expenses incurred by the User, or an End User, Service Provider or third party, regardless of when or how such loss/damage arose and whether in contract, delict or otherwise and regardless of whether the loss/damage was foreseen or reasonably foreseeable by EFTPOS, unless the User or the End User can show that any loss or damage was due to the gross negligence of EFTPOS and /or a defect in the Merchant Terminal which has been caused solely by EFTPOS and subject always to the provisions and defences permitted under the CPA.
- 10.3 The User agrees to indemnify EFTPOS, its officers, employees, associates, and assigns, against any claims brought by the User, End User or third parties, or any Merchant Bank or financial institution which arises from the use of the Merchant Terminal or the EFTPOS Services, regardless of the kind of loss or damage the party attempting to claim may suffer, including direct, indirect, special, incidental or consequential damages, and whether due to the use of, or inability to use, the Merchant Terminal and EFTPOS Services, save where such loss has been incurred by the User or a an End User as a result of the gross negligence of EFTPOS and/or as a result of a defective Merchant Terminal which defect has been caused solely by EFTPOS as envisaged under section 61 of the CPA, and subject always to the provisions and defences permitted under the CPA, and in particular those permitted under section 61 of the CPA.
- 10.4 In addition to and without prejudice to any other limitations of liability provided for in the Agreement and to the fullest extent permitted by applicable law, EFTPOS will not be liable to the User for any direct damages howsoever arising and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement, whether resulting from negligence, breach or any other cause. To the extent that a competent court or tribunal or other competent dispute resolution body or authority finally determines, notwithstanding the exclusion contained in this clause, that EFTPOS is liable to the User for any damages, EFTPOS's liability to the User for any damages howsoever arising shall be limited to the amounts paid by EFTPOS under this Agreement in consideration for the EFTPOS services during the immediately preceding 12 (twelve) month period.

## 11 IRREGULAR TRANSACTIONS

**This clause sets out the procedure, which must be followed when an EFT irregularity is experienced.**

- 11.1 When a User raises a transaction dispute, the User must make immediate contact with EFTPOS and provide EFTPOS with the details of the dispute and a copy of the merchant receipt. EFTPOS will then take up the matter on behalf of the User with the acquiring Merchant Bank.
- 11.2 When an End User raises a transaction dispute, the User must make immediate contact with the transacting Merchant Bank who is responsible for the End User's account, which parties will be solely responsible for the determination and administration of the dispute.

- 11.3 The User warrants that it will not, directly or indirectly, be a party to, or allow or authorise any transaction to be effected through the Merchant Terminal, by any person who is not an End User and warrants that it will implement and keep in place all necessary security precautions and checks to prevent the above from occurring.

## 12 INSURANCE

**This clause states that the User must take out insurance to cover all the risks, excluding reasonable wear and tear, which it may be exposed to under this Agreement, including the costs to insure and where necessary to replace any stolen or damaged Merchant Terminal which EFTPOS refuses to replace and/or repair.**

- 12.1 The User acknowledges and accepts the various risks which it may be exposed to in consequence of this Agreement and which may arise in consequence of its use of the Merchant Terminal and the EFTPOS Services. The User undertakes where possible to take out insurance, with a reputable insurance service provider acceptable to EFTPOS, to cover all or any of these risks, which cover should include public liability cover, loss of cash where it's shown to be solely at fault, the costs which may have to be incurred to repair and or replace any Merchant Terminal, excluding reasonable wear and tear and to implement any additional security measures that may be required by the User's insurers from time to time.

## 13 INDEPENDENT CONTRACTORS

**This clause records that both parties are independent and will never be seen as employees or partners of each other.**

- 13.1 Both EFTPOS and the User are acting independently as independent service providers and not as partners, and under no circumstances will their respective employees be deemed to be employees of the other for any purpose.
- 13.2 EFTPOS may not, as agent or in any other capacity contract on behalf of or make any commitments of any kind on behalf of the User except to the extent and for the purposes expressly provided for under the Agreement.
- 13.3 The User may not, as agent or in any other capacity contract on behalf of or make any commitments of any kind on behalf of EFTPOS except to the extent and for the purposes expressly provided for under the Agreement.

## 14 UNCONTROLLABLE EVENTS PREVENTING PERFORMANCE

**Where any EFTPOS service cannot be provided or the Merchant Terminal accessed and used as a result of an event beyond the party's control, the parties will be excused from such performance.**

- 14.1 Where either party is unable to perform their obligations as set out under the Agreement and the non-performance is wholly or partly due to an Uncontrollable Event then, for so long as the Uncontrollable Event in question remains in place, the party who is unable to perform will be excused from such performance and from any liability in consequence of its inability to perform.

## 15 THE SERVICE OF LEGAL NOTICES AND OTHER DOCUMENTS

**This clause details where various notices and communications by one party to the other must be sent to.**

- 15.1 The User will send all communications, and any legal notices to EFTPOS by either post, fax, e-mail, SMS or other similar technology at the selected addresses detailed below which addresses the User chooses as its domicile citandi et executandi. (*place where documents may be served*)

Invoices and statements and general communication:  
EFTPOS ATT: Financial Manager  
Sandhaven Office Park  
14 Pongola Crescent  
Eastgate Extension 17  
Sandton  
2199

Legal Notices:  
EFTPOS (Pty) Ltd.  
ATT: Legal Manager  
Sandhaven Office Park  
14 Pongola Crescent  
Eastgate Extension 17  
Sandton  
2199

- 15.2 EFTPOS will send all communications, including EFTPOS's monthly invoice, statement and any legal notices to User by either post, fax, e-mail, SMS or other similar technology at the selected addresses detailed below which addresses User chooses as its domicilium citandi et executandi. (*place where documents may be served*)

Invoices and statements and general communication:

*Postal Address - see Application form*

Legal Notices:

*Installation Address - see Application form*

- 15.3 Should the addressees reflected above change, the respective party will have a duty to update the details and give written notice to the other of such change.

## 16 PERSONAL INFORMATION

**The parties are under a legal duty to protect the others personal information.**

- 16.1 The User acknowledges that EFTPOS will by virtue of the Agreement come into possession of the User's Data.
- 16.2 The User acknowledges and agrees that EFTPOS may use, process and or transfer (including intra-group transfers) the User's Data:
- 16.2.1 in connection with the provision of the Services;
- 16.2.2 to incorporate the User's Data into the databases controlled by Paycorp Group for purposes of administration, invoicing and statements, verification of User's identity and solvency by using any credit bureau or a government agency, fraud detection and prevention, revenue analysis and reporting, and
- 16.2.3 to communicate to the User by voice, letter, fax or email regarding products and services of EFTPOS or its Affiliates .
- The User may withdraw consent for the use, processing or transfer of the User's Data as set out above by written notice to EFTPOS, unless such Data is required for; invoicing and statements, fraud investigations, in order to comply with any statutory obligation or regulatory requirement or court order.
- 16.3 EFTPOS undertakes to treat the User's personal information as confidential and will take all reasonable steps to ensure such protection.
- 16.4 EFTPOS will only disclose the User's personal information if it is under a legal duty to do so or where the User gives its consent to such disclosure.
- 16.5 The User undertakes to treat EFTPOS's personal information as confidential and will take all reasonable steps to ensure such protection.
- 16.6 The User will only disclose EFTPOS's personal information if it is under a legal duty to do so or where EFTPOS gives its consent to such disclosure.
- 16.7 In order to maintain a relationship with the User, the User expressly agrees that EFTPOS as part of their credit rating and account maintenance processes may obtain or check the User's personal information using another parties information such as a credit bureau or a government agency and to this end disclose to any of these parties the Users personal information.

16.8 Notwithstanding anything to the contrary contained in the Agreement, in order to keep up to date with the various services and products offered by and provided by EFTPOS, any of its Subsidiaries or business partners, the Merchant hereby agrees that EFTPOS may disclose the Merchant's Personal information for direct or other types of marketing and / or promotion purposes.

16.9 The Merchant has the right to object, in the prescribed manner, to EFTPOS processing Personal information in terms of this 16.8 above. On receipt of your objection EFTOS will place a hold on any further processing in terms of clause 16.8.

## **17 CONSEQUENCES OF A TERMINATION BY EFTPOS**

**This clause details what will happen when EFTPOS cancels the Agreement.**

17.1 In the event of the Agreement being terminated by EFTPOS as a result of a breach by the User, EFTPOS will have the right to:

17.1.1 retain all amounts already paid by the User;

17.1.2 claim all arrear amounts, which are due and owing to EFTPOS by the User up to date of termination;

17.1.3 claim immediate payment as pre-estimated liquidated damages the following amounts:

17.1.3.1 One (1) to Six (6) months from the Operational Date, User will be liable for a cancellation fee in the amount of R3000;

17.1.3.2 Seven (7) to Twelve (12) months from the Operational Date, User will be liable for a cancellation fee in the amount of R2000.00;

17.1.3.3 Thirteen (13) to Eighteen (18) months from the Operational Date, User will be liable for a cancellation fee in the amount of R750.

17.1.4 Should the Merchant Terminal not be returned the User within 5 (Five) Days of written request to do so, the User will be liable to pay a replacement fee for the Merchant Terminal in the amount of R4 000.00.

17.1.5 Should EFTPOS be required to collect the Merchant Terminal from the User's premises, User will be liable for a R399 collection fee.

17.1.6 All amounts stated above are exclusive of VAT.

17.2 claim in the alternative to the right under clause 17.1.3, payment of all direct and indirect damages resulting from the breach by the User, including but not limited to costs for the removal of the Merchant Terminal and loss of revenues by EFTPOS, all legal costs and disbursements incurred by EFTPOS as a result of the breach, including legal costs on the attorney and own client scale, costs incurred in collecting or endeavouring to collect all or any amounts payable by User; collection commissions, storage charges, all of which will be payable on demand.

17.3 On termination of the Agreement for whatever reason, EFTPOS will be allowed access to the Premises for the purposes of removing the Merchant Terminal, which will be done at the cost of the User and added to any damages claim referred to under this clause 17. Any damages incurred to the Premises as a result of the removal will be for the User's account- EFTPOS expressly advising that it will not be liable for these, if any, amounts.

## **18 CONSEQUENCES OF A TERMINATION BY THE USER**

**This clause details what will happen when the User cancels the Agreement.**

18.1 In the event of the Agreement being terminated by the User as a result of a breach by EFTPOS, the User will allow EFTPOS access to the Premises for the purpose of removing the Merchant Terminal, which will be done at EFTPOS's own cost and expense.

## **19 JURISDICTION AND APPLICABLE LAWS**

**This clause tells you which Court must be approached should the party elect to sue the other.**

19.1 In the event of the Parties not utilising the dispute resolution forums available to them under the CPA, and one of the parties instead elects to avail itself to its common law rights, then in such an event, the parties both consent and submit to the jurisdiction of the Magistrates' Court having jurisdiction over their person in respect of all proceedings in connection with the Agreement, notwithstanding that the amount claimed or the value of the matter in dispute exceeds such jurisdiction.

19.2 Notwithstanding the provisions of clause 19.1, either party may at their election institute any proceedings in connection with the Agreement in any division of the High Court of South Africa having jurisdiction.

## **20 CESSION AND DELEGATION**

**This clause prevents the Parties from transferring this Agreement to another.**

- 20.1 The User may not sell, cede, assign, delegate or in any other way alienate or dispose of any or all of its rights and obligations under the Agreement without the prior written approval of EFTPOS, which approval will not be unreasonably withheld.
- 20.2 EFTPOS shall be entitled to sell, cede, assign, delegate, alienate, dispose or transfer any or all of its rights and obligations under the Agreement to any of its affiliates or to any third party.,.

## **21 CONSENT**

- 21.1 EFTPOS a wholly-owned subsidiary of Paycorp Group Proprietary Limited (Paycorp Group) disposed of its entire business to Paycorp Group on **1 October 2015** (the Effective Date). As a result of the transaction, there has been a direct change of control of EFTPOS.
- 21.2 To the extent that the User's consent is (whether expressly or in terms of the common law) required in terms of the Agreement between the User and EFTPOS for a direct change of control in EFTPOS and/or for the assignment by EFTPOS of their rights and obligations under the Agreement to Paycorp Group, the User is deemed to have granted such consent as at the Effective Date and waives any rights in that regard.

## **22 WHOLE AGREEMENT**

**The general clauses, which are important, are found under this section, so read them carefully.**

- 22.1 The Agreement as defined in clause 1.1 constitutes the entire Agreement between parties, which Agreement shall supersede all previous agreements, negotiations, commitments and writings.
- 22.2 The Agreement may not be changed or modified unless the change is negotiated and is acceptable to both parties, which change is to then be reduced to writing and signed by both parties.
- 22.3 All documents to which these terms and conditions are attached, including but not limited to the Schedules, shall form part of and shall be integral to the Agreement.
- 22.4 Should the parties agree to install an additional Merchant Terminal at the Premises, the Agreement and all its terms and conditions will apply equally (*mutatis mutandis*) to any additional or replacement Merchant Terminal.

## **23 WAIVER**

**A waiver is the voluntary relinquishment or surrender of some known right or privilege. While a waiver is often in writing, sometimes a person's actions can act as a waiver. This clause allows a party where he has surrendered a right, to still rely on that right later on.**

- 23.1 No indulgence, leniency or extension of time which either party may grant or show to the other (the waiving party) will prejudice or preclude the waiving party from exercising any of its rights, even where waived, in the future.

(Explanation - While EFTPOS may give you extra time to comply with your obligations or decide not to exercise some of its rights, the User must not assume that this means that EFTPOS cannot apply its rights at a later stage or visa versa).

## **24 REPRESENTATIONS**

**This clause states that no promises or legal statements were made which induced the User to conclude the agreement with EFTPOS.**

- 24.1 EFTPOS has not made any representations or given any legal statements to the User other than those contained in the Agreement and the User has not relied on any representations other than those contained in the Agreement.

## **25 INTERPRETATION AND SEVERABILITY**

**This sets out how the Agreement will be interpreted and where certain clauses can be separated from the main agreement which have been found to be unlawful.**

- 25.1 All words and phrases referring to one gender include each of the other genders and the singular includes the plural and vice versa where the context requires.

25.2 Each phrase, sentence, paragraph and clause in the Agreement is severable, notwithstanding the manner in which they may be linked together or grouped grammatically and if in terms of any judgment or order any phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason the remaining phrases, sentences, paragraphs and clauses as the case may be will nevertheless be and continue to be of full force and effect.

## **26 VAT**

**This clause states that all amounts are exclusive of VAT.**

26.1 All amounts reflected in the Agreement and the Schedules will exclude Value Added Tax (VAT).

## **27 COMPLIANCE WITH APPLICABLE LAWS**

**This clause states that the User and EFTPOS must comply with all the laws of South Africa.**

27.1 The User will comply all respects with the laws of the Republic of South Africa, including but not limited to the Financial Intelligence Centre Act 38 of 2001, the Prevention of Organised Crime Act 121 of 1998, the Consumer Protection Act, 2008 and the Prevention of Counterfeiting of Currency Act 16 of 1965, and any other law, enactment or statute relevant to the business of the User.